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June 17, 2021

VIA IZIS

Anthony J. Hood, Chairman
Zoning Commission for the District of Columbia
441 Fourth Street, NW, Suite 200S
Washington, DC 20001

Re: Z.C. Case No. 20-27: Application of High Street District Development, Inc. (the "Applicant") to the District of Columbia Zoning Commission for a Consolidated PUD and Map Amendment at Square 445, Lots 191, 192, 193, 194, 800, 821, and 822 (the "Property") – Applicant's Proposed Findings of Fact and Conclusions of Law

Dear Chairman Hood and Commissioners:

Enclosed please find the Applicant's proposed Findings of Fact and Conclusions of Law in the above referenced case. Please feel free to contact the undersigned with any questions.

Respectfully submitted,

/s/ Allison C. Prince

/s/ Jennifer Logan

Enclosures

CC: Jacob D. Ritting (*via e-mail only: jacob.ritting@dc.gov*)
Office of the Attorney General for the District of Columbia

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Certificate of Service

I certify that on or before June 17, 2021, I delivered a copy of the foregoing document via e-mail to the addresses listed below.

/s/ Jennifer Logan

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-27
Z.C. Case No. 20-27
High Street District Development, Inc.
(Consolidated Planned Unit Development and Map Amendment @ Square 445, Lots 191, 192, 193, 194, 800, 821, and 822)

June __, 2021

Pursuant to notice, the Zoning Commission for the District of Columbia (the "**Commission**") held a public hearing on May 20, 2021 to consider an application (the "**Application**") from High Street District Development, Inc. (the "**Applicant**"), for review and approval of a consolidated planned unit development and a PUD-related amendment of the Zoning Map from the current MU-4 zone to the MU-6 zone ("**PUD**") for Lots 191, 192, 193, 194, 800, 821, and 822 in Square 445 (the "**Property**"). The Commission considered the Application pursuant to Subtitles X and Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the "**Zoning Regulations**" or "**ZR16**," to which all citations to regulations herein are made unless otherwise specified). For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

Parties

1. The following were automatically parties in this this proceeding pursuant to Subtitle Z §403.5:

    - The Applicant; and
    - Advisory Neighborhood Commission ("ANC") 6E, in which district the Property is located and so an "affected ANC" pursuant to Subtitle Z §101.8

2. The Commission received no requests for party status.

Notice

3. On March 31, 2021, the Office of Zoning ("OZ") sent notice of the May 20, 2021 public hearing (Exhibits ["Ex."] 20 and 21) to:

    - ANC 6E;

- The ANC 6E02 Single Member District Commissioner, whose district includes the Property;
- The Office of the ANCs;
- The Office of Planning ("OP");
- The District Department of Transportation ("DDOT")
- The Department of Consumer and Regulatory Affairs ("DCRA")
- The Office of the Attorney General;
- The District Department of the Environment ("DOEE")
- The Ward 6 Councilmember, in whose district the Property is located;
- The Chair and At-Large Councilmembers; and
- The owners of property within 200 feet of the Property

4. OZ published notice of the public hearing in the March 30, 2021, *D.C. Register* as well as on the calendar on OZ's website (Ex. 19 and 20).

5. The Applicant submitted evidence that it had posted notice of the public hearing on the Property as required by Subtitle Z §402.3. (Ex. 22A).

The Property

6. The Property consists of approximately 22,824 square feet of land area, located on 7 contiguous lots in the northwest quadrant of the District. (Ex. 3, 3H1-3H2)

7. The Property is located in the Northwest quadrant of the District within Ward 6 and ANC 6E02, in the Shaw neighborhood. (Ex. 3, 3H1-3H2)

8. The Property is bounded by:

- To the north, a public alley and a Bread for the City building;
- To the south, P Street N.W.;
- To the west, 7th Street N.W.; and
- To the east, Marion Street N.W.
(Ex. 3, 3H1-3H2)

9. The Property currently is devoted to a mix of uses including a surface parking on the eastern half and a vacant and unimproved lot on the western half. Lot 194 is currently improved with a one-story building in which the Ordinary People barber shop is located. (Ex. 3, 3H1-3H2)

10. The Property is located within three blocks of two major Metrorail stations and is served by Metrobus along 7th Street N.W. (Ex. 3, 3H1-3H2)

11. The area around the Property includes:

- To the north along 7th Street N.W. - a mix of commercial, retail, and residential uses in the MU-4 zone district;

- To the east across Marion Street N.W. – rowhomes in the RF-1 zone district;
- To the west across 7th Street N.W.- a mixed-use building that was rezoned through the PUD process to the C-2-C zone, which is the equivalent of the current MU-6 zone; and
- To the south across P Street N.W. – the Kennedy Recreation Center.
(Ex. 3, 3H1-3H2)

12. The Property is subject to affordable covenants (the "Affordable Covenants"), which require the following:
    - the greater of 30% of the units built on Lot 191 or 3 units be set aside as affordable;
    - the greater of 20% of the units built on Lot 821 or 7 units be set aside as affordable; and
    - For rental projects, 25% of these affordable units must be reserved for households with an annual income no greater than 30% MFI, and the remaining affordable units must be set aside for households with an annual income at or above 30% MFI and no more than 50% MFI.
    (Ex. 11)

Current Zoning

13. The Property is currently in the MU-4 zone, the intent of which is to: "*(a) Permit moderate-density mixed-use development; (b) Provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and (c) Be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers.*" (Subtitle G §400.3).

Comprehensive Plan (Title 10A DCMR, the "CP")

14. The CP's Generalized Policy Map (the "GPM") designates the eastern portion of the Property facing Marion Street as a "Neighborhood Enhancement Area", and the majority of the Property as a "Main Street Mixed-Use Corridor."

15. The CP defines Neighborhood Enhancement Areas as:

    "*neighborhoods with substantial amounts of vacant and underutilized land. They include areas that are primarily residential in character, as well as mixed-use and industrial areas. Many of these areas are characterized by a patchwork of existing homes and individual vacant lots, some privately owned and others owned by the public sector or non-profit developers. These areas present opportunities for compatible infill development, including new single-family homes, townhomes, other density housing types, mixed-use buildings, and, where appropriate, light industrial facilities. Land uses that reflect the historical mixture and diversity of each community and promote inclusivity should be encouraged.*" (CP §225.6)

16. The CP defines Main Street Mixed-Use Corridors as:

"*traditional commercial business corridors with a concentration of older storefronts along the street. The area served can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian- oriented environment with traditional storefronts. Many have upper-story residential or office uses. Some corridors are underutilized, with capacity for redevelopment. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment*." (CP §225.14).

17. The CP's Future Land Use Map (the "FLUM") designates the Property as a mix of Moderate Density Residential on the eastern portion of the Property facing Marion Street, and the remainder of the Property as a mix of Medium Density Commercial/Medium Density Residential.

18. The Moderate Density Residential Designation

"*is used to define neighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings. In some neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). Density in Moderate Density Residential areas is typically calculated either as the number of dwelling units per minimum lot area, or as a FAR up to 1.8, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development, The R- 3, RF, and RA-2 Zone Districts are consistent with the Moderate Density Residential category, and other zones may also apply.*" (CP §227.6)

19. The Medium Density Residential Designation

"*is used to define neighborhoods or areas generally, but not exclusively, suited for mid-rise apartment buildings. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. Pockets of low and moderate density housing may exist within these areas, Density typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The RA-3 Zone District is consistent with the Medium Density Residential category, and other zones may also apply.*" (CP §227.7).

20. The Medium Density Commercial Designation

"*is used to define shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or*

taller than those in Moderate Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-8 and MU-10 Zone Districts are consistent with the Medium Density category, and other zones may also apply." (CP §227.12).

21. The CP's Near Northwest Area Element applies to the Property, and includes the following development priorities:

- *Policy NNW-1.1.1: Residential Neighborhoods* Maintain and enhance the historic, architecturally distinctive mixed density character of Near Northwest residential neighborhoods, including Burleith, Georgetown, Foggy Bottom, Dupont Circle, Sheridan-Kalorama, Logan Circle, Mount Vernon Square, and Shaw. Ensure that infill development within these areas is architecturally compatible with its surroundings and positively contributes to the identity and quality of each neighborhood.

- *Policy NNW-1.1.2: Directing Growth* Generally direct growth within the Near Northwest Planning Area to the eastern side of the Planning Area (Logan Circle and Shaw), given the strong market demand and limited land available on the west side, and the need for reinvestment and renovation on the east side.

- *Policy NNW-1.1.4: Neighborhood Commercial Revitalization* Improve the neighborhood shopping areas along 7th, 9th, and 11th Streets NW. The success of the established businesses on these streets should be strongly encouraged, and new businesses that provide needed goods and services to area residents should be attracted.

- *Policy NNW-1.1.9: Affordable Housing* Protect the existing stock of affordable housing in the Near Northwest Planning Area, particularly in the Shaw and Logan Circle neighborhoods. Sustain measures to avoid displacement, such as tax relief and rent control, and to encourage the production of new affordable housing throughout the community.

- *Policy NNW-1.2.10: Sustainable Development* Encourage the use of green building practices within Near Northwest, with a particular emphasis on green roofs. Rooftop gardens should be encouraged in new construction and major rehabilitation projects as a way to create additional green space, reduce stormwater runoff, and provide an amenity for residents.

- *Policy NNW-2.1.1: Affordable Housing* Protect existing affordable housing within the Shaw/Convention Center area, and produce new affordable housing and market rate housing on underutilized sites. Use a range of tools to retain and develop affordable housing in the study area, including tenant organization and public education, inclusionary zoning, renewing project-based Section 8 contracts, tax

abatements, public-private partnerships, and including affordable housing when development on publicly owned land includes a residential component.

- *Policy NNW-2.1.2: Reinforce Existing Development Patterns* Stabilize and maintain existing moderate-density row house areas within the Shaw/Convention Center Area. Locate multi-unit buildings in areas already zoned for greater density, including areas near the Mount Vernon Square and Shaw/Howard University Metrorail stations, and on publicly owned land with the potential for housing. Ensure that development on infill sites scattered throughout the row house portions of the Shaw/Convention Center area is consistent with the neighborhood's character.

- *Policy NNW-2.1.3: Shaw/Howard University and Mount Vernon Square Metro Stations* Encourage mixed-income residential development with underground parking adjacent to the Shaw/Howard and Mount Vernon Square Metro stations, particularly on existing surface parking lots.

- *Policy NNW-2.1.5: 7th and 9th Street Corridors* Locate retail development within the Shaw/Convention Center Area in a manner that best serves residents, creates the best environment for businesses to succeed, and uses land already zoned for commercial uses. Continuous ground floor retail uses should be encouraged along sections of 7th and 9th Streets as designated in the 2005 Strategic Development Plan to create a traditional pedestrian-oriented Main Street pattern and establish a unified identity for the community. These corridors should attract convention-goers, residents, and visitors, and should include both new and existing businesses.

II. THE APPLICATION

The Project

22. The Application, as revised, proposes to construct an apartment house containing ground floor retail with:

- A height of 90 feet;
- Approximately 163,595 square feet of gross floor area ("GFA");
- An overall floor area ratio ("FAR") of 7.17 with a retail FAR of 0.33 and a residential FAR of 6.84;
- Approximately 223 units
    - 19 units will be Inclusionary Zoning units, with 18 units reserved for households with a maximum medium family income ("MFI") not exceeding 60% and 1 unit reserved for households with an MFI not exceeding 50%
    - 3 affordable units reserved for households with a income not exceeding 30% and 7 affordable units reserved for households with income not exceeding 50% of MFI
- Approximately 56 below grade vehicle parking spaces;
- 72 long term and 14 short term bicycle parking spaces;

- Approximately 7,442 square feet of net retail area; and
- Rooftop amenities including pool, outdoor deck and residential amenity space.

(Ex. 3, 15, 28A1-28A2)

23. The Project will also include streetscape and landscaping improvements along 7th and P Streets as well as widening of the public alley to the north of the Property. (Ex. 3, 28A1-28A2).

24. The Application requested the Commission approve design flexibility to vary certain elements in the Application's final plans as approved by the Commission and still comply with the requirement of Subtitle X § 311.2 and Subtitle Z § 702.8 to construct the Project in complete compliance with the final plans.

25. The Application proposes to rezone the Property pursuant to Subtitle X §300.4 from the current MU-4 zone to the MU-6 zone (the "Map Amendment"). (Ex. 3).

26. Subtitle G §400.5 states that the MU-6 zone is intended to: (a) Permit medium- to high-density mixed-use development with a focus on residential use; and (b) Provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core.

27. The Map Amendment would change the standards applicable to the Property as follows:

	Current MU-4 Zone	**MU-6 PUD**
Height	50 feet	110 feet
FAR	2.5 or 3.0 (IZ)	8.64
Lot Occupancy – Residential Use	60% or 75% (IZ)	75% or 80% (IZ)
Rear Yard	15 feet	15 feet
Side Yard	Not required, but if provided 2 inches/foot of height, but no less than 5 feet	Not required, but if provided 2 inches/foot of height, but no less than 5 feet
Penthouse Height	12 feet except 15 feet for penthouse mechanical space	20 feet

(Ex. 31)

28. Pursuant to Subtitle Z, Chapter 3 of the DCMR 2016 Zoning Regulations, the Applicant is seeking:

- Consolidated PUD and related map amendment to the MU-6 District;

- Relief from the 80% maximum lot occupancy for residential uses; and
- Relief from the penthouse requirements to allow two separate penthouse enclosures of different height.
(Ex. 3)

APPLICANT'S REVISIONS/SUBMISSIONS

29. In response to comments from the Commission at its January 28, 2021 public meeting, the Applicant filed a supplemental submission on February 12, 2021, that included updated architectural plans and responded to the Commission's questions as follows: (Ex. 15-15A):

    - In response to the Commission's concern regarding the originally proposed massing of the Project along Marion Street, the Applicant meaningfully revised the massing of the Project along Marion Street, by reducing the portion of the building that is built up to the eastern property line by a full story (a reduction from 54 feet in height to 43 feet, 8 inches in height), and doubling the width of the setback above the 7th floor of the building, from 15 feet to 30 feet.
    - In response to the Commission's concern regarding the Project's consistency with the Moderate Density Residential designation that applies to a portion of the Property, the Applicant provided additional information regarding the flexibility of the FLUM to allow for increased density in a PUD, and the Project's consistency with other elements of the Comprehensive Plan, most notably, affordable housing, which would outweigh any potential inconsistency with the FLUM.
    - In response to the Commission's concern that affordable units were originally located in the cellar, the Applicant modified the Project such that only market rate units will be located in the cellar.
    - In response to the Commission's concern regarding the size of vertical residential signage along P Street, the Applicant revised the Project to remove such signage.

30. Following the Commission's February 25, 2021 public meeting, the Applicant filed a pre-hearing submission on March 19, 2021, that responded to the Commission's questions and included Project updates as follows (Ex. 18-18D):

    - Updated architectural plans;
    - Removal of the request for court relief;
    - Further details on the Project's benefits and amenities, including:
        - A 12% Inclusionary Zoning proffer, including a commitment to include a larger proportion of two-bedroom IZ units relative to the proportion of market rate units that are two-bedroom;
        - Confirmation that the Project will achieve LEED Gold certification;
        - Additional information regarding the Applicant's investigation of a utility credit tied to the solar energy generated by the Project;
        - Additional information regarding the offer of retail space at a reduced rent for the current operator of the barber shop located on the Property;

- Additional information regarding the Applicant's discussions with community groups; and
- An analysis of the Project's consistency with the CP and weighing of proposed public benefits and amenities against a potential inconsistency with the Moderate Density Residential FLUM designation.

31. The Applicant filed a Comprehensive Transportation Review, including a Transportation Demand Management ("TDM") plan for the Project on April 20, 2021. (Ex. 25-25B).

32. The Applicant filed a supplemental statement on April 30, 2021, which included the following information (Ex. 28-28C):

- Updated architectural plans, which include a darker shade for the penthouse;
- Information of the Project's consistency with the Convention Center Area Strategic Development Plan, specifically with the design and signage guidance;
- An update list of the Project's benefits and amenities; and
- Information regarding the Applicant's coordination with community groups and grants to the following groups:
    - Grant of $30,000 to Shaw Main Streets to support the Clean & Safe Team;
    - Grant of $50,000 to Shaw Main Streets to support public art along P Street;
    - Grant of $15,000 to City Blossoms to fund a new youth-led community art installation at the Marion Street Intergenerational Garden;
    - Grant of $20,000 to Friends of Kennedy Playground, Inc. dedicated to expanded senior programming and service enhancement for a full year;
    - Grant of $20,00 to New Endeavors by Women to replace the outdoor decks and interior hallway tile in common areas in their transitional housing;
    - Grant of $10,000 to Citizens Organized Patrol Efforts to purchase computers and audio/visual equipment to assist with crime prevention activities.

Testimony

33. At the May 20, 2021 public hearing, the Applicant presented the Application, including the testimony of:

- Mr. Rich McPhillips, of the Applicant;
- Mr. JB Lallement, of Eric Colbert & Associates, as an expert in architecture, accepted by the Commission as an expert in architecture; and
- Mr. Eric Colbert, of Eric Colbert & Associates, as an expert in architecture, accepted by the Commission as an expert in architecture.

34. In its testimony, the Applicant noted the updates to the requested lot occupancy relief as well as the extensive outreach with the community and ANC 6E.

Post Hearing Submissions

35. The Applicant submitted a June 10, 2021 post-hearing submission (Ex. 56-56A) that included the following items to address the Commission's requests for additional information:

- Proposed designs for balcony railings;
- Additional detail showing north building elevation;
- Additional detail showing proposed location and maximum dimensions of retail and residential signage;
- Solar Credit: The Applicant proposed that if the tenants of the Inclusionary Zoning Units and the units subject to the Affordable Covenants are responsible for their own utility bills, the Applicant shall provide a $50.00 discount to such tenants' annual rent.

36. The Applicant submitted a June 10, 2021 list (Ex. 57-58) of its draft proffers and conditions that included:
- Further details regarding the Project's minimum Inclusionary Zoning proffer;
- The commitment to prohibit residents of the Project from participating in the District's Residential Permit Parking ("**RPP**") Program; and
- The commitment to provide a $50.00 discount to the annual rent of tenants of the Inclusionary Zoning and Affordable Covenant units, if such tenants are responsible for their own utility bills.

JUSTIFICATION FOR RELIEF

Consistency with the Comprehensive Plan and Public Policies (Subtitle X §304.4(a))

37. The Application asserted it complied with Subtitle X §304.4 and is not inconsistent with the CP as a whole, including its maps and policies, and other public policies, as follows:

- The Project is not inconsistent with the Property's Neighborhood Enhancement Area designation on the GPM since the Project is a residential infill development that transforms a vacant and underutilized site. The Project's stepdown along Marion Street responds to the existing character of the neighborhood. (Ex. 15, 16, 31)

- The Project is not inconsistent with the Property's Main Street Mixed Use Corridors designation on the GPM since the Project provides pedestrian-oriented ground floor retail with upper story housing at a location near two Metrorail stations that is also served by Metrobus routes. (Ex. 3, 15, 16, 31)

- The Project is overall not inconsistent with the FLUM's Moderate Density Residential designation, which applies to the eastern portion of the Property along Marion Street.

    - The Moderate Density Residential designation applies to areas that include row houses, and low-rise apartment buildings and acknowledges that while the R-3, R-4, AND R-5-A zone districts are generally consistent with this

designation, other zones may apply in some locations. The 4-story portion of the Project that is located in the Moderate Density Residential designation is similar a low-rise apartment building.

- The Framework Element of the Comprehensive Plan notes that is not intended to be a "parcel-specific" map and makes clear that "greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. (Ex. 15, 16, 31)

- The Framework Element does explicitly allow an increase in density above the base cited in the Moderate Density Residential description when a site is developed through the PUD process and particularly if it is a residential PUD that includes IZ units. In other words, a density of more than 1.8 FAR in an area designated for Moderate Density Residential can be exceeded when the development is a PUD that includes IZ units. (Ex. 18).

- Any potentially limited inconsistency with a portion of the FLUM is offset and outweighed by the Project's satisfaction of multiple other Comprehensive Plan policies as set forth below. (Ex. 15, 16, 18, 31)

- The MU-6 zone is consistent with the Medium Density Commercial description of FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning or when approved through a PUD. (Ex. 15, 16, 18, 31)

- The Project is consistent with the Medium Density Residential description of mid-rise apartment buildings, as well as taller residential buildings surrounded by large areas of permanent open space, since the bulk of the Project is concentrated on the 1st through 4th floors, and the Project is significantly set back above the 4th floor. Furthermore, the Project is located across from the Kennedy Recreation Center, which includes significant open space. (Ex. 3, 15, 16, 31)

- The Project is not inconsistent with the CP's Near Northwest Area Element because the Project is a "mixed income residential development with underground parking adjacent to the Shaw/Howard and Mount Vernon Square Metro station" on a site that is currently an existing surface parking lot, which precisely matches the goal of the Near Northwest Area Element. Furthermore, the Project includes ground floor retail along 7th Street, green building practices, and affordable housing, all of which advance the policies of the Near Northwest Area Element. (Ex. 3, 15, 16, 31)

- The Project is not inconsistent with the CP's Land Use Element because the Project is a pedestrian-oriented infill development in proximity to transit with ground floor retail use and develops a vacant and underutilized site into a multifamily residential use. (Ex. 3)

- The Project is not inconsistent with the CP's Transportation Element because it is a pedestrian-oriented development around a transit station. (Ex. 3)

- The Project is not inconsistent with the CP's Housing Element because it creates a mixed-use development with high-quality mixed income housing, including a substantial affordable housing component, comprised of 12% Inclusionary Zoning and 10 affordable units pursuant to the Affordable Covenants, which include units at 30% MFI. The Project will include a larger proportion of two-bedroom IZ units relative to the proportion of market rate units that are two-bedroom. (Ex. 3, 18)

- The Project is not inconsistent with the CP's Environmental Protection Element by achieving LEED Gold certification and including solar panels, green roof, landscaping improvements and street trees (Ex. 31)

- The Project is not inconsistent with the CP's Economic Development Element because it will introduce ground floor retail along the 7th Street commercial district. (Ex. 3)

- The Project is not inconsistent with the CP's Urban Design Element because it will include high-quality design and create an attractive and pedestrian-oriented streetscape in an area that was formerly a vacant lot. (Ex. 3).

- The Project advances the Mayor's Order 2019-036 on affordable housing which sets a goal of creating 36,000 new housing units by 2025, including 12,000 affordable housing units, by introducing 223 residential units, including 19 Inclusionary Zoning Units and 10 affordable units, some of which are affordable at 30% of MFI. (Ex. 15, 18)

No Unacceptable Project Impacts on the Surrounding Area (Subtitle X §304.4(b))

38. The Application asserted that it complied with Subtitle X §304.4's requirement to not create any potential adverse impacts that could not be mitigated or balanced out by public benefits because the Project:

- Would have a positive land use impact by:
  - Replacing existing vacant, underutilized and dilapidated lot with attractive and well-designed multi-family development; and
  - Improving the streetscape along 7th and P Streets.
  (Ex. 3)

- Would not have an adverse zoning impact, as the Property's proposed 90' height and 7.17 FAR are at or below what would be permitted in an MU-6 PUD or Inclusionary Zoning development and the Project's stepback from Marion Street is designed to fit in with the scale of the surrounding buildings. (Ex. 15, 16, 18, 31)

- Would not have an adverse environmental impact, as the Project will achieve LEED-Gold certification, and will meet the green area ratio and stormwater management requirements. (Ex. 3)

- Would not have an adverse facilities or transportation impact because the Property is located nearby to public transit (two Metrorail stations and two Metrobus routes) and contains on-site parking spaces to accommodate the parking demand generated by the Project. The Applicant will also implement the TDM plan as approved by DDOT, which will mitigate any transportation impacts of the Project. (Ex. 3)

Requested Zoning Flexibility (To Be Balanced Against Public Benefits (Subtitle X §304.4(C))

Map Amendment

39. The Application asserted that it complied with Subtitle X § 304.4's requirement to balance out the zoning flexibility requested and any potential adverse impacts incapable of being mitigated.

40. The requested Map Amendment to the MU-6 Zone is necessary because the proposed MU-6 zoning will allow for the Property to be developed at a density that will allow for the provision of substantial housing, including affordable housing. (Ex. 3, 28)

41. It is only through the PUD process that the Applicant can create a financially viable project that is large enough to unlock and support the provision of deeply affordable units as required by the Affordable Covenants. (Ex. 28)

Lot Occupancy and Penthouse Relief

42. The Application asserted that it met the criteria for relief for the lot occupancy and penthouse enclosure because:

- The requested lot occupancy in excess of the 80% maximum permitted in the MU-6 zone is limited to only 4 floors of the building and allows the Project to accommodate both a 12% Inclusionary Zoning component and 10 affordable units required by existing Affordable Covenants, which is in harmony with the general purpose and intent of the MU zone, the zoning regulations, and the zoning maps. Given the thoughtfully designed setbacks of the Project, the limited excess lot occupancy will not significantly or materially add to the density of the Project that would have an adverse impact of the use of neighboring property. (Ex. 3, 28A1-28A2).

- The penthouse relief to allow a penthouse staircase enclosure that includes a "pool room" and is of a non-uniform height with the main penthouse enclosure is necessary and appropriate because the height of the staircase enclosure is dictated by building and safety codes. Additionally, for safe and efficient operation, the equipment serving the pool should be located in close proximity to pool, and it would be unreasonable to locate such mechanical and storage areas in a different location. Locating the "pool room" in the staircase enclosure allows for a better design of the roof structure as it consolidates several uses in an already necessary separate penthouse enclosure. It also enables the pool equipment, chemicals, and machinery to be located in close proximity to the pool, and avoids having pool-related items scattered throughout the penthouse level of the Project.

The staircase enclosure complies with the required penthouse setbacks. (Ex. 3, 28A1-28A2).

Public Benefits

43. The Application asserted that it complied with Subtitle X § 304.4's requirement to balance the zoning flexibility requested and any potential adverse impacts incapable of being mitigated by providing the following categories of public benefits as defined by Subtitle X § 305:

- **Superior Urban Design, Architecture, and Landscaping (11-X DCMR § 305.5(a) and (b)).** The proposed height and massing of the Project have been carefully designed to relate to the surrounding context. Along the eastern side of the Property, the building is set back 15 feet from the property line above the 4th floor and set back a full 30feet above the 7th floor. Through these setbacks, the building is compatible with the scale of the buildings along Marion Street. The Project includes high-quality private outdoor spaces, superior architecture and high-quality materials. A clearly defined retail base and streetscape will enhance the pedestrian scale and environment. The building is articulated with projecting and interior balconies, bay windows and carefully selected materials to add warmth along Marion Street and an open and more modern atmosphere along 7th Street. The Project will feature high-quality design and materials and transform a surface parking lot to a lively and dynamic residential development with ground floor retail. The Project shall include a well-designed rooftop and street-level landscaping, including new street trees.

- **Site Planning and Efficient Land Utilization (*id*. § 305.5(c)).** The Project makes efficient use of a deteriorating site that is near two Metrorail stations and well-served by Metrobus, places all parking underground and transforms an underutilized and inactive area into an attractive 21st century mixed-use development.

- **Commemorative Works or Public Art *id*. § 305.5(d)).** The Applicant will purchase and install a piece of public art in the public space along P Street (subject to approval by DDOT).

- **Housing in Excess of Matter-of-Right Development (*id*. § 305.5(f)(1)).** The Project includes a greater number of housing units than could be developed on the Property as a matter-of-right under the existing MU-4 zoning. The Project will create approximately 223 new residential units in furtherance of the Mayor's Housing Order and the goals of the CP. There is currently no housing at the Property, and given the Property's current zoning, no residential use is required. Additionally, portions of the Property are subject to the Affordable Covenants. These covenants require that a minimum of 10 units (for Lot 821 the greater of 20% or 7 units and for Lot 191, the greater of 30% or 3 units) be affordable. Pursuant to the covenants, at least 25% of the units must be reserved at 30% MFI, the remaining units must be reserved between 30% and 50% MFI. It is only through the PUD process that the Applicant can create a financially viable project that is large enough to unlock and support the provision of such deeply affordable units as required by the Affordable Covenants. The Project will create all new housing in an underutilized location.

- **Affordable Housing in Excess of Inclusionary Zoning Requirements (*id.* § 305.5(g))**
    - The Project reserves twelve percent (12%) of its residential gross floor area that is not already subject to the Affordable Covenants (excluding penthouse habitable space) for households with incomes not exceeding 60% of MFI.
    - The Project reserves an area equal to 12% of the penthouse habitable space for households with incomes not exceeding 50% of MFI.
    - The Project will include a larger proportion of two-bedroom IZ units relative to the proportion of market rate units that are two-bedroom.

- **Building Spaces for Special Uses: Retail Uses (*id.* § 305.5(j))**

    - The Project commits to providing approximately 7,442 square feet of retail uses on the ground floor.
    - The Applicant will provide relocation assistance to the operator of the Ordinary People Barber Shop during construction of the Project and will provide the Ordinary People Barber Shop with an option to relocate to the retail space within the Project at a reduced rent for up to 20 years.

- **Environmental and Sustainable Benefits: LEED Gold (*id.* § 305.5(k))**

    - The Applicant proposes to construct the Project to LEED Gold v4 certification. The Project will also integrate other sustainable design features, including solar panels as a renewable energy source on the roof of the Project and 2 electric vehicle charging stations in the parking garage.

- **Other Public Benefits - Solar Utility Credit (*id.* § 305.5(r))**.

    - The Project's solar panels are anticipated to generate approximately 13,000 kWh/year and roughly $1,500 in avoided electrical costs in a year. If the tenants of the Inclusionary Zoning Units and the units subject to the Affordable Covenants are responsible for their own utility bills, the Applicant will provide a $50.00 discount to such tenants' annual rent.

(Ex. 3, 15, 18, 28, 57).

III. RESPONSES TO THE APPLICATION

OP

44. OP submitted a January 18, 2021 report (Ex. 11, the "First OP Setdown Report") recommending that the Commission set the Application down for a public hearing based on OP's conclusion that the Project would not be inconsistent with the CP, but requested the Applicant to continue to provide additional information on the building's proposed energy performance, solar installation, and storm water retention, and the proffered benefits and amenities, including the public art installation.

45. OP submitted a February 15, 2021 report (Ex. 16, the "Second OP Setdown Report"), recommending that the Commission set down the Application for public hearing based on OP's conclusion that the Project, as modified from the time of the First OP Setdown Report, would be generally not inconsistent with the CP. The Second OP Setdown Report concluded that the Project was not inconsistent with the CP because:

- The proposed MU-6 zoning would not be inconsistent with the FLUM's Medium Density Commercial/Medium Density Residential designations since the MU-6 zone was formerly the C-2-C zone under the 1958 regulations and the abutting property directly across 7th Street is zoned C-2-C. As intended by the MU-6 zone, the Project is a mixed-use development with a focus on residential use.
- Greater density would be possible through a PUD and would be furthering a critical goal of the District by providing a significant amount of affordable housing through both the required covenants and more Inclusionary Zoning than required on a site that currently provides no housing.
- While there may be a potential inconsistency in the proposed density for the portion of the site that is designated for Moderate Density Residential use, the proposed four-story section of the Project would qualify as a "low-rise apartment building".
- The overall project would further other Comprehensive Plan policies that would outweigh any potential inconsistencies with the FLUM designation including most significantly the critical need for new affordable housing units.
- The Project is not inconsistent with the Property's GPM designations because the Main Street Mixed Use Corridor designation envisions a pedestrian-oriented street with ground floor retail and upper-story residential, like the proposed mixed-use development. For the eastern part of the site, which is currently a surface parking lot, the Project is consistent with the Neighborhood Enhancement Area designation since it presents an opportunity for infill development, including residential use and mixed-use buildings as proposed.

46. OP submitted a May 10, 2021 report (Ex. 31, the "OP Hearing Report" and, together with the First OP Setdown Report and the Second OP Setdown Report, the "OP Reports") which recommended that the Commission approve the Application. The OP Hearing Report concluded that:

- The Project, on balance, is not inconsistent with the CP and would further a number of important goals of the District, including the provision of affordable housing;
- Project is consistent with the Convention Center Area Strategic Development Plan, since the Property is labeled as a "potential site for high and medium density residential development" and as "a preferred location of ground floor retail";
- The requested lot occupancy and penthouse relief meets the required special exception standards; and
- The requested flexibility is warranted.

47. At the May 20, 2021 public hearing, OP testified in support of the Application and reiterated that OP finds, on balance, that the PUD would not be inconsistent with the CP. (Tr. 65-68)

DDOT

48. DDOT filed a May 7, 2021 report (Ex. 30) that assessed the potential safety and capacity impacts of the proposed Project on the District's transportation network (the "DDOT Report").

49. The DDOT Report concluded that DDOT had no objection to the Application provided that the Applicant implement the TDM plan as proposed in the Applicant's March 26, 2021 Transportation Statement (Ex. 25A), for the life of the project, unless otherwise noted.

50. At the May 20, 2021 public hearing, DDOT testified in support of the Application and confirmed that DDOT found the proposed TDM plan to be sufficiently robust for the Project. (Tr. 68-69).

ANC

51. ANC 6E submitted a January 5, 2021 report stating that at its virtual public meeting on December 1, 2020, the ANC voted 4-0-0 to support the Application. (Ex. 10).

52. At the May 20, 2021 public hearing, Rachelle, Nigro, chair of ANC 6E testified in support of the Application and noted the ANC's support for the Project's affordable housing component, and the manner in which the Project will transform the Property from a run-down parcel into a vibrant development. (Tr. 70-71).

PERSONS IN SUPPORT

53. The Commission received written submissions in support of the Application (Ex. 33-35, 37-48, 50-51), in which several neighbors provided testimony in support of the Project, particularly the design, massing, and public benefits.

54. At the May 20, 2021 public hearing, Greg Sitzmann, Shalini Sitzmann, Alexander Padro, and Leroy Thorpe all testified in support of the Project. (Tr. 74- 85).

CONCLUSIONS OF LAW

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

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

3. Pursuant to Subtitle X §§ 303.1 and 303.13:
As part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards. Any such flexibility shall be considered the type of development flexibility against which the Zoning Commission shall weigh the benefits of the PUD.

4. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must:

Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.

The Commission must also find that the proposed development:

(a) Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;
(b) Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and
(c) Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.

5. A PUD's proposed public benefits must comply with Subtitle X § 305.12:

A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.

6. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as:
(1) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;
(2) to guide executive and legislative decisions on matters affecting the District and its citizens;
(3) to promote economic growth and jobs for District residents;
(4) to guide private and public development in order to achieve District and community goals;
(5) to maintain and enhance the natural and architectural assets of the District; and
(6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.

7. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)) (the "McMillan PUD"). In its decision affirming the Commission's approval of the McMillan PUD, the Court stated the following:

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

Special Exception Relief

8. Subtitle X § 901.2 authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:

- *will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map;*
- *will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map; and*
- *complies with the special conditions specified in the Zoning Regulations*

9. A special exception for penthouse relief under Subtitle C §1504.1 must also meet the following special conditions:

- *The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes;*
- *The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall;*
- *The relief requested would result in a roof structure that is visually less intrusive;*

- *Operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of Subtitle C-118 building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable;*
- *Every effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and*
- *The intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.*

CONSISTENCY WITH PUD ELIGIBILITY STANDARDS

10. The Commission concludes that the Application meets Subtitle X § 301.1's minimum 15,000 square feet of land area for a PUD in the MU-4 zone because the Property consists of approximately 22,824 square feet of land area.

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

11. Based on the case record and the Findings of Fact above, the Commission concludes that the Project is not inconsistent with the CP, when considered in its entirety, because the Project will further the following CP map designations and elements:

12. The Commission concludes that the Project is not inconsistent with the Property's "Neighborhood Enhancement Area" designation on the CP's GPM because the Project is residential infill development that transforms a vacant and underutilized site into a vibrant mixed-use development.

13. The Commission concludes that the Project is not inconsistent with the Property's "Main Street Mixed Use Corridor" designation on the CP's GPM because the Project introduces pedestrian-oriented ground floor retail with upper story housing in a location nearby to mass transit.

14. The Commission concludes that the Project is not inconsistent with the Property's Medium Density Commercial/Medium Density Residential designation on the FLUM because the Property's proposed FAR and height are in line with that envisioned under this designation, as increased through a PUD. Additionally, the Project is located across the street from a large area of open space, as envisioned by the Medium Density Residential Designation.

15. The Commission concludes that the Project is overall not inconsistent with the Property's Moderate Density Residential designation on the FLUM because the FLUM is not a "parcel-specific" map and the area of the Project generally located in the Moderate Density Residential portion of the Property has been reduced in height and is similar to a low-rise apartment building, which is appropriate for this designation.

16. The Commission concludes that to the extent the Project is potentially inconsistent with the Moderate Density Residential designation, the Project's advancement of other Comprehensive Plan policies, such as affordable housing, transit-oriented development, green building practices, and high-quality design outweigh any potential inconsistencies with the Moderate Density FLUM designation.

17. The Commission concludes that the Project is not inconsistent with the Near Northwest Area Element which applies to the Property because the Project is precisely the type of pedestrian oriented mixed-use development located on an underutilized site that this Element promotes.

18. The Commission concludes that the Project will further the housing goals of Mayor's Order 2019-036 by introducing approximately 223 residential units, of which approximately 29 are affordable, including affordable units at 30% MFI.

19. The Commission concludes that the Project furthers the CP's Land Use, Transportation, Housing, Environmental Protection, Economic Development, and Urban Design Elements because the Project will develop an underutilized and dilapidated parcel into a pedestrian oriented, LEED Gold certified mixed-use development in close proximity to transit, which includes ground floor retail use, high quality materials and design, green roof, and solar panels.

20. Based on the extensive evidence provided in the Record, the Commission agrees that the Project is not inconsistent with the Comprehensive Plan or other adopted and applicable public policies.

POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (SUBTITLE C §304.4(B)

21. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts that are not capable of being mitigated or outweighed by the Project's proffered public benefits and therefore protects and advances the public health, safety, welfare and convenience as detailed below.

22. The Commission finds that the Project will not create any unacceptable land use impacts because the Project will replace existing vacant, underutilized and dilapidated lot with attractive and well-designed multi-family development.

23. The Commission finds that the Project will not create any unacceptable zoning impacts because the Project's proposed density and height are below that permitted for a PUD in the MU-6 Zone and the Project is designed to fit in with the scale of surrounding buildings, both on 7th and Marion Streets.

24. The Commission finds that the Project will not create any unacceptable transportation impacts because the Applicant's proposed TDM plan, as approved by DDOT will mitigate any potential adverse impacts on the transportation network of the Project's increased

traffic and because the Project is located in close proximity to multiple mass transit offerings.

25. The Commission finds that the Project will not create any unacceptable environmental impacts because the Project will be built to LEED Gold standard and will include green roof and solar panels.

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

26. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies Subtitle X § 304.3's balancing test because the Application's public benefits outweigh the requested zoning flexibility, as well as any potential adverse impacts that are not capable of being mitigated, as discussed below.

27. The Commission concludes that the Application's proposed amendment of the Zoning Map to rezone the Property from the current MU-4 zone to the MU-6 zone is appropriate because:

- the Map Amendment is not inconsistent with the CP when taken as a whole; and
- The Property is currently underutilized given its poor condition and location at the corner of two major streets and the Map Amendment will allow the Property to be developed as a mixed-use Project at a density and height that will allow for a financially viable project that is large enough to unlock and support the provision of deeply affordable units as required by the Affordable Covenants.

28. The Commission concludes that the flexibility is balanced by the proffered benefits and amenities resulting from the Project, including, superior urban design, architecture, and landscaping, site planning, and efficient land utilization, commemorative works or public art, housing and affordable housing, building spaces for special retail uses, environmental and sustainable benefits, and other public benefits.

29. The Commission concludes that these benefits more than outweigh the relatively modest relief requested, and the potential adverse effects of the Project that are not otherwise favorable or adequately mitigated.

SPECIAL EXCEPTION STANDARDS (SUBTITLE X §901, SUBTITLE C §1504.1)

30. Based on the case record and the Findings of Fact above, the Commission concludes that the Applicant demonstrated that the Application satisfied the requirements of Subtitle X §901.2 and Subtitle C §1504.1 for the following reasons:

- The lot occupancy relief is limited to only 4 stories of the building and the building has been designed to minimize impacts to neighboring properties along Marion Street and therefore, will not tend to have an adverse effect on the use of the neighboring property. Additionally, the Project as a mixed-use building with

ground floor retail is in harmony with the general purpose and intent of the MU-6 zone.

- The penthouse relief is necessary for the efficient functioning of the penthouse and in order to comply with building code requirements. The penthouse will comply with required setbacks and will not be visually intrusive or have an adverse effect on neighboring properties.

GREAT WEIGHT TO RECOMMENDATIONS OF OP

1. The Commission must give "great weight" to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment, 141 A.3d 1079, 1087 (D.C. 2016).

2. The Commission finds persuasive the OP Reports' analysis of the Application, particularly OP's conclusions that:

   - While there may be a potential inconsistency with the proposed designation of the eastern portion of the site for Moderate Density Residential use, the overall project would further other Comprehensive Plan policies that would outweigh any potential inconsistencies with the FLUM designation including most significantly the critical need for new affordable housing units as well as infill development near transit, neighborhood revitalization, and others.

   - The FLUM identifies the majority of the site for Mixed-Use Medium Density Commercial/Medium Density Residential uses and a portion of the site at the corner of P and Marion Streets for Moderate Density Residential use. The Project responds to this Moderate Density Residential designation by proposing a building height and design to transition to the residential row dwellings in the adjoining RF-1 zone. The building would step down to four stories along Marion Street and has been lowered to a proposed height of 43'8". The four-story section of the building would reflect a "low-rise apartment building" consistent with the moderate designation.

   - The Project is consistent with the GPM designations of the Property. The Main Street Mixed Use Corridor envisions a pedestrian-oriented street with ground floor retail and upper-story residential, like the Project. For the eastern part of the site, the Project is also in keeping with the guidance for a Neighborhood Enhancement Area. The eastern part of the site, currently a surface parking lot, presents an opportunity for infill development, including residential use and mixed-use buildings as proposed. The Project provides housing in this area which keeps with the goal stated for Neighborhood Enhancement Areas that new development should support city-wide housing needs.

   - The requested lot occupancy and penthouse relief will not have an adverse effect of the use of neighboring properties.

- The Applicant has offered substantial public benefits and amenities as an offset to the additional development gained through the PUD process.

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

GREAT WEIGHT TO WRITTEN REPORT OF THE ANC

1. The Commission must give "great weight" to the issues and concerns raised in the written report of an affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (Wheeler v. District of Columbia Board of Zoning Adjustment, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

2. The Commission finds the ANC Report persuasive, including the ANC's support of the Project's affordable housing, which would not be financially feasible to delivery absent the PUD process, and concurs with the ANC Report's support of the Application.

DECISION

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

- A Consolidated PUD;
- An amendment of the Zoning Map to rezone the Property from the MU-4 zone to the MU-6 zone;
- A special exception under Subtitle X §901.2 to allow lot occupancy in excess of 80%;
- A special exception under Subtitle C§1504.1 to allow two separate penthouse enclosures of differing height;

subject to the following guidelines, conditions, and standards:

A. PROJECT DEVELOPMENT

1. The Project shall be constructed in accordance with the following plans and as modified by the guidelines, conditions, and standards herein:

    - the plans prepared by Eric Colbert & Associates, submitted April 30, 2021 as Exhibit 28A1-28A2, as modified in the post-hearing submission dated

June 10, 2021 and included in the record as Exhibit 56A (the "**Approved Plans**").

2. The Project shall have the following flexibility from the requirements of the Zoning Regulations:

   - A maximum lot occupancy of 89.3%, where a maximum lot occupancy of 80% is required
   - A separate penthouse stairway enclosure containing a "pool room" with a height of 15 feet, where a penthouse enclosure exclusively for stairway at a uniform height of 12' with the main penthouse enclosure is required.

3. The Project shall have the following flexibility from the Approved Plans in the following areas:

   - To vary the proposed residential unit range by 5-10%;
   - To vary the number of proposed parking spaces by 5-10%; and to make refinements to parking and loading configurations, so long as the required parking and loading complies with the side, location, access, maintenance and operation requirements of the Zoning Regulations;
   - To vary the amount of retail square footage by 25%;
   - To vary the design of the retail space per the specifications of the retailer, actual retail bay elevations will be developed by individual retail tenants, approved by the building owner and may change over time to accommodate leasing cycles;
   - To vary the selection of public art;
   - To vary the final selection of exterior materials within the color ranges and general material types proposed, based on availability at time of construction; and
   - To vary floor to floor heights as design is refined.

4. In accordance with the Approved Plans, as modified by the guidelines, conditions, standards, and flexibility herein, the Approved PUD shall have:
   - A maximum building height of approximately 90 feet;
   - Approximately 163,595 square feet of GFA;
   - A FAR of 7.17 for the Property, with a retail FAR of 0.33 and a residential FAR of 6.84;
   - Approximately 7,442 square feet of net retail area;
   - Approximately 223 residential units;
   - Approximately 56 on-site parking spaces; and
   - Approximately 72 long term and 14 short term bicycle parking spaces.

B. CERTIFICATE OF OCCUPANCY REQUIREMENTS

1. **Prior to the issuance of the Certificate of Occupancy for the Project**, the Applicant shall purchase and install a piece of public art in the public space along P Street (subject to approval by DDOT). In coordination with Shaw Main Streets, the Applicant will determine the ideal type and configuration for such art, subject to review and approval of such proposal through the public space permitting process.

2. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with evidence that the Project has or will achieve the requisite number of prerequisites and points necessary to secure LEED Gold v4 certification or higher from the U.S. Green Building Council.

3. **For up to 20 years after the date of issuance of the first certificate of occupancy for the Project**, the Applicant shall reserve a minimum of 750 rentable square feet of the non-residential gross floor area of the ground floor of the Project for the Ordinary People Barber Shop.

4. **Following the issuance of a certificate of occupancy for the Project**, the Project's Transportation Coordinator shall submit to the Office of Zoning for inclusion in the IZIS case record of the case documentation summarizing compliance with the transportation and following TDM conditions of this Order.

5. **Five years after the issuance of the final certificate of occupancy for the Project**, if the Transportation Coordinator has not established a relationship with DDOT or goDCgo, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo summarizing continued substantial compliance with the transportation and following TDM conditions in the Order, unless no longer applicable as confirmed by DDOT; provided, that if such letter is not submitted on a timely basis, the Applicant shall have sixty (60) days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter.

C. REQUIREMENTS FOR THE LIFE OF THE PROJECT

1. **For the life of the Project**, the Project shall dedicate approximately 145,736 square feet of GFA to residential use.

2. **For the life of the Project**, the Applicant shall reserve no less than 12% of the Project's residential gross floor area (excluding the area subject to the existing Affordable Covenants

and the penthouse habitable space) for households with incomes not exceeding 60% of MFI.

3. **For the life of the Project**, the Applicant shall reserve an area equal to no less than 12% of the penthouse habitable space for households with incomes not exceeding 50% of MFI.

4. The Inclusionary Zoning and Affordable Covenant units shall be generally in accordance with the following chart, subject to the flexibility noted below:

Residential Unit Type	Total Residential Gross Floor Area	Units	Reserved for households earning equal to or less than:	Affordability Control Period	Tenure (rental or sale)
IZ	12,736 sf of GFA	18	60% MFI	Life of Project	Rental
IZ	429 sf of GFA	1	50% MFI	Life of Project	Rental
Affordable Covenants	1,568 sf of GFA	3	30% MFI	Life of Project	Rental
	5,469 sf of GFA	7	50% MFI	Life of Project	Rental

Ultimate unit count, unit mix and unit locations are subject to change based on final interior layout, total unit mix, and as necessary to comply with any applicable DC laws and regulations including the Inclusionary Zoning Implementation Regulations, DCMR Title 14, Chapter 22.

Ultimate residential GFA is also subject to change based on unit count; however, Applicant will provide a minimum of 12,500 sf of residential GFA at 60% MFI and 400 sf of residential GFA at 50% MFI **for the life of the project**.

5. **For the life of the Project**, the Applicant will provide 6 Inclusionary Zoning units of the two-bedroom type (at 60% MFI) and 1 affordable covenant unit of the two-bedroom type (at 50% MFI).

6. **For the life of the Project**, the Applicant shall set aside a minimum of 7,442 square feet on the ground floor (subject to the flexibility requested herein) of the Project for retail uses.

7. **For the life of the Project**, if the tenants of the Inclusionary Zoning Units and the units subject to the Affordable Covenants are responsible for their own utility bills, the Applicant shall provide a $50.00 discount to such tenants' annual rent.

8. **For the life of the Project**, the Applicant shall prohibit residents of the Project from participating in the District's Residential Permit Parking ("**RPP**") Program through a

clause in all leases for residents that prohibits residents from applying for or obtaining RPPs, or using an RPP guest pass within one mile of the Property.

9. **For the life of the Project,** the Applicant shall provide the following TDM measures for the Project:

   A. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential or retail unit and charge a minimum rate based on the average market rate within a quarter mile.
   B. Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement.
   C. Will provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year.
   D. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to residents and employees, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications.
   E. Transportation Coordinators will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan.
   F. Provide residents and retail employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future.
   G. Will not lease unused parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents, or sporting events).
   H. Will meet or exceed Zoning Regulations of 2016 short- and long-term bicycle parking requirements. Long-term bicycle space will be provided free of charge to residents and employees. There are 65 long-term spaces required; 72 long-term spaces provided. Fourteen (14) short-term spaces required; 14 short-term spaces provided.
   I. Long-term bicycle storage room will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes.
   J. Provide a bicycle repair station in each long-term bicycle parking storage room.
   K. Provide a free SmarTrip card or a complimentary Capital Bikeshare coupon good for one ride to every new resident and employee.
   L. Electrical outlets will be provided within the long-term bicycle storage room for the charging of electric bikes.
   M. Offer an annual CaBi membership to each resident and employee for the first year after the building opens.

10. **For the life of the Project,** for the residential component of the Project, the Applicant shall provide the following TDM measures:

A. Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com.

B. Transportation Coordinator will subscribe to goDCgo's residential newsletter.

C. Post all TDM commitments on website, publicize availability, and allow the public to see what commitments have been promised.

D. Install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum, the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car- sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles.

E. Provide one (1) collapsible shopping cart (utility cart) for every 50 residential units, for a total of four (4) to encourage residents to walk to the grocery shopping and run errands.

11. **For the life of the Project,** for the retail component of the Project, the Applicant shall provide the following TDM measures:

A. Will post "getting here" information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for patrons and employees discouraging parking on-street in Residential Permit Parking (RPP) zones.

B. Transportation Coordinator will demonstrate to goDCgo that tenants with 20 or more employees who work on-site are in compliance with the DC Commuter Benefits Law and participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future.

C. Ownership of building will offer discounted annual memberships to on-site retail employees via the Capital Bikeshare Corporate Membership program.

D. VALIDITY

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, DCRA (the "**PUD Covenant**"). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of OZ.

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.

VOTE FINAL ACTION: _-_-_ ([Peter A. Shapiro, Vice Chairman Robert E. Miller, Chairman Anthony J. Hood, Michael G. Turnbull and Peter G. May] to **APPROVE**).

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	**SARA B. BARDIN**
Chairman, Zoning Commission	**Director, Office of Zoning**