

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 21-18

Z.C. Case No. 21-18

Dance Loft Ventures LLC

**(Consolidated Planned Unit Development and Related Map Amendment @ Square 2704,
Lots 64, 815, 819, 821, 823, 828, 830, 831, 832, and 833)**

[September __], 2022

Pursuant to notice, at its [September __], 2022¹ public meeting, the Zoning Commission for the District of Columbia (the “**Commission**”) considered the application (the “**Application**”) of Dance Loft Ventures LLC (the “**Applicant**”) requesting the following relief under the Zoning Regulations (codified at Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016) and to which all subsequent citations to the District of Columbia Municipal Regulations refer unless otherwise specified):

- (a) A consolidated planned unit development (“**PUD**”), pursuant to Subtitle X, Chapter 3, and Subtitle Z, Chapter 3;
- (b) A PUD-related amendment to the Zoning Map to change the designation for Square 2704, Lots 64, 815, 819, 821, 823, 828, 830, 831, 832, and 833 (the “**Property**”) from the MU-3A zone to the MU-5A zone, pursuant to Subtitle X, Chapters 3 and 5, and Subtitle Z, Chapter 3; and
- (c) Such other design and use flexibility as are set forth in the Conditions hereof.

The Applicant proposes to construct a new mixed-use building (the “**Project**”) on the Property, which is located at addresses 4608-4618 4th Street, N.W.

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

PROCEDURAL MATTERS

NOTICE AND SETDOWN

1. Pursuant to Subtitle Z §§ 300.7 and 300.8, on March 9, 2021 the Applicant mailed to all property owners within 200 feet of the Property and to Advisory Neighborhood Commission (“**ANC**”) 4C, the “affected ANC” per Subtitle Z § 101.8, a “Notice of Intent to file a Zoning Application with the District of Columbia Zoning Commission for Approval of a Consolidated Planned Unit Development and Related Zoning Map Amendment” pertaining to the Application, which notice the Applicant subsequently

¹ On May 5, 2022, the Commission opened a public hearing on the Application and continued the hearing on May 12, 2022. At its [July __], 2022 public meeting the Commission approved proposed action.

amended by second notice mailed to all such property owners and the ANC on July 16, 2021. (Exhibit [“Ex.”] 2D).

2. Pursuant to Subtitle Z § 300.9, subsequent to the mailing of such notice but prior to filing the Application with the Commission, the Applicant presented the Application to ANC 4C at its April 14, 2021 public meeting. (*Id.*)
3. Pursuant to Subtitle Z §§ 400.1-400.3 and 400.7, on November 2, 2021, the Office of Zoning (“**OZ**”) determined that the Application satisfied the filing requirements and referred the Application to the Office of Planning (“**OP**”), ANC 4C, the District Department of Transportation (“**DDOT**”), and the Ward 4 Councilmember, in whose district the Property is located, among others, and filed notice of the Application in the *D.C. Register*. (Ex. 3-9.)
4. Pursuant to Subtitle Z §§ 400.9-400.12, on December 16, 2021 at its duly-noticed public meeting the Commission considered the Application and scheduled it for a public hearing. (Transcript of Zoning Commission Public Meeting at 79 (Dec. 16, 2021) [“**Tr. 1**”].)
5. Pursuant to Subtitle Z §§ 402.1-402.2 and 402.6, on or before February 17, 2022, OZ sent notice of the May 5, 2022 public hearing concerning the Application to:
 - (a) The Applicant;
 - (b) ANC 4C;
 - (c) ANC 4C03 Single Member District Commissioner, whose district includes the Property;
 - (d) The Ward 4 Councilmember, in whose district the Property is located;
 - (e) The Office of the ANCs;
 - (f) OP;
 - (g) DDOT;
 - (h) The Department of Consumer and Regulatory Affairs (“**DCRA**”);
 - (i) The Office of Zoning Legal Division;
 - (j) The District Department of the Environment (“**DOEE**”);
 - (k) The Chair and At-Large Members of the D.C. Council; and
 - (l) The owners owning property within 200 feet of the Property.(Ex. 133 and 134.)
6. Pursuant to Subtitle Z § 402.1(a), OZ published notice of the May 5, 2022 public hearing concerning the Application in the February 25, 2022 issue of the *D.C. Register* (69 DCR 001523) as well as on the calendar on OZ’s website. (Ex. 132-134.)
7. Pursuant to Subtitle Z § 402.3-402.4, 402.8-402.10, on March 24-25, 2022, the Applicant submitted evidence that it had posted notices of the public hearing on the Property and on April 29, 2022 submitted evidence that it had thereafter maintained such notices. (Ex. 343A and 668.)

PARTIES

8. Pursuant to Subtitle Z § 403.5(a), the Applicant is automatically a party to the Application. The Applicant consists of two organizations: Heleos, a developer and owner of mixed-income and sustainable residential projects, and Dance Loft on 14, a not-for-profit community performing arts organization, and a long-time occupant of the Property. (Ex. 2A2.) Portions of the Property are owned by The Menkiti Group. (*Id.*)
9. Pursuant to Subtitle Z §§ 101.8 and 403.5(b), ANC 4C is automatically a party to the Application because the Property is located within the boundaries of ANC 4C. (Ex. 2A.)
10. Pursuant to Subtitle Z § 404.1-404.5, on April 18, 2022, Friends of Fourteenth Street (“**FOFS**”) sought advanced party status with respect to the Application at the Commission’s April 28, 2022 public meeting. (Ex. 537 and 607.) Pursuant to Subtitle Z § 404.13, at its April 28, 2022 public meeting the Commission voted to grant FOFS party status in the contested case considering the Application, notwithstanding that FOFS’s April 18, 2022 request occurred fewer than fourteen days before such public meeting and notwithstanding that such public meeting occurred fewer than fourteen days before the public hearing on the Application. (Transcript of Zoning Commission Public Meeting at 8-10 (Apr. 28, 2022).)
11. Pursuant to Subtitle Z § 404.1-404.3, on March 28, 2022, prior to FOFS’s filing for advanced party status, David M. Hollis sought advanced party status as an individual. (Ex. 342.) Pursuant to Subtitle Z § 404.9, the Applicant filed an opposition to Mr. Hollis’s request. (Ex. 425.) At the public hearing, Mr. Hollis informed the Commission that he had joined FOFS. (Transcript of Zoning Commission Public Hearing, Case No. 21-18 at 7-8 (May 5, 2022) [“**Tr. 2**”].) Accordingly, the Commission denied Mr. Hollis’s party status request. (*Id.*)
12. Pursuant to Subtitle Z § 404.1-404.3, on April 29, 2022, five commercial tenants occupying space at the Property—Catrachitos, Pica Taco, Allstate Insurance, Golden Leon Shoe Repair, and 14th Snack Bar (the “**Retail Tenants**”)—sought party status. (Ex. 608.) Pursuant to Subtitle Z § 404.17, on May 4, 2022, prior to the public hearing, the Retail Tenants withdrew its party status request. (Ex. 608B.)
13. On May 3, 2022, FOFS filed a motion to delay the public hearing, citing in part the filing of the party status request by the Tenants’ Party. (Ex. 724.) The Applicant opposed the motion to delay, citing, among other reasons, the Retail Tenants withdrawal of its party status request. (Ex. 763.) At the hearing, FOFS agreed to withdraw its motion. (Tr. 2 at 14.)

THE PROPERTY

14. The Property consists of approximately 29,960 square feet of contiguous land area located along 14th Street, N.W. The irregularly-shaped Property consists of multiple lots in Square 2704 that will ultimately be combined into a single record lot (Ex. 2A.)
15. The Property is located in the Northwest quadrant of the District within Ward 4 and ANC 4C03, in the Sixteenth Street Heights neighborhood. (Ex. 2A.)

16. The Property is currently improved with six primary and habitable existing structures. The largest is 4618 14th Street, N.W. which is, at its highest, a three-story building with a single-story entrance along 14th Street, N.W. and single-story warehouse structures to the rear. Within 4618 14th Street, N.W. are the 8,000 square foot existing Dance Loft studios, performance space, and offices plus approximately 21,000 square feet of space occupied by an existing furniture retailer. The other five existing single-story buildings at 4608-4616 14th Street, N.W. contain the five Retail Tenants. Alley lots at the rear of the Property are used for parking, garbage, and storage and include non-habitable garage structures. The Property does not include any residential uses today. The Property's existing buildings will all be demolished in order to construct the project that is the subject of the Application. (Ex. 2A.) Immediately across 14th Street, N.W. from the Property is WMATA's Northern Bus Garage, which is currently planned for redevelopment. (*Id.*)
17. The Property is bounded to the north by an alley system and single-story retail buildings fronting on 14th Street, N.W., to the east by 14th Street, N.W., and to the south and west by alleys. Opposite the Square 2704 alley network are the rear yards of approximately 33 attached residential buildings, generally all single-family dwellings, which front on Buchanan Street, N.W. to the south, 15th Street, N.W. to the west, and Crittenden Street, N.W. to the north. Three mixed-use, attached buildings occupy the southeast corner of the Square. The surrounding public alleys are either 10 or 15 feet wide. (Ex. 2A.)

CURRENT ZONING

18. The Property is currently located in the MU-3A zone, which Subtitle G § 400.2 establishes is intended to “[p]ermit low-density mixed-use development; and [p]rovide convenient retail and personal service establishments for the day-to-day needs of a local neighborhood, as well as residential and limited community facilities with a minimum impact upon surrounding residential development.”
19. The MU-3A zone allows a maximum (a) floor area ratio (“**FAR**”) of 1.2, subject to the Inclusionary Zoning (“**IZ**”) bonus and 1.44 with the FAR bonus for a PUD (11-G DCMR § 402.1), (b) height of 40 feet (*id.* § 403.1) plus a penthouse of up to 15 feet inclusive of mechanical space (*id.* § 403.3), and (c) lot occupancy of 60 percent (*id.* § 404.1). The MU-3A requires a minimum rear yard of 20 feet. (*Id.* § 405.1.) The MU-3A zone permits multifamily residential (“multiple dwelling unit”) uses (11-U DCMR § 510.1(a)) and a wide range of commercial uses, including entertainment, assembly, and performing arts uses. (*Id.* § 510.1(g), (i), (w), and (x).)

COMPREHENSIVE PLAN (TITLE 10-A DCMR)

20. The Comprehensive Plan's Generalized Policy Map (“**GPM**”) designates the Property as a “Main Street Mixed Use Corridor” on the. (Ex. 525H.) The Framework Element of the Comprehensive Plan states that such designation is for areas which “are traditional commercial business corridors with a concentration of older storefronts along the street” with “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.” (10-A DCMR § 225.14 [*note: full citation is needed for Plan references*].)

21. The Comprehensive Plan’s Future Land Use Map (“**FLUM**”) designates the Property as Mixed Use Moderate Density Commercial/Moderate Density Residential. (Ex. 525H.) The Mixed Use Moderate Density Commercial/Moderate Density Residential allows for mixed use buildings and moderate density uses, with a FAR range of 2.5 to 4.0 (with greater density possible when complying with IZ or when approved through a PUD) and provides that “[t]he MU-5 and MU-7 [zones] are representative of zone districts consistent with” such designation. (*Id.* §§ 227.6 and 227.11.)
22. The Comprehensive Plan also includes the Property within the Rock Creek East Area Element, which recommends the following development priorities:
 - (a) Maintain and strengthen the neighborhoods of the Rock Creek East Planning Area while providing new housing opportunities for a range of incomes and household sizes. Any new development in the Planning Area should be attractively designed and should contribute to the community’s physical characteristics. (*Id.* § 2208.2.)
 - (b) Ensure that . . . new construction in the area’s low-density neighborhoods respect[s] the scale and densities of adjacent properties, provide[s] new housing opportunities, and preserve[s] parklike qualities, such as dense tree cover and open space. (*Id.* § 2208.3.)
 - (c) Concentrate economic development activity, employment growth, and new housing, including affordable housing, in Rock Creek East . . . at key nodes along 14th Street NW . . . Provide improved pedestrian, transit, and bicycle access to these areas, and improve their visual and urban design qualities to create a unique destination for the local community to enjoy. (*Id.* § 2208.4.)
 - (d) Maintain and encourage the development of multi-use neighborhood shopping and services in those areas designated for commercial or mixed-uses. (*Id.* § 2208.5.)
 - (e) Encourage . . . measures to increase housing choices and improve housing affordability for area residents. (*Id.* § 2208.7.)
 - (f) Integrate sustainability strategies at the site and project level in new developments. (*Id.* § 2208.16.)
 - (g) Assist small and local businesses along Kennedy Street, Georgia Avenue, and other Rock Creek East commercial districts in providing neighborhood services and creating job opportunities for area residents. (*Id.* § 2209.5.)
 - (h) Community services should be responsive to cultural changes in the Rock Creek East community, particularly the growing number of Latino residents in the Planning Area. (*Id.* § 2209.6.)
 - (i) Support the nodal redevelopment opportunities of 14th Street NW: . . . Intermediary Node Two (Webster to Decatur Streets NW) can become a neighborhood-serving retail area with potential for additional uses in conjunction with the reconstruction of the existing bus barn. (*Id.* § 2217.3.)
 - (j) Improve the aesthetics of the Central 14th Street corridor, as well as pedestrian safety and connectivity. (*Id.* § 2217.4.)

- (k) Improve multimodal options along the Central 14th Street corridor while increasing the efficiency of parking systems. (*Id.* § 2217.5.)

CENTRAL 14TH STREET REVITALIZATION AND VISION PLAN (“SMALL AREA PLAN”)

- 23. The Small Area Plan, adopted in 2012, includes the Property within the area labeled “Node Two” and recommends in relevant part:
 - (a) For Node Two, a “Development Goal” to “Pursue land use change and infill development that is designed with contextual sensitivity and attract a medium-scale grocery anchor to support existing businesses and spur increased foot traffic.”
 - (b) “Design Guidance” providing that: “New development targeted for the [Property] should include residential infill at the top with ground floor retail at the bottom”; “The surrounding residential uses between Crittenden and Buchanan consist of single-family homes with rear yards backing to the opportunity site. In all cases, height and density should front on 14th Street and step back away from existing residential neighborhoods;” “To decrease the appearance of mega blocks, storefront improvement should be consistent with the corridor’s existing, neighborhood-serving retail character;” “To create a more pedestrian-friendly area, continuous street frontage should be established where possible;” “Parking should be oriented towards the rear of the building, either underground or wrapped garages” and “Street amenities such as Washington globe lights and street banners could help maintain the corridors existing character.”
 - (c) With respect to the Property specifically that “As the second largest site (75,000 square feet) with single ownership, [the Property] has the best redevelopment potential within the next five years because it is located mid-block, has good visibility, a deep footprint, singularly owned, and two separate alley access points.” “The development concept includes ground floor retail, ideal for a neighborhood grocery, with two to three floors of residential above.” “Parking is a concern for residents and businesses and should be part of any redevelopment.” “To facilitate development, this plan proposes to modify the current Comprehensive Plan Future Land Use Map designation of low-density commercial to mixed use moderate density residential and commercial.” “This modification would apply to those properties fronting 14th Street between Allison Street and Decatur Street and would enable an appropriate increase in zoning.” “The commercially zoned properties fronting, on the east side of 14th Street, from Allison to Webster, should remain a land use classification per the Comprehensive Plan of low-density commercial. This part of 14th Street serves as a natural transitional block for lower density commercial uses and is compatible with the residential uses on the west side of the corridor.”

(Small Area Plan at 31-39; *see also* Ex. 2J.)

THE APPLICATION

THE PROJECT

24. The Application, as amended, proposes to construct the mixed-use Project with:
- (a) A maximum height of 66 feet, 8 inches plus a penthouse and partially- and fully-below-grade areas;
 - (b) A lot occupancy of approximately 100% proposed for the first floor and a maximum of approximately 70% beginning at the second floor (the lowest floor containing residential units);
 - (c) Approximately 113,546 square feet of gross floor area (“GFA”);
 - (d) An overall FAR of 3.79;
 - (e) An approximately 10,276 square foot habitable penthouse with residential units and amenity space plus a mechanical penthouse above;
 - (f) Approximately 101 residential units in total (subject to the Conditions hereof);
 - (g) A set aside of 22% of the residential units for households up to 60% MFI, a set aside of 23% of the residential units for households up to 50% MFI, and a set aside of 22% of the residential units for households up to 30% MFI, for a total of approximately 67 affordable housing units (subject to the Conditions hereof);
 - (h) Twenty-four (24) 3-bedroom units, including sixteen (16) affordable 3-bedroom units (subject to the Conditions hereof);
 - (i) Approximately 58 of units with access to balconies/terraces (subject to the Conditions hereof);
 - (j) Landscaped areas totaling a green area ratio (“GAR”) of not less than 0.3;
 - (k) Approximately 40 vehicle parking spaces in the Project’s enclosed garage;
 - (l) Approximately 36 long term and approximately 8 short term bicycle parking spaces; and
 - (m) Approximately 21,637 square feet of non-residential GFA on the ground floor and mezzanine level, with approximately 11,277 square feet of GFA of such area designated for entertainment/assembly/performing arts use to be used by the Dance Loft and approximately 1,888 square feet of GFA of such area designated for retail, service, and other ground level uses permitted in the MU-5A zone.
- (Ex. 525B.)
25. The Project assimilates into the surrounding urban fabric, including integrating into the significant grade change on the Property, which rises from a low point on the east at 14th Street, N.W. to a high point on the west at the rear of the Property. To the east, the Project’s primary entrances are along 14th Street, N.W. and the Project is constructed to the lot line to help maintain and enhance the vitality of the 14th Street, N.W. urban street wall. To the south, the Project is recessed from the lot line at grade for a portion of the Property in order to widen the alley for vehicular access to the Project’s enclosed garage, which is accessible only from this side from a location designed to minimize impacts on residential neighbors. (Ex. 2A.)
26. The Project’s ground level is built to the Property line at grade along the alley to each of the south, west, and north of the Project, except where set back to effectively widen the

alley to the south of the Property, as noted above. As a result of the Property's topography, the Project's second level is close to grade at the Property's highest point at the rear of the Project. This results in the Project being effectively one full story lower (i.e., four stories) from the perspective of the residential neighbors. The Project's upper levels are significantly recessed from the lot line to the south, west, and north to increase the distance between the Project and surrounding residences. (*Id.*)

27. The Project's south, west, and north façades, although "rear" and "alley-facing" sides of the Project, are highly-designed so as to have the level of design and quality of materials as would be utilized for the front of a building. (*Id.*)
28. The Project employs oriel windows and ground level details that extend that street wall from immediately to the north of the Property. (*Id.*)
29. The Project's parking and loading access is in one location accessible only from the alley, with entry and egress from 14th Street, N.W. The Project does not include any new curb cuts. (*Id.*) The Property's residents will not be eligible for Residential Parking Permit ("RPP").
30. The Project is clad largely in a red brick, with soldier courses at each level for visual interest. The use of cementitious and metal panels breaks the overall mass of the building into discrete volumes. The Project's 14th Street, N.W. frontage has an active pedestrian level featuring retail storefronts with outdoor seating and an indoor/outdoor dance studio. The studio is designed to host interior-only events and events that spill from the interior to the exterior and engage the public realm. Purposely framed alley murals contribute to an overall creative placemaking strategy allowing the arts and related uses to inform the physical characteristics of the façade and ground plane. The windows are punched opening with red cast stone sills and heads. A composite grey metal panel is used for the bay projections and a section along the alley façades provides visual interest in contrast to the masonry façade. The alley façades also include multiple projecting balconies. The roof cornice line features a masonry corbel detail in character with the neighborhood. Similarly, the bays have a metal panel cornice profile. The penthouse level is clad with a grey cementitious panel. (*Id.*)
31. The Project includes modest streetscape and landscape improvements along 14th Street, N.W. The Project includes landscape improvements on second floor terrace areas within the building setbacks and on the penthouse level terrace and green space. The areas incorporate primarily green roof requirements with native plants, along with some private unit and public residence terrace areas. (*Id.*)
32. The Project is a vertically segmented, mixed-use building, with non-residential uses on the ground floor and mezzanine level, with multifamily residential uses above. The retail areas are double height spaces at the street front to create a more engaging street presence. Immediately above the ground level is a mezzanine which contains Dance Loft's administrative spaces, back stage areas, and theater operations areas. The ground level and mezzanine also include the residential lobby, amenity areas, and related residential back of house space. Due to the Property's topographic change, much of the Dance Loft theater and rehearsal space is effectively below grade, which is conducive to use for performing

arts practice areas and performances, which require little-to-no natural light and complete soundproofing. Accordingly, the below ground space is ideal for arts but not for most other uses. The upper levels of the Project include residential and amenity uses exclusively. The penthouse level includes amenity space for residents plus adjacent outdoor space. The communal outdoor amenity space is purposely located as far away from existing nearby residences as is possible. The roof is also designed to accommodate solar photovoltaics, some mechanical equipment, green roofs and vegetation. (*Id.*)

APPLICANT’S REVISIONS, SUBMISSIONS, AND TESTIMONY

33. Initial Application. Pursuant to Subtitle Z §§ 300.1-300.4, 300.6, and 300.10-300.13, on October 26, 2021, the Applicant filed its initial application materials. (Ex. 1-2.)
34. Applicant’s Pre-Hearing Submission. Pursuant to Subtitle Z §§ 401.1 and 401.3-401.4, on February 4, 2022, the Applicant filed a prehearing submission responding to the issues and comments raised by (i) the Commission at the December 16, 2021 public meeting (*see* Tr. 1 at 68-78), and (ii) by OP in its December 6, 2021 report (*see* Ex. 10). (Ex. 35.) The Applicant’s February 4 filing included updated architectural plans in support of those responses. (Ex. 35B.) Such issues, comments, and responses are summarized as follows:
 - (a) Comprehensive Plan Consistency. During discussion at the December 16, 2021 public meeting, the Commission asked for confirmation and clarification that the Application’s proposed amendment to the Zoning Map was consistent with the Comprehensive Plan. At the meeting, OP confirmed that it was. (Tr. 1 at 75-76.) In its February 4, 2022 filing, the Applicant noted that the FLUM, as amended in 2021, designates the property as “Mixed Use Moderate Density Residential/Moderate Density Commercial”. (Ex. 35.) The proposed MU-5A zone is expressly among the zones appropriate for such a designation in the Comprehensive Plan’s Framework Element. The definition for such designation provides that in such designated areas “Density typically ranges between a FAR of 2.5 and 4.0, with greater density possible when complying with [IZ] or when approved through a [PUD].” 10-A DCMR § 227.11.
 - (b) Shadow Study. The Commission also asked for additional information about the Project’s potential shadow impacts. The Applicant provided shadow studies with enhanced detailing that depict the impact of the Project’s shadows relative to existing conditions. (Ex. 35B and 525B.)
 - (c) ANC 4C Feedback. The Applicant also provided a response to comments by the Commission regarding the ANC’s position on the Project. The Applicant noted that the ANC had not, as of the time of such filing, taken a position on the Project and moreover had not provided any feedback in opposition to the Project. (Ex. 35.)
 - (d) Revised Door. OP requested that the Applicant revise the proposed “flip-up” door on 14th Street, N.W. In response, the Applicant revised such door to avoid any potential interference with public space. (Ex. 35 and 35B.)
 - (e) PEPCO Vault Locations. OP asked the Applicant to confirm the location of the Project’s utility vaults. In response, the Applicant provided updated drawings showing the proposed location of such vaults. (Ex. 35 and 35B.)

- (f) Design of the Project's Top. OP provided comments regarding the top of the Project. In response, the Applicant enhanced the Project's cornice to reference the surrounding neighborhood context with brick projections, brick corbelling, and soldier-coursed brickwork. (Ex. 35 and 35B.)
 - (g) Design of the Project's Brickwork. OP also asked for further study to the Project's brickwork. In response, the Applicant provided enhanced brickwork to more closely match the style of brickwork common to the existing buildings in the vicinity of the Project, including soldier courses above each window similar to the homes on Crittenden Street, N.W., and brickwork on alley facades with the same level of detail as the 14th Street, N.W. façade. (Ex. 35 and 35B.)
 - (h) Design of the Project's Alley Façade. OP commented on the Project's apparent "projection" above the alley to the south of the Property. In response the Applicant noted that the Project's upper stories do not project over an alley. Instead, the upper stories are constructed to the lot line, and the lower story is recessed from the lot line in order to widen a portion of the alley by reserving a portion of private property for vehicular and pedestrian access. This alley-widening addressed neighbor concerns about the existing width of the alley. In response to OP's design comment, the Applicant added decorative half arches beneath the cantilevered second level to emphasize the transition from the ground floor and add visual interest where the ground level is recessed. The proposed configuration of the second floor and above allows the building to be symmetrical when viewed from 14th Street, N.W. and to provide a more extensive street presence, consistent with the Comprehensive Plan and the Small Area Plan.
35. Applicant's Transportation Reports. Pursuant to Subtitle Z §§ 401.7-401.78, on March 22, 2022, the Applicant filed a Transportation Statement, prepared by Gorove Slade regarding the Project, which Statement the Applicant supplemented with a Transportation Assessment prepared by Gorove Slade on April 4, 2022. (Ex. 308A and 468A.)
36. Applicant's Supplemental Pre-Hearing Submission. Pursuant to Subtitle Z § 401.5, on April 15, 2022, the Applicant filed a supplemental submission that included:
- (a) Plans. Updated architectural plans with (i) the proposed locations of the Project's affordable units, (ii) view of the Project in context, and (iii) revisions to the Project's garage entrance (Ex. 525B);
 - (b) Outreach. A summary of the Applicant's discussion with neighbors, including potential areas of compromise regarding neighbor opposition points (Ex. 525C);
 - (c) Changes. A summary of changes to the Project resulting from neighbor and agency comments (Ex. 525D);
 - (d) Density and Design. An analysis of the Project's proposed density and design in light of the requested height and density, affordable housing goals, Dance Loft preservation goals, construction cost constraints, Comprehensive Plan, and Small Area Plan (Ex. 525E);
 - (e) Letters in Record. Summary of the letters of support and opposition in the record as of the date of such filing and responses to comments in such opposition letters (Ex. 525F);

- (f) Dance Loft. An analysis of the Project’s Dance Loft preservation goals and the need for preservation of community performing arts spaces (Ex. 525G);
 - (g) Comprehensive Plan. An analysis of the Project’s consistency with the Comprehensive Plan and Small Area Plan, including with respect to the racial equity objectives of the Comprehensive Plan (Ex. 525H);
 - (h) Benefits and Impacts. A summary of the Project’s proposed benefits, amenities, and potential impacts (Ex. 525I);
 - (i) Alley Impacts. An analysis of the Project’s relationship with the surrounding alley network (Ex. 525J);
 - (j) Resumes. Resumes for the Applicant’s proffered expert witnesses and outlines of testimony for each (Ex. 525K).
37. Applicant’s Direct Presentation. In advance of the May 5, 2022 public hearing for the Application, the Applicant filed a presentation into the record. (Ex. 755.) At the public hearing, the Applicant presented the Application, providing testimony from five witnesses:
- (a) Diana Movius, founder of Dance Loft on 14, as a representative of the Applicant;
 - (b) Mark James of Heleos as a representative of the Applicant;
 - (c) Chris Van Arsdale of Heleos as a representative of the Applicant;
 - (d) Sean Pichon of PGN as the Project’s architect, admitted as an expert; and
 - (e) William Zeid of Gorove Slade as the Project’s transportation engineer, also admitted as an expert.
- (Tr. 2 at 26.)
38. Applicant’s Rebuttal Presentation. In advance of the May 12, 2022 continued public hearing for the Application, the Applicant filed a rebuttal presentation into the record. (Ex. 791-792.) The Applicant also submitted into the record environmental information requested by FOFS. (Ex. 793.)
39. Applicant’s Post-Hearing Submission. Pursuant to Subtitle Z § 602.1, on May 26, 2022, the Applicant filed responses to requests at the public hearing from the Commission for post-hearing information (the “**Applicant’s Post-Hearing Submission**”):
- (a) Views from Alley and Sections. The Commission requested views from the perspective of the rear of the residences that front on each of Crittenden Street, N.W., 15th Street, N.W., and Buchanan Street, N.W. within Square 2704. (Tr. 2 at 104-105.) The Applicant provided those views. (Ex. 795A.) The Commission requested sections. (Transcript of Zoning Commission Public Hearing, Case No. 21-18 at 63 (May 12, 2022) [“**Tr. 3**”].) The Applicant filed sections. (Ex. 795A.)
 - (b) EIFS/Brick Details. The Commission requested details regarding the change from brick to EIFS on the north façade of the Project. (Tr. 2 at 78.) The Applicant provided that information. (Ex. 795A.)
 - (c) Vent Details. The Commission also requested details regarding the Project’s vents. (Tr. 2 at 79-80.) The Applicant provided that information as well. (Ex. 795A.)
 - (d) Parking Details. The Commission requested details regarding the Project’s parking system. (Tr. 2 at 70-71.) The Applicant provided that information. (Ex. 795A.)

- (e) Green Roof Access. The Commission requested information regarding access to the Project’s green roofs. (Tr. 2 at 80-82.) The Applicant provided that information. (Ex. 795A.)
 - (f) Construction Management Plan. The Commission requested a copy of a Construction Management Plan for the Project. (Tr. 2 at 91.) The Applicant provided a draft of that plan. (Ex. 795B.)
 - (g) Construction Pricing Information. The Commission requested additional information about expected construction costs related to theoretical alternative configurations for the Project. (Tr. 3 at 108.) The Applicant provided such cost information. (Ex. 795. (“As a predominantly-affordable building seeking DHCD subsidy, construction costs impose considerable restrictions on the massing and design of the Project. In sum and as discussed at the hearing, revising the Project to exceed five stories on 14th Street, NW would require the entire building, including portions less than five stories, to comply with high-rise construction and fire code requirements. The result is that the building’s construction costs would increase by approximately 20-30% (i.e., by as much as \$10 million in the aggregate). . . . A seven- or eight-story plus penthouse design exceeds DHCD’s construction cost limit by a substantial margin even if only a portion of the Project is seven or eight stories. . . . The construction cost limitations fundamentally bear on the Project’s ability to be eligible for DHCD subsidy, without which the Project would not be able to achieve its lofty affordable housing targets.”))
 - (h) Dance Loft Programming in Public Schools Information. The Commission requested additional information about the Dance Loft’s activities in District schools. (Tr. 2 at 86.) The Applicant provided a draft of that plan. (Ex. 795C.)
 - (i) Affordable Unit Count Flexibility. The Commission asked whether the Project’s absolute number of affordable housing units would remain fixed even if the overall number of units was reduced. (Tr. 2 at 93-94 and 125-126.) The Applicant clarified that if the total unit count was reduced then the Applicant would make every effort to maintain 67 affordable units on an absolute basis without exceeding 70% of the units being affordable in response to District housing subsidy priorities. (Ex. 795.)
 - (j) WMATA Bus Electrification. The Commission asked the Applicant obtain information about the electrification of the WMATA Bus Garage, which is located opposite 14th Street, N.W. from the Property. (Tr. 3 at 104.) The Applicant provided as much information about such electrification as was available from WMATA at the time of its post-hearing filing. (Ex. 795.)
40. Applicant’s Post-Hearing Update. At the May 12, 2022 hearing, OZ staff also directed the Applicant and FOFS to file a post-hearing update regarding discussions between those parties. (Tr. 3 at 131.) The Applicant provided such filing on June 9, 2022. (Ex. 796.)
41. Draft Findings of Fact and Proposed Conditions. Pursuant to Subtitle Z § 601.1 and Subtitle X §§ 308.8 and 308.10, (a) on July 5, 2022, the Applicant submitted its proposed findings of fact and conclusions of law and (b) on July [21], 2022, the Applicant submitted its draft proffers and conditions. (Ex. [__].)
42. Final Conditions. Pursuant to Subtitle X §§ 308.10 and 308.12, on [August 4], 2022, the Applicant submitted revised conditions. (Ex. [__]; the “**Proposed Conditions**”.)

JUSTIFICATION FOR RELIEF

RELIEF REQUESTED

43. Pursuant to Subtitle X, Chapters 3 and 5, the Application seeks a PUD with a related Zoning Map amendment to the MU-5A zone. As a result of such PUD and map amendment, the Project is able to achieve the additional height and density shown on the chart below:

Development Standards	MU-3A	MU-5A	Project	Development Incentive
Height	40 feet	90 feet	66 feet, 8 in.	26 feet, 8 in.
Density (FAR)	1.2 (w. IZ bonus) 1.44 (w. PUD and IZ bonus)	4.2 (w. IZ bonus) 5.04 (w. PUD and IZ bonus)	3.79	2.35 (77,594 sf)
Lot Occupancy	60%	80%	70%	10%
Penthouse Height	12 feet (15 feet w. mechanical penthouse)	12 feet (18.5 feet w. mechanical penthouse)	12 feet (18.5 feet w. mechanical penthouse)	3.5 feet of mechanical penthouse height
Rear Yard	20 feet	15 feet	15 feet	5 feet

(11-G DCMR §§ 402.1, 403.1, 403.3, 404.1, 405.1-405.2, and Ex. 525B.)

44. Apart from the five foregoing development incentives, the Project is in all material respects consistent with parameters applicable in the MU-3A and MU-5A zones. The Application does not seek any additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1.²
45. The Application does seek design flexibility to vary certain elements in the Application’s final plans as approved by the Commission and still comply with the requirement of Subtitle X § 311.2 and Subtitle Z § 702.8 to construct the Project in complete compliance with the final plans. (Ex. [2A].)

CONSISTENCY WITH THE COMPREHENSIVE PLAN, SMALL AREA PLAN, AND OTHER ADOPTED PUBLIC POLICIES RELATED TO THE PROPERTY (SUBTITLE X § 304.4(a))

46. Comprehensive Plan. The Applicant provided evidence that the Application complies with Subtitle X § 304.4(a) and is not inconsistent with (i) the Comprehensive Plan as a whole,

² The Application initially sought flexibility from the requirements of Subtitle C § 702.1(c) with respect to the prerequisites to reduce the vehicle parking requirement for a property within 0.25 miles of a priority transit corridor. However, during the pendency of this proceeding, DDOT designated as ineligible for the residential parking program the 14th Street, N.W. block on which the Property is located. Such designation permits a reduction by 50% of the number of vehicle parking spaces required for the Project. Accordingly, the Project now complies with the matter-of-right parking requirement and the Applicant no longer seeks any relief with respect to parking. (Ex. 755A6.)

including its maps, District Element policies, and Area Element policies, (ii) the Small Area Plan, or (iii) and other public policies related to the Property.

- (a) GPM. The Project is not inconsistent with the GPM’s Main Street Mixed Use Corridor designation for the Property.³ The Project includes a mix of upper-story residential and ground level, pedestrian-oriented, transit-supportive uses with a traditional storefront design along 14th Street, N.W.
- (b) FLUM. The Project is also not inconsistent with the FLUM’s Mixed Use Moderate Density Residential/Moderate Density Commercial designation for the Property. For such FLUM designation, the Comprehensive Plan’s Framework Element expressly lists the MU-5A among the appropriate zones and contemplates an FAR between 2.5 and 4.0 (or higher with IZ and PUD bonuses, both of which would apply to the Project notwithstanding that such additional density is not necessary). The Project contains mix of uses and an FAR of 3.79. (Ex. 35 (“The Project far exceeds Inclusionary Zoning requirements and, therefore, would be eligible under the Comprehensive Plan for greater density than requested. However, the Project provides an appropriate level of density given the context and the need for new affordable housing near a Ward 4 transit priority corridor. The current proposal balances and resolves multiple competing tensions in the Comprehensive Plan.”).) The zones contemplated as compatible with the Moderate density designation would allow buildings up to 90 feet tall. (*Id.*)
- (c) Racial Equity. The Project advances racial equity for the following reasons:
 - (i) The Project provides 67 new affordable units reserved as affordable for households earning 30%, 50%, or 60% MFI, an amount of affordable housing units and levels of affordability that substantively advance racial equity in the District. This housing primarily benefits the District’s Black and low-income residents by providing affordable housing opportunities within an overall inclusive development in an amenity-rich area of the District.
 - (ii) Sixteen (16) of the Project's residential units are affordable three bedrooms (24 of the units overall are three-bedroom units), which will create affordable housing opportunities for District families to remain in the District.
 - (iii) No residences exist on the Property today, so the Project does not displace any existing residents, notable in a part of the District where many Black residents and members of other minority communities face displacement.
 - (iv) The Project allows the Dance Loft to remain in operations and three other businesses, potentially small businesses, to provide economic and job opportunities. Dance Loft has a strong commitment to and history of maintaining a diverse workforce and ensuring opportunities to a diverse mix of artists and audiences. In total, over half of all users of Dance Loft are

³ See 10-A DCMR § 225.14 (A “Main Street Mixed Use Corridor” is defined as a “traditional commercial business corridor[] with a concentration of older storefronts along the street” and “a pedestrian-oriented environment with traditional storefronts. Many have upper-story residential or office uses. Some corridors are underutilized, with capacity for redevelopment”. Any new “development or redevelopment that occurs [along a Main Street Mixed Use Corridor] should support transit use and enhance the pedestrian environment.”)

from a racial minority. Dance Loft itself enables minority-owned dance businesses, and as an arts institution reflects the diversity within DC and within different forms of dance. Within Dance Loft's youth programs, Dance Loft serves over 600 local Ward 4 students each year with free bilingual dance education (Spanish/English) and free performances.

- (v) In addition, the Project is an opportunity for a Black-owned real estate business, The Menkiti Group, to continue its success in the District. Also, one of the partners of Heleos is a Black real estate professional.
 - (vi) Finally, the Project adds residents who will be future patrons of other minority-owned businesses on the 14th Street corridor.
 - (vii) While the Project does potentially displace minority-owned retail businesses, the Applicant has committed to working with each current retail business and the small businesses on the Property who initially filed as a party in opposition ultimately expressed support for the Project.
 - (viii) The benefits of the Project will be enjoyed by, among others, residents of the Project's new housing, many of whom are likely to be Black given the demographics of the District's affordable housing waiting list.
 - (ix) The Project has gone through a robust public process with multiple, intensive rounds of meetings with the ANC. The Applicant has made itself available for discussing the Project with any interested neighbors or community groups to the maximum extent possible given the public health situation in the District.
- (d) Land Use Element. The Project balances the numerous and sometimes competing objectives of the Land Use Element of the Plan, which is the Element that should be given the greatest weight.⁴ Consistent with the Land Use Element, the Project:
- (i) Adds an appropriate amount of residential density to achieve the Plan's affordable housing goals, housing diversification objectives, and Fair Housing obligations following a detailed Small Area Plan effort and extensive neighborhood engagement for a PUD for Dance Loft to remain in its current home indefinitely (and actually own its space);
 - (ii) Retains a thriving, cultural performing arts use as a critical asset for central 14th Street NW and provides a modest amount of other commercial uses, all at appropriate scales and with appropriate mitigation measures to minimize any adverse or quality of life impacts on nearby residential areas;
 - (iii) Focuses District resources to create opportunities for family-sized and affordable housing, expand commercial opportunities in a way that avoids "unreasonable and unexpected traffic, parking, litter, shadow, view obstruction, odor, noise, and vibration impacts" on nearby residences, advance sustainability and Fair Housing goals, optimize tax and job creation benefits, and revitalize "Node Two" of central 14th Street N.W.;
 - (iv) Helps establish the role of 14th Street N.W. as a Main Street corridor by devoting the ground floor to compatible commercial uses, adding upper story residential uses that create weekend/evening populations to support the growth of retail and services in Ward 4, offering employment opportunities, designing public and private outdoor spaces that are inviting,

⁴ *Id.* §§ 300.3, 2504.6 ("the Land Use Element . . . should be given greater weight than the other elements").

accessible, attractive and supportive of social interaction, and providing opportunities for cultural uses and the performing arts;

- (v) Integrates the development of the Project into the surrounding urban fabric by establishing a compatible, inclusive, connected, ungated relationship with the existing neighborhood fabric, improving upon sidewalks and public spaces surrounding the Property in a manner that maintains pedestrian zones, facilitates public interaction, and does not privatize or enclose public space but instead creates indoor-outdoor zones for performing arts, including landscaping and other improvements to the neighborhood's overall visual quality and animation levels of the street, improving the Project's visual beauty including with public-accessible art;
- (vi) Combines land use and transportation planning by implementing best practice design for a new mixed-use residential building along a transit corridor (i.e., sufficient new residential density near transit to justify the public investment in transit), providing garage parking spaces, in an amount that responds to site- and use-specific parking demand, locating all parking from an alley entrance to maintain an attractive street environment, including transportation demand and loading management elements that address any potential parking and traffic impacts, prioritizing pedestrians and cyclists, and not adding any new curb cuts;
- (vii) Serves as a buffer between the existing and planned higher-intensity uses to the east of the 14th Street, N.W. and the residential areas to the west;
- (viii) Advances a site-specific resilient design and actively anticipates future flood risk by being located outside of the flood plain in a neighborhood that is not otherwise likely to be flood-prone, incorporating green roof area and other stormwater mitigation elements, and including on-site renewable energy generating capacity; and
- (ix) Seizes on an opportunity for an innovative land use regulatory process that simultaneously advances civic and ANC-led beautification objectives and incorporates enforceable conditions regarding design, building, and operating criteria;
- (x) However, the Project does involve the demolition rather than rehabilitation or adaptive reuse of an aging structure, in a manner arguably inconsistent with one policy objective of the Land Use Element.⁵ In light of the Project's affordable housing commitments, the Plan's affordable housing goals outweigh any inconsistency with this objective.⁶ The achievement of additional goals set forth in other Comprehensive Plan elements, as set forth below, allow for even more justification to not incorporate the above mentioned policy objective.

(e) Transportation Element. Not inconsistent with the Transportation Element:

⁵ *Id.* § 310.11. ("In redeveloping areas characterized by vacant, abandoned, and underused older buildings, generally encourage rehabilitation and adaptive reuse of architecturally or historically significant existing buildings rather than demolition.")

⁶ *See, e.g., id.* § 504.8. ("The production and preservation of affordable housing for low- and moderate-income households is a major civic priority").

- (i) Conforms to best practices for transit-oriented design with new and improved pedestrian and cycling infrastructure and pedestrian safety and improved alley access from 14th Street, N.W.;
 - (ii) Balances off-street parking supply with demand and the multitude of transit and other mobility options, includes a curbside plan to limit long-term curbside parking, and removes existing above-grade parking structures in favor of more productive uses (arts and housing);
 - (iii) Improves the urban design and streetscape and overall visual quality of 14th Street N.W., with no auto-oriented uses or curb cuts;
 - (iv) Constructs enhancements to public space to support an active and naturally-landscaped pedestrian environment;
 - (v) Expands cycling infrastructure and adds residents and workers who will contribute to the use of CaBi stations and the overall cycling system and electric vehicle (EV) charging capacity;
 - (vi) Includes a robust multimodal transportation impact assessment;
 - (vii) Delivers a robust transportation demand management (“**TDM**”) package; and
 - (viii) Adds density, residents, and jobs that will ultimately help justify transit investments along 14th Street and 16th Street N.W. in support of the objectives of the Plan’s Transportation Element, especially when viewed through a racial equity lens (e.g., transit investments are noted to benefit the District’s racial minority populations disproportionately).
- (f) Housing Element. The Project adds affordable housing in an amenity-rich area that otherwise includes primarily single-family ownership opportunities that are now all-but unattainable to many District residents or former or would-be District residents. The Project is not inconsistent with the Housing Element because the Project:
- (i) Addresses two major housing production civic priorities: it includes affordable housing (where none is currently provided) and imposes affordability restrictions for the life of the project to preserve such housing and includes 24 three-bedroom (“family-sized”) units, including 16 affordable three-bedroom units at a site that “received increased residential density as a result of underlying changes to the Future Land Use Map” (*id.* § 503.11) and that is proximate to transit and other amenities (parks, retail, schools).
 - (ii) Is a private-sector-led, moderate-density, mixed-use development with market rate and affordable housing that consistent with the density designation for the Property, relies on a zoning density bonus as an incentive for additional deeply affordable housing, helps meet present and long-term housing needs for Ward 4, an area that is becoming a high-cost area of the District but that through the Project will remain inclusive, redevelops underutilized commercially-zoned land on a Main Street corridor within walking distance of transit access, mitigates and minimizes adverse impacts on the design character of existing residential areas, minimizes future displacement effects, and balances housing opportunities in Ward 4 (i.e., by adding affordable rate housing in an otherwise increasingly unaffordable

- submarket and building in long-term affordability in anticipation of future rent growth);
- (iii) Achieves high quality architecture and interior quality/sustainability standards despite its high levels of affordability and provides market rate and affordable units that are externally indistinguishable, include access to recreational amenities such as balconies, achieve high levels of environmental sustainability, and avoid long-term potential health hazards (e.g., no lead paint or gas appliances);
 - (iv) Achieves an Enterprise Green Communities Plus (“EGC+”) rating, a high level of sustainability and water efficiency, and is seeking the net-zero energy target encouraged by the Comprehensive Plan;
 - (v) Does not displace any existing residents or convert any existing housing and provides a mix of affordable units to help mitigate displacement elsewhere in Ward 4 and in the District;
 - (vi) Complies with all fair housing laws and begins to redress in part, through investment in amenities and infrastructure, the adverse effects of racially-restrictive deeds and similar discriminatory methods that occurred in neighborhoods around the Property; and
 - (vii) Includes housing specifically-designed for persons with disabilities (and does not preclude housing anyone in other vulnerable groups such as seniors and returning citizens) for 15 percent of the units with broad accessibility measures for all units (e.g., elevators, in-unit washer/dryer, etc.), which measures are not possible or available in older buildings; but
 - (viii) Does not anticipate any owner-occupied housing (or any future homeowner assistance program); however, it is unusual for a single building to have rental and owner-occupied units together, and instead, the Project contributes to a mix of rental and owner-occupied units in Sixteenth Street Heights, which is largely comprised of owner-occupied housing.
- (g) Environmental Element. The Project proactively advances climate resiliency, stormwater, landscaping, water efficiency, renewable energy, and energy efficiency objectives of the Comprehensive Plan and:
- (i) Advances resilience objectives by, among other things, being located outside of any flood plain, capturing a very high amount of stormwater runoff through green roof areas and other “absorbent” features, providing on-site energy generating capabilities, and relying on resilient and native vegetation selections;
 - (ii) Incorporates landscape and tree planting to reduce adverse heat island impacts, capture and manage stormwater as part of climate resilience and general infrastructure resilience priorities, provide habitat for pollinating species, and improve the overall quality of the environment;
 - (iii) Complies with green building methods and employs water conservation methods to achieve sustainable building goals;
 - (iv) Incorporates renewable energy and energy efficiency measures that reduce greenhouse gases and improve overall air quality;
 - (v) Includes an evaluation of climate and resiliency measures and consideration of other environmental measures; however, the Project does not undergo a

full environmental review at the zoning entitlement stage even though the Plan encourages impact assessments that consider environmental and other impacts before any decision is made (such reviews are not mandatory requirements and are not typically included as part of PUD cases but in this case will be performed as part of the building permit process; the Applicant did submit evidence that “no recognized environmental conditions[], controlled recognized environmental conditions[], historical recognized environmental conditions[], or de minimis conditions, exist at the site at this time.”) (Ex. 793A.)

- (vi) Avoids adding noise-generating uses near existing residential areas and is designed comply with the District’s noise limits;
 - (vii) Generates construction demolition debris because the site contains buildings that will be razed; however, the deconstruction (rather than demolition) objective is not stated in mandatory terms in the Plan, and any demolition activity will comply with applicable health and safety standards;
 - (viii) Anticipates construction-period measures to limit erosion and avoid any adverse construction-period effects even with respect to the topographic changes across the Property; and
 - (ix) Includes plans to control vectors, airborne dust, and vehicle emissions and otherwise mitigate impacts during construction.
- (h) Economic Development Element. The Project includes the Dance Loft as an economic anchor plus additional retail/service/eating and drinking uses to help to continue to revitalize 14th Street, N.W. and add entry-level and salaried jobs and:
- (i) Adds to the District’s performing arts and retail use job sectors to help anchor the future development of neighborhood shopping options along a Main Street commercial center outside from the District’s historic commercial core and that is developing its own unique identity with the assistance of the Uptown Main Street program;
 - (ii) Retains and avoids displacement of the Dance Loft on the Property, although the Project could potentially result in some displacement of small business retail tenants, including minority-owned businesses;
 - (iii) Continues the success of a woman-owned non-profit organization and a variety of CBE organizations and provides future space for incubation of new small businesses or potentially the return of the existing tenants;
 - (iv) Adds opportunities for entry-level jobs and jobs that result in upward mobility for District residents, small start-up and incubator businesses through the future small-footprint retail spaces, and professional artists and entrepreneurs who will access the Dance Loft space for performance and instruction purposes;
 - (v) Includes a commitment to CBE and First Source employment programs for local and/or small business spending and hiring;
 - (vi) Does not provide any opportunities for direct community equity investment; however, as with many policy objectives of the Plan, this item is only ambiguously applicable to private developers (as opposed to District policymaking more generally). On balance, the Project’s other positive attributes—affordable housing, family-sized housing, Dance Loft retention,

and job creation opportunities, chief among them—make the Project overwhelmingly consistent with the Plan and Small Area Plan.

- (i) Urban Design and Historic Preservation Elements. Consistent with the Urban Design Element of the Comprehensive Plan, the Project:
 - (i) Is consistent with the massing, design, building-orientation, corridor-based viewshed preservation, and Height Act-limited/horizontal urbanism principles in Washington D.C. and improves upon the delivery of such principles in the image of the District generally relative to the existing conditions;
 - (ii) Promotes and improves upon the usability of the alley network surrounding the Property, including by widening the alley onto private property;
 - (iii) Helps strengthen the 14th Street N.W. corridor, a major thoroughfare in Washington, D.C., in a location that does not disturb the “topographic bowl” of the city;
 - (iv) Employs superior and innovative architectural design that improves nearby public spaces, avoids monotony, and will endure for decades;
 - (v) Advances the streetscape objectives of the Comprehensive Plan (including comfortable, safe, and interesting walking paths with direct, accessible pedestrian corridors and numerous pedestrian entrances to a mix of at-grade uses, street trees and pedestrian lighting, cycling infrastructure, integrated non-vehicular transportation options, seamless connections to publicly accessible space on adjacent (privately-owned) portions of the Property, pedestrian-focused placemaking and traffic-calming improvements including crosswalks, no curb cuts, and public spaces that can be flexibly programmed to enhance public life);
 - (vi) Creates a unique indoor-outdoor dance studio along 14th Street, N.W., consistent with the Plan’s goals regarding “spaces that incorporate play and welcome multiple generations”, “social play” and “mini-play destinations” all of which bring people together (outdoors) in an inclusive way and accessible manner in public space; in addition, the Project provides high-quality, street-activating public spaces for sidewalk vendors, cafés, and food sellers, special events, and other activities, with features, lighting, and an overall design that promotes public safety, inclusion, and accessibility; importantly, the Project does not remove or adversely affect any meaningful existing open spaces;
 - (vii) Preserves the existing defined streetwall, employs projections (canopies, oriels, and balconies) that preserve views along 14th Street N.W., provides high-quality storefronts, includes multiple entrances with a mix of uses to enliven the entire frontage, and improves the adjacent streetscape with social and pedestrian-oriented features that also add visual interest; and
 - (viii) Provides a classic tripartite design with a strong top level that respects the urban design intent of the Height Act and penthouse setback requirements as well as the character of the neighborhood while also leveraging the views available at the Property and creating opportunities for outdoor gathering, and resident interactions, and neighborhood play; but

- (ix) Arguably creates transitions in mass and scale that do not maintain existing roof lines, but instead changes the character relative to the single-story buildings and existing rooflines in the immediate vicinity of the Property. However, the Project's transitions are consistent with the density designations of the Comprehensive Plan and the revitalization objectives of the Small Area Plan, which anticipates the Project leading future development of the corridor.
- (j) Arts and Culture, Education, and Parks, Recreation, and Open Space Elements. The Project's innovative arts component, the retention of the Dance Loft, advances numerous related elements of the Arts and Culture, Community Facilities, Education, and Parks, Recreation, and Open Space Elements. Of particular note, objective AC-1.1.10 encourages "Developing long term, low-cost cultural space should be considered an important and desired benefit in discretionary development reviews. Where appropriate, it should be provided in addition to, not instead of, any affordable housing deemed appropriate for the project." *Id.* § 1403.14. This particular objective plus its companion in the Land Use Element (i.e., LU-2.3.12) speak with precision to the Project and outweigh any potential inconsistency between other objectives which are not so clearly applicable to this Application. In addition, the Project:
 - (i) Preserves and enhances an arts and cultural organization's facilities to enhance the quality, diversity, and distribution of cultural infrastructure that accommodates a wide variety of arts disciplines, cultures, individuals, and organizations, is located near transit on a revitalizing Main Street corridor located "beyond the Mall," and draws visitors and patrons (and their spending) to the District;
 - (ii) Provides a variety of innovative performances spaces to reach a diversity of District residents and expand the cultural infrastructure in the District;
 - (iii) Avoids the displacement of a cultural organization through a partnership with a private development team to "to use art and cultural facilities, combined with programming, to support vibrant neighborhoods and inclusive real estate development" (*id.* § 1415.9);
 - (iv) Is positioned alongside affordable housing to provide synergies for affordable housing for artists and performers; and
 - (v) Continues Dance Loft's strong tradition of arts- and cultural-based partnerships with local educational institutions and for area youth in a manner that brings arts and cultural programming and recreation to such populations in an equitable fashion.
- (k) Community Services and Infrastructure Elements. The Project is served by adequate community services and infrastructure, which will be updated to the extent necessary as part of the construction of the Project. The Property is served by adequate infrastructure (notwithstanding some above-grade powerlines, which is common in the neighborhood), and the Applicant's team has worked with PEPCO, DC Water, and other service providers on the location, scale, and scheduling/timing of facilities to meet future development and neighborhood demand. In addition, the Project includes solid waste collection from a fully-indoor trash collection facility which reduces adverse effects (noise, odors, truck

movements) on neighbors. The Project also contributes property taxes to ensure that it pays its fair share for public facilities, adds residential density and demand that will attract and justify continued and further investment in community-serving health and emergency services, and includes amenities, programming, and services for any future senior residents of the neighborhood.

- (l) Implementation Element. The Project is consistent with the implementation objectives of the Plan, including those specifically applicable to the Zoning Commission’s review of the Application. More specifically, the Project involves an amendment to the Zoning Map that remedies the existing inconsistency between the current MU-3A zoning and the Moderate Density designation and was developed as part of a robust public process that included meaningful ANC, neighbor, and other stakeholder participation in the design and revisions of the Project, its program of uses, package of benefits and amenities, and mitigation measures. The Project also uses additional height and density to achieve other objectives of the Plan including affordable housing and other goals that advance racial equity outcomes. The Project includes a transportation study (with recommended conditions to mitigate potential impacts), a racial equity analysis, and commitments regarding District employment and other requirements, and a significant housing component with housing for low-income households and larger family-sized units and a meaningful arts component.
- (m) Area Element. The Project advances the housing, commercial, livability, transportation, and sustainability objectives of the Rock Creek East Area Element. More specifically, the Project:
 - (i) Balances respect for the density and height of nearby residences with the need for new housing opportunities;
 - (ii) Adds the new density and development at a designated “Node” along 14th Street N.W.;
 - (iii) Adds new housing that increases housing choices and affordability with a priority on housing for families and no loss of existing housing;
 - (iv) Maintains a mix of retail and service uses, small businesses, and an arts organization with strong multicultural programming and involvement;
 - (v) Provides an appropriate amount of parking (in a highly efficient stacked system), other alternative mobility improvements, and additional residents, workers, and visitors who will increase demand for transit along 14th Street N.W. and mitigates transportation impacts otherwise; and
 - (vi) Integrates sustainable design elements and renewable energy and improves the public realm and pedestrian environment surrounding the Property.

(Ex. 525H and 2J.)

- 47. Small Area Plan. The Project helps achieve the active, walkable, and connected vision for central 14th Street, N.W. by retaining an anchor arts destination and adding new residents who will support local businesses and bolster the case for transit enhancements to the corridor. The Project revitalizes an underused commercial site with new retail and arts offerings and a significant contribution of affordable housing at a scale and density in line with the Plan’s vision for the Property. In addition, the Project represents land use change

and infill development that is contextual. The Project's additional residents support the goal of attracting a grocery anchor and supporting existing businesses. The Project:

- (a) Involves a retail strategy that builds off the principles of the Small Area Plan because the Dance Loft use is unique to the corridor and an attractor to visitors from outside the neighborhood while also a benefit to those within the neighborhood, and the services offered by Dance Loft are unique to this location along the 14th Street, N.W. corridor;
- (b) Provides a "healthy living studio" use;
- (c) Includes a commitment by the Applicant to continue to work with neighbors and community members to identify other retail tenants, potentially including one or more eating and drinking establishment businesses, that advance the other retail objectives;
- (d) Is a development site, consistent with the Vision Plan that leverages the Property's visibility, deep footprint and alley access points to provide a unique mixed-use anchor development at the core of "Node Two";
- (e) Includes ground floor retail and anchor uses with four floors of residential above (although the residential is one story greater than that envisioned here, all of the residential density above the amount identified in the Small Area Plan is affordable, advancing other priority goals of the District);
- (f) Seeks an increase in zoning appropriate for the FLUM density designation;
- (g) Includes residential infill above ground floor non-residential uses;
- (h) Steps away from the existing residential uses and locates the height and density along 14th Street, N.W. to the extent feasible;
- (i) Includes store-front improvements that are highly articulated at the ground level, in the vein of the existing retail character;
- (j) Provides continuous street frontage and continues the pedestrian-friendly nature of the area;
- (k) Includes parking is in a garage and is not accessible directly from 14th Street, N.W.; and
- (l) Incorporates appropriate streetscape improvements.

Although the Small Area Plan discusses a concept of a grocery store at the Property, it does not mandate such use. The Project's mix of the Dance Loft as an anchor and other retail uses is not inconsistent with the Small Area Plan, when viewed as a whole.

48. Mayor's Housing Order. 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. The Project helps satisfy the District's goal of 1,580 new units in the Rock Creek East Planning Area. The District's Housing Equity Report shows that as of October 2019, the Rock Creek East Planning Area was short 340 units of affordable housing, meaning that the Project alone provides nearly 20% of the Rock Creek East Planning Area's affordable housing deficiency. (Ex. 525H.)

NO UNACCEPTABLE PROJECT IMPACTS ON THE SURROUNDING AREA OR THE OPERATION OF CITY SERVICES (SUBTITLE X § 304.4(b))

49. The Applicant also provided evidence that the Application complies with Subtitle X § 304.4(b); that is, the Project does not create unacceptable impacts on the surrounding area:
- (a) Zoning and Land Use Impacts. The Application proposes to change the Property's existing zone from MU-3A to MU-5A. The MU-5A zone is consistent with the Comprehensive Plan's FLUM for the Property. The change in zoning alone is unlikely to have any adverse impacts on the surrounding area. The area surrounding the Property already allows very intense PDR uses, and buildings of similar height and mix of uses are located along 14th Street, N.W. approximately two blocks south of the Property. Furthermore, this stretch of 14th Street, N.W. has been anticipated to be an area that is appropriate for changes in intensity, as noted in the recently-approved Comprehensive Plan amendments and the long-approved Small Area Plan. The Project's contribution of a critical mass of commercial and multifamily uses to the neighborhood is a favorable land use impact. These proposed uses create economic opportunities and contribute to the emergence of job opportunities in the neighborhood and provide new, high-quality multifamily housing units to Ward 4.
 - (b) Housing Market Impacts. The Project's inclusion of enhanced permanently-affordable units has favorable impacts because it helps establish 14th Street, NW as an mixed-use, mixed-income community and not one that overly concentrates affordable housing in one location. The Project does not displace any existing residents and is unlikely to create any adverse impacts on the surrounding housing market. Instead, the addition of the Project's new housing units, and especially its affordable housing units, help buffer increasing housing costs, as increases in supply are widely understood to dampen rent increases.
 - (c) Other Economic Impacts. Dance Loft on 14 will continue to attract neighbors and outside visitors to patronize area restaurants, retailers, and services and add transit-accessible job opportunities as well as construction period jobs. The Project's introduction of new residential uses also contributes patrons for the existing businesses. The intensification of land use on the Property has positive tax revenue effects for the District. To the extent there are any adverse effects from the Project, such effects are offset by these mitigating factors and the benefits and amenities.
 - (d) Construction-Period Impacts. During the development period for the Project, impacts on the surrounding area are capable of being mitigated, and the Applicant agreed to construction mitigation measures in accordance with ANC 4C.
 - (e) Open Space, Urban Design and Massing Impacts. The Project has favorable impacts on the public realm through the construction of improved streetscaping and the provision of ground level uses and new residents to activate the public realm. To the extent there are negative impacts on residential neighbors as a result of the Project's height or density, those impacts are more than acceptable in light of the Project's significant affordable housing contribution which would not be possible absent the Project's proposed height or density, along with the Project's mitigations of such impacts.
 - (f) Design and Aesthetic Impacts. The Project's design and architecture have a favorable outcome, no unacceptable impacts, and become a center point of the

central 14th Street, N.W. corridor. The Project incorporates quality architecture and exemplary design with the legacy urban design principles of the 14th Street, N.W. mixed-use corridor.

- (g) Transportation and Mobility Impacts. The Project does not have any unacceptable impacts on the public transportation facilities or roadways that it relies on for service. Instead the Project's transportation impacts are either capable of being mitigated or acceptable given the quality of the Project's benefits and amenities. Vehicular traffic impacts from the Project are mitigated.
- (h) Cultural and Public Safety Impacts. The Project will continue to provide performing arts uses that will contribute positively to the culture of Ward 4. The Project's contributions to the public realm provide neighborhood gathering and event spaces, celebrations, performance opportunities, and opportunities for social interactions and engagement.
- (i) Environmental, Public Facilities and/or District Services Impacts. DC Water confirmed that the Property is serviced by adequate existing infrastructure, and the Project has been designed to achieve high levels of on-site stormwater retention. The proposed bio-retention, green roofs, and permeable pavement are designed to meet or exceed DOEE requirements. Solid waste and recycling materials generated by the Project will be collected regularly by a private trash collection contractor and will not have any adverse effect on the District's municipal waste collection services. Electricity will be provided by PEPCO, and the Project's sustainable design minimizes energy usage. During construction, erosion on the Property will be controlled in accordance with District law, and there will no adverse impacts on the environment or the surrounding area, which is generally fully developed already. The Project is designed to achieve high levels of environmental performance as evidenced by its satisfaction of the sustainable design standards. Air and noise pollution impacts, if any, do not exceed those of a matter of right development and mitigated by the Project's sustainable design and avoidance of gas-powered appliances. The Project is highly unlikely to have an unacceptable impact on schools in the District given the size of the Project, its mix and type of units, and the capacity for the District's nearby schools to take on additional students. The Project is unlikely to have any adverse impacts on District services, such as parks, recreation centers, public library, and emergency and health services. To the extent the Project's future residents are new to the District, they will be contributing new tax dollars, both in the form of income taxes and through the indirect payment of property taxes associated with the Project, that facilitate the provision of District-run services. To the extent the Project's future residents are existing District residents, they have no net new impact.
- (j) Positive Impacts. The Project creates positive land use impacts through new housing and affordable housing; enhanced arts use and corridor-supporting retail use, increased tax revenue; an improved streetscape, open space, and urban design (particularly when compared to the existing improvements); enhanced public safety through "eyes on the street"; and improved stormwater management and sustainable design over existing conditions.

(Ex. 525I, 755A5.)

INCLUDES PUBLIC BENEFITS AND PROJECT AMENITIES THAT ARE NOT INCONSISTENT WITH THE COMPREHENSIVE PLAN, SMALL AREA PLAN, OR OTHER ADOPTED PUBLIC POLICIES RELATED TO THE PROPERTY (SUBTITLE X § 304.4(c))

50. The Applicant provided evidence that the Application complies with Subtitle X § 304.4(c). The Applicant also provided evidence that the Project’s public benefits and project amenities are not inconsistent with the Comprehensive Plan or other public policies and such benefits and amenities satisfy the criteria of Subtitle X § 305. As discussed in detail below, the proffered benefits exceed what could result from a matter-of-right development, are tangible, measurable, and able to be arranged prior to issuance of the certificate of occupancy, and benefit either the immediate neighborhood or address District-wide priorities. (*Id.* §§ 305.2, 305.3.) The majority of the benefits accrue to the benefit of the area of ANC 4C, the ANC in which the Project is proposed. (*Id.* §§ 305.4.)
51. The Application enumerated the following benefits and amenities, organized under the categories defined by Subtitle X, Section 305.5:
- (a) Superior Urban Design and Architecture (Subtitle X § 305.5(a)). The Project reflects superior urban and architectural design. For instance, the Project’s urban design emphasizes the pedestrian nature of 14th Street, N.W. in the vicinity of the Property and provides large setbacks at the rear for the surrounding properties. The Project has high quality façade materials and finishes, four “front” façades, and balconies or patios for approximately 58 units. This benefit is consistent with the Comprehensive Plan for the reasons noted above, superior to a matter-of-right building, enforceable via the Conditions to this Order prior to the issuance of a building permit for the Project, and accrues to the benefit of the neighborhood.
 - (b) Site Planning and Streetscape Plans (*Id.* § 305.5(c), (f)). The benefits of the Project’s site plan and efficient land utilization are reflected in the Project’s overall density, introduction of residential uses on underutilized lots located near transit, the absolute number of new residential units provided, and introduction of income-restricted housing. In addition, the Project places parking and loading in a garage with access only from an alley via existing curb cuts. OP notes that the alley widening is on its own not a benefit (but rather mitigation) but that replacement of the storefronts is a benefit. This benefit is also consistent with the Comprehensive Plan for the reasons noted above, superior to a matter-of-right building, enforceable via the Conditions prior to the issuance of a building permit for the Project, and accrues to the benefit of the neighborhood.
 - (c) Housing in Excess of Matter-of-Right Development, Affordable Housing, Three-Bedroom Units, and Deeply Affordable Housing (*Id.* § 305.5(f)(1), (f)(3), (g)(1), and (g)(2)). The Project includes a greater number of housing units than could be developed on the site as a matter-of-right plus affordable housing, including 22 50% MFI units, 22 30% MFI units, and 24 three-bedroom units (of which 18 will be affordable). This benefit is also consistent with the Comprehensive Plan, significantly superior to a matter-of-right building (i.e., compare the Project’s 66% affordable housing set aside with the 10% matter-of-right requirement, plus the Project’s inclusion of three-bedroom and 30% MFI units; *compare* IZ’s requirement for 60% MFI units (plus 50% MFI units only for penthouse GFA) per Subtitle C §§

1003.7, 1507.2 with the Project’s provision of 30% and 50% MFI units), enforceable via the Conditions prior to the issuance of a building permit for the Project and via a recorded covenant thereafter, and accrues to the benefit of the neighborhood by making the neighborhood more affordable and for the benefit of the District overall.

- (d) CBE and First Source (*Id.* § 305.5(h)). The Applicant committed to enter into a Certified Business Entity (“CBE”) Agreement, setting forth minimum CBE contracting and equity requirements, and a First Source Employment Agreement, setting forth minimum District-resident employment requirements. This benefit is also consistent with the Comprehensive Plan for the reasons noted above, superior to a matter-of-right building (for which these agreements would not be required), enforceable via the Conditions and by the agreements with the District. This benefit accrues to the benefit of the District as a whole.
- (e) Environmental and Sustainable Benefits (*Id.* § 305.5(k)). The Project includes innovative sustainable design elements and achieves appropriate levels of environmental certification, given the mix of multiple uses. The Project has been designed to meet net zero energy targets while exceeding environmental design standards at the EGC+ level. Specific sustainable benefits in the Project include solar panels and electric vehicle charging stations. This benefit is also consistent with the Comprehensive Plan for the reasons noted above, superior to a matter-of-right building, enforceable via the Conditions prior to the issuance of a certificate of occupancy for the Project, and accrues to the benefit of the neighborhood.
- (f) CaBi Station (*Id.* § 305.5(o)). The Applicant committed to expanding a nearby CaBi station from 11 spaces to 19. This benefit is also consistent with the Comprehensive Plan for the reasons noted above, superior to a matter-of-right building (for which this commitment is not required), enforceable via the Conditions to this Order, and accrues to the benefit of the neighborhood.
- (g) Uses of Special Value to the Neighborhood (*Id.* § 305.5(q) (“Building space for special uses including, but not limited to . . . *promotion of the arts or similar programs* and not otherwise required by the zone district”) (emphasis added)). The Project retains the Dance Loft on 14 use in its current location. The retention of a locally-owned and woman-owned community performing arts organization fits into this category of benefits and amenities. This benefit is also consistent with the Comprehensive Plan (particularly objective AC-1.1.10), superior to a matter-of-right building (Dance Loft is not a required use), enforceable via the Conditions prior to the issuance of a certificate of occupancy for the Project, and accrues to the benefit of the neighborhood and the District as a whole.
- (h) Neighborhood Retail Uses (*Id.* § 305.5(r)). Finally, the Applicant has committed to retaining approximately 1,888 square feet of non-Dance Loft retail uses. This benefit is also consistent with the Comprehensive Plan, superior to a matter-of-right building (no retail is required as a matter-of-right), enforceable via the Conditions to this Order, and accrues to the benefit of the neighborhood because the surrounding community requested this amenity specifically.

(Ex. 525I and 755A.)

SATISFACTION OF THE PUD ELIGIBILITY STANDARDS

52. The Applicant provided evidence that the Application complies with the purposes of a PUD set forth in Subtitle X § 300.1:

- (a) Superior to matter-of-right development. The Project is superior to a matter-of-right development because it provides more housing and affordable housing than what could be constructed on the Property without a PUD. In addition, the amount of housing included in the Project and the amount of affordable housing in the Project exceed the amount and depth of affordability that would be required in a matter-of-right development pursuant to the Zoning Regulations' IZ requirements. The Project also includes family-sized three-bedroom units (plus many more two-bedroom or larger units). The Project's construction supports a significant package of benefits and amenities (besides those relating to housing), which exceed what would be provided in any matter-of-right development, including the exemplary and sustainable design of the building envelope and an arts-related component. Finally, the Project is undergoing a public review process with opportunities for neighbor, community group, and public agency participation. Those opportunities would not exist for a matter-of-right development of the Property. (Ex. 2I and 10.)
- (b) Protects and advances the public health, safety, welfare, and convenience. The Project improves major public interests and priorities such as housing and affordable housing, additional ground level activating uses including an arts-related use, and streetscape and urban design improvements relative to existing conditions on and around the Property. The Project's redevelopment of an underutilized lot with new housing, arts and other retail/non-residential ground floor uses in a significant mixed-use node in Ward 4 advances the public health, safety, and welfare goals of the District by converting low-density commercial buildings to more productive use, avoiding the health and safety problems often associated with vacant industrial spaces, and providing uses that promote public welfare and convenience in a transit-oriented fashion. The Project does not displace or convert any existing housing and provides housing opportunities for residents of limited income. The Project also improves pedestrian and transit opportunities (e.g., CaBi expansion and sidewalk and intersection improvements). (Ex. 2I.)
- (c) Does not circumvent the intent and purposes of the Zoning Regulations. The Project also advances the MU zones' purposes which encourage "mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities." (11-G DCMR § 100.1.) The Project is a "compact mixed-use development with an emphasis on residential use" with "facilities for . . . housing, and mixed-uses . . . outside of the central core," "located on [an] arterial street[], in [an] uptown . . . center[]", all as contemplated in the MU-5A zone. (*Id.* § 400.4.) The Project is an orderly development with a mix of uses at an appropriate scale and density for its location. It reflects the type shop-front, vertically mixed-use building type contemplated for the MU zone. The Project encourages safe conditions for pedestrians by locating all vehicular entrances on alleys, and relying on existing curb cuts. Lastly, the Project enhances a commercial node and surrounding with an appropriate scale of development and a range of opportunities. (*Id.* § 100.3; Ex. 2I.)

RESPONSES TO THE APPLICATION

OP

53. Pursuant to Subtitle Z §§ 400.5 and 405.3, on December 6, 2021 OP filed a report recommending that the Commission set down the Application for a public hearing. (Ex. 10, the “**OP Setdown Report**”). The OP Setdown Report made four comments regarding the Project’s design: (a) revise the hydraulic flip-up door on 14th Street, N.W.; (b) indicate the location of PEPCO utility vaults; (c) consider adding a more defined top and brick work more in character and style with neighborhood; and (d) consider pulling back the projection or creating a setback at the second floor on the front elevation. The Applicant fully addressed each of those comments. (See Finding of Fact [“**FF**”] ¶ 34.) OP also found that the Application is not inconsistent with the Comprehensive Plan’s maps or Citywide Elements and that it would further Area Element statements and policy objectives. (Ex. 10.) OP also found that the Project’s benefits and amenities are sufficient for the PUD. (*Id.*)
54. Pursuant to Subtitle Z §§ 405.6 and 405.7, on April 28, April, 29, and May 10, 2022 OP filed a report recommending that the Commission approve the Application. (Ex. 667, 669, and 785; collectively, the “**OP Hearing Report**”). The OP Hearing Report concluded that:
- (a) The Project, on balance, is not inconsistent with the Comprehensive Plan and would further a number of important goals of the District, including the provision of affordable housing, that outweigh potential inconsistencies about the Project not complementing the established character of the adjacent rowhouse blocks;
 - (b) The Project is consistent with the Small Area Plan notwithstanding an additional floor on the Project above that depicted in the Small Area Plan;
 - (c) The Project’s height and density is consistent with the Small Area Plan;
 - (d) The Applicant responded to the issues and concerns identified in the OP Setdown Report and raised by the Commission at the December 16, 2021 public meeting;
 - (e) The Project provided a particularly strong benefits, amenities and proffers package, commensurate with the related map amendment and other requested flexibility through the PUD.
55. At the May 5, 2022 public hearing, OP testified in support of the Application. (Tr. 2 at 121-124.) OP reiterated its recommendation that the Commission approve the Application.
56. On cross examination at the public hearing, OP was asked whether the Project would be more consistent with the Small Area Plan if it were reconfigured such that the density and height were moved toward 14th Street, N.W. OP testified in response that the Project, as proposed, is consistent with the Small Area Plan because the tallest portion of the building and greatest density faces 14th Street, N.W. such that Project is one level lower in height at the rear. OP was also asked about the view at the ground level from the rear of homes facing on Crittenden Street, N.W. and Buchanan Street, N.W. OP testified that Project is set back from those homes, many of which have exposed basement levels making them effective three-story buildings at the rear, which as recommended by the Small Area Plan, is generally consistent with the four-story (plus penthouse) proposal for the Project at the rear. (*Id.* at 130-131.)

DDOT

57. On April 27, 2022, DDOT filed a report expressing no objection to the Application subject to three conditions. (Ex. 658; the “**DDOT Report**”.) DDOT’s three conditions include: (a) implementation of the TDM measures proposed in the Applicant’s transportation filing at Ex. 308A plus public space improvements noted below and bicycle storage upgrades; (b) implementation of the loading management plan (“**LMP**”) proposed in the Applicant’s transportation filing at Ex. 308A; and (c) evaluation of the efficiency and safety of the flow of vehicles and trucks in the alley surrounding the Property, following which DDOT may require changes, including imposing directionality controls, and/or requiring installing signage, striping, and/or flexposts. DDOT also required pedestrian improvements to the intersection of Crittenden Street, N.W. and 14th Street, N.W. Those improvements include ADA ramps, high-visibility crosswalks, restriping (if necessary), and curb extensions. Finally, DDOT requires ongoing coordination regarding aspects of the Project that occur in public space, including café seating, building projections, the CaBi expansion, and street tree and bicycle rack location. (*Id.*)
58. The DDOT Report also found “the amount of vehicle parking proposed on-site to be sufficient”. (*Id.*) DDOT agreed with the Applicant’s transportation report that “there is adequate on-street parking to support the [P]roject.” (*Id.*) Further, DDOT found that “proposed development does not meet DDOT’s trip generation threshold requiring the submission of a Traffic Impact Analysis (TIA) as part of the Transportation Statement” and that “The Applicant and DDOT coordinated on an agreed-upon scope for the Transportation Statement that is consistent with the scale of the action.” (*Id.*) Similarly, DDOT found the mode-split and trip generation estimates in the Applicant’s transportation report to be “appropriate.” (*Id.*) Nevertheless, the Applicant provided a TIA in its supplemental transportation report. (See Ex. 468A.) DDOT expressed “no concerns” with the LMP subject to the further evaluation condition noted above. (Ex. 658.)
59. At the May 5, 2022 public hearing, DDOT testified in support of the Application. (Tr. 2 at 124-125.) DDOT reiterated its support for the Applicant’s TDM plan and LMP. (*Id.*)
60. On cross examination at the public hearing:
- (f) DDOT was asked whether it had concerns about the Project’s impact on the existing alley configuration surrounding the Property. DDOT confirmed that it did not have general concerns, that the widening of the alley from 14th Street, N.W. to the entrance of the Project’s garage was sufficient and that the rest of the alley will function generally the same. DDOT noted that it does expect further evaluation of the alley operations after a year of usage. (Tr. 2 at 127-128.)
 - (g) DDOT was also asked whether a 10-foot alley is wide enough for the Project. DDOT confirmed that the alley is wide enough because the Project does not require any backing maneuvers in the alley. (*Id.* at 128.)
 - (h) DDOT was asked whether the Applicant’s transportation plan contemplated redevelopment of the WMATA property and about any possible simultaneous construction. DDOT confirmed that it does and that the Project and the WMATA development team would coordinate on any simultaneous construction. (*Id.* at 129.)

OTHER DISTRICT AGENCIES

61. DOEE Report. As part of the OP Hearing Report, DOEE submitted a report that noted that the agency was “impressed by the [P]roject’s ambitious sustainability goals, which align with [DOEE]’s mission and objectives of the Sustainable DC, Clean Energy DC, and Climate Ready DC plans.” (Ex. 667.) DOEE supported the use of the EGC+ rating system, which it notes “is reserved for projects that go above and beyond the base-level certification to achieve net-zero energy or near-net-zero energy.” DOEE encouraged the Applicant to exceed the minimum GAR and stormwater requirements and to conduct a simple life-cycle analysis to measure and reduce the impacts from the proposed project’s structural and envelope design. (*Id.*)
62. DHCD Report. As part of the OP Hearing Report, the Department of Housing and Community Development (“**DHCD**”) submitted a report confirming that it had no objections to the Project based on the proposed affordable housing set aside. (Ex. 667.)
63. DC Water Report. As part of the OP Hearing Report, DC Water submitted a letter confirming that it had reviewed the Project’s plans and found that the sewer system surrounding the Property has capacity to accept the discharge from the Project, that the domestic water service is sufficient for the Project, that stormwater capacity will not be problematic, and that fire suppression should be considered in the Project’s design. (*Id.*)
64. FEMS Report. As part of the OP Hearing Report, the Fire and Emergency Management Services (“**FEMS**”) submitted a letter noting no objection to the Project being approved and requesting that the Applicant confirm that all fire department access and service features be constructed in accordance with applicable construction codes. (*Id.*)
65. Letter from the Office of Attorney General (“OAG”). On May 4, 2022 OAG submitted comments in support of the Application. (Ex. 761.) OAG noted the Project “advances the public interest” by providing more affordable housing than is required by the Zoning Regulations, at deeper levels of affordability than is required by the Zoning Regulations, with three-bedroom units, and with lower future utility costs resulting from the sustainable design. OAG provided evidence that the Project is not inconsistent with the Comprehensive Plan. OAG also suggested two conditions: (a) that the Project’s affordable units be IZ units even if temporarily exempt pursuant to Subtitle C § 1001.6, and (b) that if the Project’s unit count is reduced, at least 66 units in the Project remain affordable and that if the Project’s unit count is increased, the proportion of affordable units remain the same. (*Id.*) The Commission declines to adopt OAG’s recommendations because the Project’s affordable units will be subject to DHCD jurisdiction, a typical exemption from compliance with the IZ requirements and provisions under the Zoning Regulations. The Applicant provided an explanation as to why the affordable unit count must fluctuate proportionally to the overall unit count. (See FF ¶ 39(i); see also Ex. [Applicant’s Proposed Conditions].)
66. Interagency Meeting. Prior to the public hearing, OP held an interagency meeting inviting participation in a discussion about the Project from DDOT, DOEE, DHCD, DC Water, FEMS, Department of Parks and Recreation, DC Public Schools, Department of Public

Works, Department on Aging, Department of Employment Services, Metropolitan Police Department, and WMATA. (Ex. 10 at 19 and 667 at 15.)

ANC 4C

67. Pursuant to Subtitle Z § 406.2, on April 20, 2022 ANC 4C submitted its report stating that at its duly-noticed public meeting on April 13, 2022, the ANC voted 9-1 to support the Application. (Ex. 605, the “ANC Report”.) The ANC Report lists no objections to the Application and noted that it “supports the application because of its exceptional affordable housing proffer and commitment to family-sized units, its arts related components, its commitment to sustainability including a net-zero energy performance target, its contribution to commercial/retail vitality on the 14th Street corridor as well as the project’s neighborhood compatible envelope and setbacks from neighboring homes.” The ANC Report “encourages the Zoning Commission to approve the [A]pplication.” (*Id.*) At the public hearing, the ANC noted that “there was no legitimate basis for the ANC to have opposed the application.” (Tr. 2 at 135.)
68. The ANC Report requests several conditions of approval:
- (a) The Applicant provide a point of contact, phone and email, that neighbors can contact with any questions or concerns about the Project’s construction;
 - (b) The Applicant provide notice in advance to impacted neighbors of any planned electrical or water shut offs;
 - (c) The Applicant complete pest abatement on the Property before any demolition work begins to mitigate any migration to nearby properties;
 - (d) At least two-thirds of the residential units be designated affordable to households earning 30%, 50%, and 60% MFI;
 - (e) The affordable units be offered in perpetuity (for the life of the Project);
 - (f) At least 20% of units be 3-bedroom units;
 - (g) The Project incorporate a performing arts facility operated by Moveius Contemporary Ballet or similar operator;
 - (h) The Project’s setbacks between the property line and the primary facade at the second level and above at the rear of the new building shall be no less than 16 feet at the north and south and 15 feet at the west, unless otherwise directed by the Commission;
 - (i) The Project contain no less than 40 parking spaces;
 - (j) The portion of the alley between the Project’s garage and 14th Street, N.W. be no less than 15 feet wide;
 - (k) The Applicant upgrade the uncontrolled crossing at the intersection of 14th Street, N.W. and Crittenden Street, N.W. subject to DDOT review and approval; and
 - (l) The Project include CBE and First Source agreements with the District Department of Small Local Business Development (DSLBD).

(Ex. 605.)

ORGANIZATIONS AND INDIVIDUALS IN SUPPORT

69. Organizations in Support. The record contains evidence of support for the Application from ten separate organizations or institutions, as follows:
- (a) 14th Street Uptown Business Association (“**14UBA**”). 14 UBA testified in support of the Application and stated that the Project helps advance the vision and intent of the Small Area Plan, which 14UBA helped prepare in 2012, which included an extensive public process. (Ex. 306 and Tr. 2 at 156-157.)
 - (b) Uptown Main Street (“**UMS**”). UMS wrote in support of the Application because of its Small Area Plan consistency, mixed-income housing, mix of uses, arts preservation, community gathering-place benefit, and its density near transit. (Ex. 628.)
 - (a) Mosaic Church of the Nazarene. Pastor Rev. Dr. Bryan Todd wrote in support of the Application because of its mixed-use model of supporting a non-profit arts organization and providing affordable housing and because the portion of 14th Street, N.W. in front of the Property needs revitalization notwithstanding the additional density that is above the prevailing density. (Ex. 161.)
 - (b) Christ Lutheran Church. Pastor Rev. Reneta E. Eustis wrote and spoke in support of the Application, noting that it is an opportunity to give more people, especially more families, the opportunity to share in the amenities of the neighborhood. (Ex. 768; Tr. 2 at 182-184.)
 - (c) Washington Interfaith Network (“**WIN**”). WIN wrote in support of the Project, especially given the long history of racially-motivated exclusion in Northwest DC neighborhoods. (Ex. 618.)
 - (d) DC for Democracy (“**DCfD**”). DCfD wrote in support of the Project, particularly its affordable housing goals and three-bedroom units. (Ex. 752.)
 - (e) Coalition for Smarter Growth (“**CSG**”). CGS wrote and spoke in support of the Application, noting that the Project “will largely benefit people of color, fulfilling the [Comprehensive] Plan’s demand that all zoning actions be viewed through a racial equity lens.” (Ex. 670; Tr. 2 at 144.) CSG noted that the Project displaces the Retail Tenants and noted that while no disruption of businesses is ideal, Dance Loft and the other enterprises faced uncertainty when the existing building on the Property was offered for sale. The Applicant has committed to mitigate the Retail Tenants’ disruption, the Project mitigates Dance Loft’s displacement, and in significant affordable housing is provided. CSG concludes that “the benefits of the redevelopment are worth the effort.” (*Id.*)
 - (f) Greater Greater Washington (“**GGW**”). GGW wrote and spoke in support of the Application. GGW expressed a preference that the Project be “taller, bigger, denser, and [with] less parking.” (Ex. 771 and Tr. 2 at 160-164.) GGW provided evidence that the Project is not inconsistent with the Comprehensive Plan, including by noting that the Property is designated as both Moderate Density Residential and Moderate Density Commercial, the former of which contemplates an FAR of 1.8 or higher with a PUD or IZ, and the latter of which contemplates an FAR of 2.5 to 4.0. GGW also argued that the intent of recently-adopted changes to the Comprehensive Plan are to allow additional density for affordable housing projects. (*Id.*)

- (g) LISC. LISC, the Applicant’s lender with respect to the Project, wrote in support of the Application. (Ex. 491.) LISC testified that financing affordable housing is difficult and without a critical threshold of density, impossible. LISC further testified that it had “underwritten [the P]roject’s financial feasibility and believe[d] any significant reduction in unit count or density would threaten viability due to limited public resources that fill affordable housing financing gaps. Since construction and development costs do not scale linearly, it is not possible for an affordable housing project to simply lose 25-50% of its units and have a corresponding 25-50% reduction in costs. Additionally, an affordable housing project that requires proportionately more subsidy in exchange for fewer affordable homes will fail to compete for limited public resources, and ultimately fail to move forward.” (*Id.*) LISC also noted that “When an affordable housing project does not satisfy the minimum criteria set by DC Government, it does not get built. Affordable housing that is financed through public programs cannot tolerate missed metrics or diluted results. Instead those subsidy dollars go to a different project.” (*Id.*)
- (h) City First Bank (“CFB”). CFB, another lender for the Project, wrote in support of the Application and testified that high housing costs have a disproportionately adverse effect on Black and other minority residents. (Ex. 647.) CFB also testified as to the difficulty in constructing affordable housing in the “current inflationary environment and with construction material supply chains disrupted in numerous ways”. (*Id.*)

70. Individuals in Support. The record contains evidence of public support for the Application and for the Dance Loft, in particular, as a performing arts organization of strong repute. The Commission received more than 650 letters expressing support for the Application.⁷ At the public hearing on May 5, 2022, the Commission heard testimony from 18 individuals in support, including two residents of Square 2704. Supporters testified that the Applicant reached out “repeatedly” and “in good faith” to neighbors. (Tr. 2 at 172 and 181-182.) The Commission also finds supporters among nearby residents including some from Square 2704. (Ex. 24, 144, 313, 517, 345, 350, 371, 530, 531, 532, 641; Tr. 2 at 141-144, 149-151, 167-169, 180, 187.) Supporters’ testimony expressed the following general themes:

- (a) The Dance Loft provides benefits to the neighborhood, Ward 4, the District, and the greater Washington, D.C. arts community generally;

⁷ To be sure, the majority of the support letters in the record (approximately 585 letters) appear to be a form letter or a close variation of one. (In addition, approximately 25 individuals submitted more than one letter of support. *Compare* the following groups of letters in support: Ex. 11 and 158; 20 and 296; 26 and 61; 34 and 467; 39 and 400; 40 and 284; 57 and 397; 82 and 627; 95 and 236; 99 and 458; 101 and 443; 106 and 460; 110 and 456; 113 and 442; 139, 143, and 202; 140 and 288 and 312; 144 and 313; 149 and 205; 187 and 225; 208 and 309; 316 and 401; 338 and 683; and 490, 492 and 695.) Nevertheless, more than 50 unique individuals expressed support for the Application. (*See* Ex. 190, 200, 202, 205, 209, 210, 250, 286, 299, 309, 311, 313, 323, 389, 429, 453, 476, 477, 479, 483, 490, 500, 502, 505, 506, 509, 536, 540, 570, 571, 609, 614, 654, 655, 657, 659, 679, 680, 682, 684, 685, 692, 698, 708, 725, 727, 735, 743, 751, 770, 773, 779, 780, and 784.) On April 22, 2022, the Ward 4 Councilmember wrote an op-ed in the *Petworth News* in support of the Application, as submitted by the Applicant. (Ex. 755A1.)

- (b) The Project’s affordable housing and family-sized commitments are commendable and much-needed in the District and too good of an opportunity to pass up;
- (c) The Project supports small businesses by bringing new residents to 14th Street NW and by revitalizing that corridor; and
- (d) The Project advances important elements of the Comprehensive Plan and racial equity objectives.

FOFS AND PERSONS IN OPPOSITION

- 71. FOFS Pre-Hearing Filings. Pursuant to Subtitle Z § 403.3, on May 4, 2022, FOFS submitted written testimony and a presentation in opposition to the Application, and on May 11, 2022, FOFS submitted updated written testimony and an augmented presentation in opposition to the Application. (Ex. 759, 759A, 764, 787-790; collectively, the “**FOFS Pre-Hearing Filings**”.)
- 72. FOFS Expert Witness. Pursuant to Subtitle Z § 403.3, on May 4, 2022, FOFS proffered Reju Radhakrishman as an expert in transportation studies. (Ex. 760.) The Commission accepted Mr. Radhakrishman as an expert. (Tr. 2 at 20-22.)
- 73. Objections to the Application in the FOFS Pre-Hearing Filings. The FOFS Pre-Hearing Filings, which includes nearly 200 pages, raise numerous objections to the Application. Those objections are grouped into eight broad categories⁸ as follows:
 - (a) Objections to the Application’s Inconsistency with the Small Area Plan. FOFS provides excerpts passages from the Small Area Plan to allege particular inconsistencies between that document and the Application, each of which is addressed in turn below. In sum, the Commission finds no evidence presented by FOFS sufficient to offset or rebut the evidence the Applicant submitted showing that the Application is not inconsistent with the Small Area Plan, nor offsetting or undermining the OP Setdown Report, the OP Hearing Report, or the OP testimony at the hearings, making a similar conclusion to the Applicant. However, the Application’s consistency with the Small Area Plan is a material contested issue worthy of close examination.
 - (i) FOFS notes that the Small Area Plan provides: ““Pursue land use changes and infill development that is designed with contextual sensitivity...” and specifically addresses the [Property] by identifying it as the “best redevelopment potential” and outlines its favorable attributes from that perspective and goes further to say that “that the development concept includes ground floor retail, ideal for a neighborhood grocery, with two to three floors of residential above.”” (Ex. 759 at 3, 790; internal citations and emphasis omitted.) The Project is not inconsistent with this statement or with the Node Two guidance in the Small Area Plan as a whole. The Project is designed with sensitivity to context, including the context of the adjacent

⁸ Some of FOFS’s objections overlap with those raised by other letters in the record, not clearly submitted by or on behalf of FOFS. In the interest of efficiency, findings regarding objections raised by FOFS are grouped in this paragraph with references to other letters in the record raising related or identical objections by persons who are not, or who do not identify themselves to be, members of FOFS.

rowhouses, by providing generous setbacks, building into the topography of the Property, and articulating the Project's design on all four facades. The Project is also sensitive to the commercial context, considering the FLUM for 14th Street, N.W. The Project has four stories of residential above retail, one more than the amount mentioned for the Property on Page 34 of the Small Area Plan although a concept rendering from the Small Area Plan of a building on the Property shows a proposed five-story building. Thus, the Project produces a building of the same height as contemplated by the general vision of the Small Area Plan, especially considering that the retail that the Small Area Plan envisioned was likely a double-height grocery space. In addition, to the extent that the Project is larger than the guidance from the Small Area Plan, all of such additional envelope can be attributable to affordable housing at 30% MFI. Such modest inconsistency, if any, is acceptable in light of the Comprehensive Plan's prevailing affordable housing goals, which outweigh the objectives of a Small Area Plan⁹, and in light of the Project's mitigations.

- (ii) FOFS also notes "While the recently adopted Comprehensive Plan identifies this area as a potential site for more intensive development, the Small Area Plan speaks to [FOFS's] concern in a more holistic way: "This part of 14th Street [N.W.] serves as a natural transitional block for lower density commercial uses and is compatible with the residential uses on the west side of the corridor." (Ex. 759 at 3.) FOFS's excerpt omits Small Area Plan statements which expressly support an increase in density on the Property via a subsequent upzoning, which is exactly what the Application proposes. ("To facilitate development, *this plan proposes to modify the current Comprehensive Plan Future Land Use Map designation of low-density commercial to mixed use moderate density residential and commercial.* This modification would apply to those properties fronting 14th Street between Allison Street and Decatur Street and would *enable an appropriate increase in zoning.*" Small Area Plan at 34. Emphasis added.) Moreover, nothing about the "transitional block" language precludes or argues against the type of zoning action sought in the Application or the proposal for the Project. The Application can be both "transitional" and include an increase in density. The mixed-use, moderate density Project can be a transition from the higher-intensity, PDR and commercial uses (i.e., WMATA bus garage with office and retail) to the east and the quieter, lower-density, residential uses to the west. Finally, FOFS's reading ignores, without justification, the FLUM, with which the Project is consistent and which provides the primary guidance for the Commission's PUD and map amendment consideration. The FLUM expressly supports an upzoning of the Property, and arguably the Property's current zoning is inconsistent with the FLUM.
- (iii) FOFS further objects to the Project on the basis of the Small Area Plan, noting that "The Small Area Plan continues: "The surrounding residential uses between Crittenden [Street, N.W.] and Buchanan [Street, N.W.] consist

⁹ See 10-A DCMR § 2503.6 ("Small Area Plans should be used as supplemental guidance by the Zoning Commission where not in conflict with the Comprehensive Plan").

of single-family homes with rear yard backing to the opportunity (Dance Loft PUD) site, in all cases, height and density should front 14th Street [N.W.] and step back away from existing residential neighborhoods. Community residents emphasized the need for future development in this node, remain sensitive to the surrounding neighborhood character and height. Adequate setbacks from adjacent residential properties should be supported as appropriate.”” (Ex. 759 at 3, 788A, 756.). The Project is consistent with these objectives as OP testified. FOFS does not rebut OP’s testimony.¹⁰ The Project does front on 14th Street, N.W. and does step away from existing rowhouses in a manner sensitive to character and height. The Project has adequate setbacks, at a minimum of 61 feet of setback to the south of the Project, more than 66 feet at the west of the Project, and more than 75 feet to the north (all as from the Project’s second story to the average rear wall of the adjacent rowhouses). Accordingly, the Application is not inconsistent with the language cited by FOFS.

- (iv) FOFS writes that “This site had been largely overlooked by the city as zoning regulations evolved and our neighborhood remained largely unchanged for many years as a mix of town and single-family houses with only nominal consideration of the potential outcomes as evidenced in the Small Area Plan.” (Ex. 759 at 5.) The Commission disagrees: the Property has not been “overlooked”. The Property was expressly studied as part of the Small Area Plan and singled out for inclusion in the FLUM amendment in 2021. The Small Area Plan’s focus on this site cannot reasonably be characterized as “nominal.” Instead it includes a detailed evaluation of possible and preferred outcomes for the Property, all of which the Project is consistent with. Moreover, the Small Area Plan expressly identifies the Property as having “the best redevelopment potential” and it provided detailed reasons why, including its midblock location and deep shape. (Small Area Plan at 34.)
- (v) FOFS objects that “Throughout [the PUD] process, [FOFS] also became frustrated with the city for its shortsightedness and failure to protect residents from this exact scenario: a developer trying to take advantage of neglectful zoning with a proposal that at face value is a clear overreach. Had the city simply recognized that the existing structure at 4618 14th Street NW encroaches in a unique and burdensome way on the surrounding homes (which the alley system was constructed to service) and acted accordingly to amend the allowable zoning, we would not be here today arguing over the height and footprint of this proposed project.” (Ex. 537B at 4, 607, 759 at 28, 789, and 788A.) The proposed zoning is not “neglectful” as FOFS alleges. The proposed zoning of the Property to the MU-5A is the culmination of a detailed planning process as part of the Small Area Plan (going back more than a decade) and the Council’s action in 2021 on the FLUM combined with the detailed design review incorporated into this

¹⁰ In the OP Hearing Report, OP acknowledges that the Project could be viewed as “not complementing the established character of the adjacent moderate density rowhouse blocks.” (Ex. 667.) But OP views that condition as mitigated: “the design is of high quality and has a clear residential character; the materials are brick and there are small residential balconies, all of which are compatible with the rowhouses.” (*Id.*)

PUD process. The Small Area Plan specifically notes that the “deep footprint” of the Property into the Square is a *feature* of the site’s development potential. The Commission also notes that the alley system is a shared resource, constructed to benefit the Property as much as the surrounding residences.

- (vi) FOFS objects that “Commercial and mixed-use zones in our area of 14th Street; and identified in the Small Area Plan, are typically 80’-100’0” back from the property lines at 14th Street - this one is 295’0” back, almost three times the depth!” (*Id.* at 5; Ex. 254, 260, 262, 399, 661, 756, 758.) This statement is also incorrect. Mixed use (i.e., MU-) zones in Ward 4 regularly extend 300 feet or more from the corridor they front on. (*See* Ex. 791 at 51-52.) The PDR zone immediately across 14th Street, N.W. from the Property is as deep as the proposed rezoning. Further, the Small Area Plan identifies the Property as having the “best redevelopment potential” in the Plan area *because* it is “mid-block” and has a “deep footprint.” Finally, the existing MU-3A zone already extends to the depth of the property. The proposed MU-5A is not inconsistent with the existing dimensions of the Zoning Map for Square 2704. As noted above at FF ¶¶ 19 and 43, the change in zoning proposed in the Application is a matter of degree and not a matter of kind.
- (vii) Per FOFS “The Small Area Plan [encourages] engagement with the surrounding residential community, but does not go far enough to restrict this type of invasive proposal.” (Ex. 759 at 5.) The Small Area Plan does not restrict the Project because the Project is exactly the type and scale of development envisioned by the Small Area Plan for the Property and the Application is the mechanism envisioned by the Small Area Plan to assess development on the Property and entitlements related thereto.
- (viii) Also per FOFS “The Small Area Plan, noting the neighborhood’s prominent charm, advocated for development to be contextually sensitive and to attract a medium scale grocery anchor to support existing businesses and spur increased foot traffic from neighbors west of the [WMATA Bus Garage]. While the [A]pplicant’s proposal may not violate the letter of the [Small Area P]lan, it does not align with the spirit of it. Infill in this area is not contextually sensitive to neighbors nor does it support current businesses.” (*Id.* at 25, 790.) The Commission disagrees with this statement as well. The Small Area Plan does not mandate a grocery store, only calling the site “ideal” for grocery use. (Moreover, a grocery store is likely to have far greater impacts on the surrounding neighborhood than the Dance Loft will have and is very likely to have a double-height retail bay, so a four-story building with a grocery store is likely to be the same height as a five-story building.) Instead, consistent with both the letter and the intent of the Small Area Plan, the Project does provide an anchor institution to generate foot traffic and draw patrons who will support nearby small businesses. Finally, the Project is contextually sensitive to neighbors given its design, height, and setbacks. The Small Area Plan does not prescribe that “contextually sensitive” means “same height” as surrounding rowhouses. The better reading of the Small Area Plan is that it permits development taller than the

MU-3A zone allows and taller than the rowhouses by virtue of its reference to “mixed use moderate density residential and commercial”¹¹ and its recommendation to an “appropriate increase in zoning”.

- (ix) FOFS also observes that “The Small Area Plan listed parking as a concern for neighbors as well as businesses and should be considered as part of the redevelopment process. It has been a concern of abutting neighbors from the first conversation.” (Ex. 759 at 25, 790.) The Commission finds that the Project has appropriately responded to parking concerns by doubling the original parking proposal, making the Project’s future residents ineligible for RPP (on-street) parking, agreeing to DDOT’s recommended TDM plan, and providing in excess of the zoning-required minimum number of spaces.
 - (x) FOFS asserts that “The Small Area Plan identified multiple parcels to support the need for affordable housing with considerable neighborhood support.” (*Id.* at 26.) This is not true. The Small Area Plan, does not refer to the term “affordable housing” at all and certainly does not imply or require that other parcels provide affordable housing in lieu of such housing at the Property.
 - (xi) Related to FOFS’s Small Area Plan objections, two other opponents argue that the Dance Loft performing arts use should be located at “Node Three” of the Small Area Plan because Node Three is a designated arts and entertainment center and question the need for a rezoning. (Ex. 213, 247, and 310.) The Small Area Plan does not preclude arts uses in Node Two and indeed mentions Node Two as appropriate for “studios” a term which includes Dance Loft. Contrary to the opponents’ assertions, both the Small Area Plan and the FLUM do provide a reason to up-zone the Property, with the Small Area Plan expressly calling for an “increase in zoning” for the Property. The reason for the zoning change is because the D.C. Council determined, consistent with the Small Area Plan, that the Property is an appropriate location for moderate density development, which is exemplified by the MU-5A zone.
- (b) Objections to the Application’s Inconsistency with other Public Policies. FOFS (and one other neighbor) cite OP’s “Historic Alley Buildings Survey,” a 2012 document that does not pertain to the Property and allege the Project is inconsistent with such document. (Ex. 661 and 759 at 6.) FOFS and the neighbor assert without citation or justification that “Regardless of the context, alley buildings, such as garages or carriage houses are typically smaller than the surrounding residential or commercial development in the area and do not seek to dominate it.” (*Id.*) The Historic Alley Buildings Survey, while a valuable resource, is not applicable in this proceeding. Subtitle X § 304.4(a) directs the Commission to consider whether the Application is “not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs *related to the subject site*” (emphasis

¹¹ Even conceding, *arguendo*, that the Small Area Plan’s references to “mixed use moderate density residential and commercial” must be understood with respect to the Comprehensive Plan in effect at the time of the Small Area Plan’s adoption in 2012, the definition of “moderate density commercial” at such time provided for buildings that “generally do not exceed five stories in height” and identified the “C-2-B” zone district as corresponding to such designation. 10-A DCMR § 225.4 (2011). (The C-2-B zone was renamed to MU-5 in 2016.) Accordingly, the Project’s five story height and MU-5A map amendment are not inconsistent with the meaning of the Small Area Plan when drafted.

added). Though the Comprehensive Plan consistency analysis should (and here does) consider policy guidance beyond the Comprehensive Plan itself, the Commission is not boundless in the policies that it may consider. The policies must be “related to the subject site.” Here the Alley Buildings Survey, by its express terms, does not apply to the Property, a fact which FOFS acknowledges. (Ex. 759 at 6: “16th Street Heights was not included in the Survey.”) Moreover, the Project is not an “alley building”.¹² It is a single building that fronts on 14th Street, N.W. and extends into the center of Square 2704. Although the Project is designed so as not to have a rear façade, that does not mean that the Project fronts on the alley. The Survey does not apply to the Application, and does not create any inconsistencies.

(c) Objections Regarding Alleged Project Impacts: Height, Density, and Design.

(i) Height and Density. The most common objection to the Project relates to its height and density. (Ex. 166, 173-174, 185, 188, 191-193, 197-199, 247, 249, 252, 254, 260, 262-263, 267, 295, 297-298, 302, 310, 320-321, 343, 395, 399, 433, 475, 485, 486, 521, 537B, 599, 607, 610, 661, 671, 690, 736, 739, 741, 745, 747, 754, 756, 758-759, 762, 765-766, 769, 772A, 787, 788A, 789.)¹³ The Project is five stories at the front and four stories at the rear (due to topography), plus a habitable and mechanical penthouse (which is setback in accordance with the Zoning Regulations). The proposed height and density fit into the Comprehensive Plan and Small Area Plan property designation and planning framework, as OP concurs. The Project is set back on its north, west, and south facades at and above the second floor in response to the context and planning guidance. At the rear, nearest the existing rowhomes, the height of the Project’s main roof line is nearly the same height as some adjacent homes. (Ex. 525E at 3.) Further, the primary volume of the building has ample setbacks from those homes, ranging from 61-75 feet. (*Id.* a 4.) Moreover, the height and density proposed are necessary in order to provide an amount of affordable housing that is consistent with the Comprehensive Plan’s priorities. (*Id.*; Tr. 2 at 33 (“Affordable housing is a critical need in the District.”)) The Project strikes

¹² Even assuming that such Survey does apply to the Property and/or the Project, FOFS does not cite any example of how the Application is inconsistent with such Survey in a manner that causes the Application to be inconsistent with the Comprehensive Plan, Small Area Plan, and “other adopted public policies and active programs related to the subject site” “as a whole”. FOFS only asserts, without evidence, that “alley buildings, such as garages or carriage houses are *typically* smaller than the surrounding residential or commercial development” (Ex. 759 at 6) and fails to provide any authority to support the proposition that the Project, or any portion of it, must be smaller than the surrounding buildings.

¹³ For example: “This is not a building of “modest size” and is completely out of place in this DC neighborhood where it would sit in such close proximity to row houses of much lesser height.” “I oppose the size, height, and density of the Dance Loft Ventures PUD 101-unit project in a residential neighborhood where the RF-1 zoned two-story town homes in Square 2704 will be dwarfed.” “The planned development is too big.” “This development, as proposed, will overwhelm the community’s RF-1 zoned two-story homes and residences.” “The size of the building does not fit in the structure of the neighborhood. The building will tower over the entire block.” “The project will overwhelm the surrounding homes on Crittenden, Buchanan and 15th Streets as proposed: it’s inconsistent with the attendant neighborhood development in this part of the city.” “[T]he proposed development is inconsistent with the existing neighborhood and overwhelms it.” “[N]ot compatible or considerate of the existing neighborhood.” And “Has no look or resemblance to any buildings around it and will overwhelm the residential nature of the neighborhood.” “The project is massively out of scale for this location and this neighborhood.”

the balance necessary to help realize important housing and arts preservation goals. Further, FOFS fails to point to, and the Commission is not aware of, any strict requirement that the Project be the same size as nearby buildings. Such a requirement would obviate the need for the FLUM and the PUD process generally and would be inconsistent with the Comprehensive Plan for this site specifically. The FLUM's density designation prevails over the opponent neighbors' subjective assessment of character or consistency with nearby buildings. FOFS also argues that the Applicant has done "nothing to mitigate the specific concerns of height and density." (Ex. 787.) The Commission cannot agree with this statement. Instead, the Commission finds that the Project's height and density are mitigated. The Project's setbacks are primary mitigating elements. The setbacks move the Project's mass away from neighboring residences, allow additional light penetration, and reduce shadows. The Project's quality façade materials and articulation along all facades are also mitigating elements. Although the Project's size is visible from neighboring properties, the Project presents an attractive view. The Property's topography also mitigates the impact of the Project. Whereas the Project appears as a five story (plus penthouse) structure from 14th Street, N.W., it appears to be only a four story (plus penthouse) structure from the west. (Ex. 525E.) The Commission does not find the Applicant's logic to be "circular" with respect to density. (Ex. 787.) The Project's proposed height and density create impacts that a smaller building would not but that same height and density also provide affordable housing and other benefits and amenities that a smaller building would not provide. That is, the high degree of benefits and amenities justifies the additional height and density in this case. (Ex. 525E.) The Commission understands that the Project's housing affordable housing benefits and amenities (66% affordable, units reserved at 30% and 50% MFI (an MFI level far below what is required by IZ), and three-bedroom units) are unlikely to be provided without DHCD subsidy, and as a result the Project must position itself to be eligible for such subsidy. However, the subsidy component of the Project's feasibility is not directly part of the Commission's calculus: the Project's height- and density-related impacts, modest as they are, are acceptable in light of the Project's benefits and amenities (however financed) given the extent of the mitigation of such impacts.

- (ii) Height and Density and Benefits. FOFS attempts to detach the Project's density from its affordable housing benefit. (Ex. 759 at 15; 787.) ("[O]ur primary concern and opposition has been . . . *height and density, which are each separate and apart from supporting the arts and affordable housing.*" Emphasis added.) The Applicant provides evidence that the Project's affordable housing and arts benefits are largely unachievable without the requested height and density. (Ex. 525E, 795; Tr. 2 at 32 ("So affordable housing, plain and simple, it requires density. I wish I could say that that was not the world we live in or the city we live in. But in order to really compete well for very limited and competitive resources, affordable housing has become a process where developers are having to consider

- density as a way of creating a reasonable development project.”.) A PUD permits additional height and density in exchange for benefits, which are provided in this case in major part through the delivery of a significant degree of affordable housing and the preservation of Dance Loft. The Commission agrees that the Project’s benefits justify its density (particularly when coupled with the Project’s mitigations described herein).
- (iii) Height. FOFS and others appear to misunderstand the Project’s height calculations. (Ex. 166, 185, 191, 194, 254, 297, 298, 343, 395, 433, 475, 521, 610, 661, 690, 747, 758-759 at 2-4.) (“[T]he completed project elevation 81’10” above the measuring point in 14th Street NW.” “This is considerably higher than the adjacent row houses, that are typically 22’0” to 25’0” at their highest elevation in the rear yards facing the proposed Dance Loft Ventures project.” “How does a building proposing to extend into the alley at a height that is between 2½ to 3 times taller than its immediate neighbors really make sense?”). These misunderstandings about the Project’s context and building height under the Zoning Regulations look only at the nominal heights of the Project and surrounding buildings. In context and accounting for the block’s topography, the top of the primary component of the Project is roughly the same elevation as the top of nearby rowhouses on Crittenden Street, N.W. (Ex. 525E.) The Project will not appear to be 2½-3 times its immediate residential neighbors given the change in grade and real relative heights. The neighbors compare the Project with penthouses to the underlying zoning without penthouses in order to arrive at the (incorrect) objection that the Project is “almost double” the underlying zoning. The 66.67-foot tall Project is not “almost double” such zoning, which has a 40-foot height limit. The Project’s height is compatible with nearby rowhouses. (Ex. 795A.)
- (iv) Context. FOFS and others incorrectly state that there are no other tall buildings of comparable size anywhere nearby. (Ex. 166, 173, 174, 185, 188, 192, 193, 197, 198, 199, 203, 204, 213, 247, 252, 254, 291, 320, 759 at 19, and 772A.) Although the definition of “nearby” is subjective, there are similarly tall, four- and five-story buildings one block to the southeast of the Property and more such buildings farther north and south along 14th Street, N.W. (Ex. 2A.) As a result, the Project is contextually appropriate.
- (v) Design. FOFS and others object to the quality of the Project’s rear design, the lack of “engagement with the surrounding alleys,” and the “solid wall” at grade and encourage more harmony with the context and improved aesthetics among other related objections. (Ex. 247, 249, 254, 745, 759 at 6, 769.) The Commission is not persuaded. The Project provides a quality brick façade on all three sides that face alleys. However, the Project is not an “alley development” with a primary entrance on an alley. Instead, the Project’s primary façade faces the commercial corridor on 14th Street, N.W. and provides a new storefront that complies relevant planning guidance and has been determined by OP to be a benefit and amenity. (Ex. 667 at 14.) The Project’s rear podium at grade appropriately interacts with other solid fences and garage doors at grade along the alleys today. The Project improves upon the alley conditions and draws inspiration from surrounding architectural

elements. (Tr. 2 at 76-77.) The Commission finds the Project's design contextually appropriate and of a superior quality commensurate with the PUD standard.

- (vi) Balconies. FOFS and others object to the Project's balconies. (Ex. 254, 496 and 759 at 9.) The Commission prefers that new residential developments include balconies and is not persuaded that balconies create adverse impacts. Balconies are important for the health of those living within the Project's affordable units. The owners of the surrounding single-family houses have yards and private outdoor space, and the future occupants of the Project should not be excluded from outdoor fresh air.
- (vii) Privacy. Some abutters object to a perceived loss of privacy as a result of the Project. (Ex. 247, 254, 267, 295, 320, 496, 745, 754, 759 at 2, and 762.) (“[W]e would lose the existing sense of privacy we have in the rear rooms of our home, including our child’s bedroom.” “Occupants of the building will be able to view residents’ private space”). The Project’s potential impacts on neighbors’ privacy are not unique to the PUD (i.e., similar interactions exist in a matter-of-right building) and are not unique to the Property (i.e., similar or more extreme conditions exist elsewhere in Square 2704) (*See Ex. 525F.*). The Applicant eliminated communal amenity space on the penthouse level and moved the space to a mezzanine level in response to neighbor privacy concerns (objecting to future residents who might have views from the roof into nearby yards). (Ex. 525D.) On balance, the Commission finds unavailing the privacy concerns with respect to the Project.
- (viii) Loss of Natural Light, Air, and View Impacts. FOFS and others object to potential adverse effects on light, air, and views arising from the Project. (Ex. 166, 173, 174, 185, 188, 192, 193, 197, 198, 199, 203, 204, 247, 252, 267, 295, 321, 496, 537B, 607, 661, 664, 736, 756, 789, Tr. 2 at 25-27, Tr. 3 at 26-27.) The Project’s potential adverse effects on light and air are consistent with the moderate density designation on the FLUM. These potential impacts are minor in nature. Overall, these impacts are acceptable given the proposed benefits and amenities, particularly the affordable housing, and the Project’s mitigations.
- (ix) Noise and Lights. FOFS and other neighbors raise concerns about noise and light impacts emanating from the Project, including from “late night outdoor parties, loud music, and screaming customers” of Dance Loft (Ex. 213, 320, 690, 745, Tr. 2 at 31.) The Project will be obligated to comply with all applicable noise and light regulations, which mitigates these concerns. However, to the extent these impacts are created, they would not be unique to the PUD: a matter-of-right building would have similar noise and light impacts as the Project. In any event, the Project’s potential noise and light impacts are acceptable given the Project’s benefits and amenities and the Project’s mitigations.
- (x) Shadow Impacts. FOFS and others raised concerns about shadow impacts (Ex. 537B at 4, 607, and Tr. 2 at 114-115.) The Applicant has provided substantial and unrefuted evidence that the Project provides minimal

shadow impacts beyond those cast by existing buildings within Square 2704 today. (See Ex. 35 (“Similar to the shadows produced by the existing residences on the block, the Project also produces modest shadow impacts over the course of the day during winter months. The most profound shadow impacts during these winter months are on the adjacent commercial structures to the north of the Project; however, those structures currently do not have any windows where the new shadow impacts would be experienced. As a result, those winter shadows are not perceptible to occupants of those buildings. The Project’s wintertime shadows secondarily affect certain residential properties along Crittenden Street to the north of the Property. The morning shadow impacts in the winter affect approximately 17 of the nearby residences. These shadows dissipate during mid-day such that the wintertime impacts on the residences to the north occur for fewer than ten of the nearby residences. The late afternoon wintertime impacts from the Project affect just four of the nearby residences (but as noted above adjacent residences to the north are affected by other existing structures on the block during winter afternoons).”), 525B.) The detailed study of the Project’s shadow impacts during all four seasons of the year shows no additional shadow impact created during three seasons of the year, with only the winter months showing seasonal impacts on a handful of buildings to the north of the Property.

- (xi) Alley “Costs”. FOFS also alleged concerns about costs incurred by neighbors as a result of the Project, *viz.* “issues with placing trash cans in the alley on trash day, or if we have issues entering and exiting our parking spaces currently, that we should widen our parking spaces or build pockets in our fences.” (Tr. 3 at 41, 70-71; *see also* Tr. 2 at 190-193.) The Commission finds that the Project does not impose any such costs on neighbors, notwithstanding that some neighbors may no longer be able to store trash cans in a public alley or private property that they do not own.
 - (xii) Construction-Period Impacts. FOFS raises concerns, largely speculative, about construction-period impacts. (Ex. 537B at 4, 607, 690, and 759 at 6-7 and 20, 789.) The Applicant provided a robust Construction Mitigation Plan (“**CMP**”) as part of its post-hearing submission to mitigate these concerns. Further, the Project is obligated comply with all regulatory and permitting requirements, mitigating potential impacts on adjacent properties.
- (d) Alleged Project Impacts: Transportation-Related Concerns.
- (i) Parking. FOFS and other opponents of the Project complain that the Project does not include sufficient parking for the future residents and Dance Loft employees and visitors, a material contested issue that requires consideration. (Ex. 191, 247, 249, 252, 254, 267, 291, 297, 298, 302, 310, 320, 343, 433, 475, 496, 521, 537B, 599, 607, 610, 661, 737, 741, 745, 747-749, 754, 756, 759, 766, 772A, and Tr. 2 at 208.) The Project is zoning-compliant with respect to parking space count. (Tr. 2 at 123.) No parking relief is requested. DDOT concurred with the amount of parking provided

in the Project, and imposed a TDM plan. (Ex. 658.) The Commission finds any parking impacts capable of being mitigated.

- (ii) Adequacy of CTR. FOFS's transportation study expert questions the adequacy of the Applicant's transportation review with respect to intersection analysis at alleys and west of the Property. (Ex. 759 at 35.) The Project's potential impact on neighboring streets and the alley was adequately studied in the Applicant's transportation reports, a point with which expressly DDOT concurs. (Ex. 658.) The opponents' transportation consultant either misunderstands DDOT's CTR guidelines or has not reviewed the DDOT-approved "Scoping Form" for the Project. (Ex. 308A.) This Application provides a much more robust transportation impact study than is ordinarily required by DDOT for this type of project and more robust than DDOT required during the scoping process for this specific application. In particular, DDOT did not require vehicular analyses for the Project because the Project is not expected to generate 25 or more peak hour peak direction trips. The Applicant thoroughly rebutted FOFS's transportation expert's concerns regarding likely approaches, and the Commission defers to DDOT's concurrence with the Applicant's study. (Ex. 791-792.) The Commission finds the Applicant's analysis to be persuasive.
- (iii) Consideration of WMATA Garage Redevelopment: FOFS's expert and other opponents question the apparent exclusion of the WMATA Northern Bus Garage redevelopment from the Applicant's transportation review. (Ex. 759 at 35, 247, 433, 661, 748, 756, 759 at 25, 790, and Tr. 2 at 207 and 214.) The Applicant's expert accounted for the WMATA Garage renovation when it prepared its report and recognized it in the report, a point confirmed by DDOT. (Ex. 791; Tr. 2 at 129.) In any event, the WMATA Garage renovation is unlikely to change the conclusions of the Applicant's study. As noted in the supplemental traffic assessment, significant capacity is available along 14th Street, N.W. with the northbound and southbound approaches operating at LOS A and B at the signalized Buchanan Street, N.W. intersection. Traffic added by the WMATA development would be able to utilize this available capacity and signal timing adjustments could be made if more green time were needed for the side street approaches of Buchanan Street, N.W. The Commission does not find any overlooked or unmitigated potential impact arising from the WMATA development. (Ex. 791-792.)
- (iv) Trip Generation Analysis. FOFS's transportation study expert and one other opponent question the Applicant's transportation review's trip generation assumptions. (Ex. 759 at 36, 496, 748.) The Commission credits the Applicant's expert's testimony that the Project's trip generation is realistic and appropriate given the Project and site factors, a conclusion in which DDOT concurs. (Ex. 791-792 and 768.) The Property is located immediately adjacent to the 14th Street, N.W. bike lanes and the 14th Street Priority Corridor Metrobus Route, as well as within 1,000 feet of the 16th Street Priority Corridor Metrobus Route. Further, the site is implementing a robust TDM plan approved by DDOT. The Project also provides less vehicular parking than is ordinarily required by the Zoning Regulations for

a similar size and mix of uses as a result of to the site's proximity to the priority corridor metrobus routes, which recognizes that such proximity is conducive to a higher non-auto mode share. The Commission finds no error in the Applicant's trip generation analysis. (Ex. 791-792.)

- (v) Mode Share. FOFS's transportation study expert questions the Applicant's transportation review's mode share assumptions. (Ex. 759 at 36.) The "DRRS" information cited by FOFS is faulty because it is based on single-family homeowners typically and not the multifamily residents who will occupy the Project and who have a different transit profile (i.e., the Project's residents are more likely to favor transit). (Ex. 791-792.) The Project is a multifamily building with a parking rate of approximately 1 space per 3 units. This is in contrast to the majority of single-family row homes in the area where the ratio of available spaces per residence, based on the census tract data, is approximately 1.2 vehicles per household. The reduced vehicle ownership of the Project's residents has a direct impact on the mode share options and results in a lower vehicular mode share for the Project. Additionally, the Project's TDM conditions promote non-auto modes of transportation, which further supports a reduced vehicular mode share. The TDM plan and mode share assumptions for this project were vetted by and approved by DDOT. The Commission discerns no adverse impacts from the Applicant's mode share assumptions. (Ex. 791-792.)
- (vi) Weekend Traffic. FOFS's transportation study expert questions the Applicant's transportation review's weekend trip generation assumptions and peak hour analysis. (Ex. 759 at 36-37.) Based on information provided by the Applicant, weekend traffic assessments are unnecessary here given the Project's mix of uses and the extent of such uses. (Ex. 791-792.) During the evening on weekends, theater traffic will not be layering onto a baseline traffic volume on 14th Street, N.W. comparable to weekday commuter traffic, and thus sufficient capacity on 14th Street, N.W. will be available for Project-related weekend trips. (*Id.*) The Commission finds the Applicant's weekend analysis to be convincing that no adverse impacts are likely to occur as a result of the Project.
- (vii) Trip Distribution Assumptions. FOFS's transportation study expert questions the Applicant's transportation review's trip generation directional assignments. (Ex. 759 at 37.) The Project's trip generation assignments are also reasonable, conservative, and applied according to a DDOT-approved design. (Ex. 791-792 and 658.) More particularly, there is a north-south alley connection to Buchanan Street, N.W. leading directly to and from the Project's garage. There would be no need for this traffic to pass through the 14th Street, N.W.-Buchanan Street, N.W. intersection to the east if coming from or going to the west. The Commission finds the Applicant's trip generation analysis to be convincing that no related adverse impacts are likely to occur as a result of the Project. (Ex. 791-792.)
- (viii) Parking Compliance. FOFS's transportation study expert and others dispute the Applicant's transportation review's parking compliance analysis and visitor parking analysis. (Ex. 759 at 37 and Tr. 2 at 208 and 215.) The

Project's stacked parking spaces are all compliant with the Zoning Regulations as proposed, per Subtitle C § 711.4 ("An automated parking garage shall meet the requirements of Subtitle C § 711.3, although individual parking spaces provided as part of the automated parking garage do not.") The Commission concurs in DDOT's determination as to the adequacy of the Applicant's parking analysis. (Ex. 791-792.) The Commission finds the Project is unlikely to result in any adverse parking impacts that are not capable of being mitigated and finds that the Project includes such mitigation in the manner of adequate overall parking, TDM measures, RPP removal, and sufficient on-street parking supply east of 14th Street, N.W. as shown in the Applicant's study.

(ix) Alley Impacts. FOFS's transportation study expert objects to proposed and potential alley conditions. (Ex. 759 at 37.) FOFS and other neighbors raised concerns about alley operations and safety, including from Dance Loft activities. Concerns about alley impacts are material contested facts. (Ex. 254, 297, 298, 302, 343, 320, 496, 599, 661, 737, 748, 754, 756, 759 at 28-29, 765, 789, Tr. 2 at 215-216.) The Application includes adequate alley impact analysis, which is the subject of ongoing DDOT-required investigation. (Ex. 525J, 768, 791-792.) The public alley is effectively widened beyond the 10-foot right-of-way from 14th Street, N.W. to the entrance to the Project's garage. (Ex. 525B, 658.) The Project is also chamfered at the rear corners to improve navigability in the alley. (Tr. 2 at 55.) The Commission finds that any alley impacts from the Project are either acceptable in light of the Project's benefits or capable of being mitigated through the DDOT-imposed alley management conditions.

(e) Alleged Project Impacts: Environmental and Other Concerns.

(i) Air Quality Impacts. FOFS and another opponent complain about potential adverse air quality impacts on the Project's future residents from the nearby WMATA bus garage, including consideration of racial equity issues arising from such potential impacts. (Ex. 247, 759 at 22-23, Tr. 2 at 206, Tr. 3 at 26-27.) The Commission does not see any evidence for any potential impacts would not also apply to any smaller building or any matter-of-right building. Further, the argument fully contradicts opponents who otherwise extol the value of their private outdoor spaces. Overall, the Applicant's presentation of the Project's overwhelmingly positive racial equity considerations tip in favor of the Project. (Ex. 755.) Finally, WMATA has committed to eventually electrify the fleet operations at the Northern Bus Garage, ultimately eliminating or significantly mitigating these concerns. (Ex. 525F, 795.)

(ii) Other Environmental Impacts. FOFS and others raise concerns about air pollution and other environmental impacts arising from the Project's future occupants. (Ex. 310, 537B at 4, 607, and 759 at 7.) The Applicant filed the Property's Phase I environmental report, which shows that the Property does not have known contamination. (Ex. 793.) To the extent unknown issues are discovered during demolition those items will be remediated in accordance with applicable health and safety regulations in a manner

capable of mitigating any potential impacts. (Ex. 791.) Separately, the Applicant will provide an EISF during the building permit process for the Project. (*Id.*) The Commission does not see any evidence of environmental impacts from the Project that are not capable of being mitigated.

- (iii) Future Resident Green Space, Amenities, and Air Quality. FOFS and another opponent lament the Project's lack of amenities and green space for new residents and proximity to family-serving businesses. (Ex. 260, 302, 321, 399, 759 at 25, 790.) FOFS asserts, without justification, that the Project lacks "natural light in most of the units because of close row homes" and is "creating a dark, dank, air trapped building with no natural ventilation." (Ex. 759 at 25, 769, 790; Ex. 759 at 23.) The Commission finds no evidence supporting these concerns about impacts. The Project includes balconies and both indoor and outdoor amenity spaces for residents. Moreover, multiple parks including Rock Creek Park, the Carter Barron recreational facility, and Upshur Park are located within 2-5 blocks away from the Property. (Ex. 2A and 791.) Similarly, the Project is well-suited for transit access to a variety of shops and businesses elsewhere along 14th Street, N.W. The units in the Project will have robust natural light. Likewise, there is no basis for concern about natural ventilation. (Ex. 791.) The Project's ventilation systems will be roof-mounted and the Project includes operable windows and balconies for fresh air. Moreover, the Project's EGC+ level of design means that the Project will include high-quality indoor air quality and related wellness measures that are not typically found in matter-of-right buildings and which address the types of concerns that the opponents raise. (*Id.*)
- (iv) Infrastructure Impacts. FOFS alleges that the Project will "burden an aging infrastructure." (Ex. 537B at 4.) DC Water disagrees. (Ex. 667.) No agency provided any information in the record indicating concerns about burdening infrastructure. The Commission sees no evidence supporting FOFS's allegation.
- (v) Unspecified Impacts. FOFS and other opponents raised concerns about unspecified impacts. (Ex. 213, 295, 739, 741, and 759 at 4.) ("92 properties will be directly impacted;" the Project "will irrevocably and detrimentally impact the quality of life for blocks and blocks of my neighbors." "[T]he [P]roject's scale will create special problems with respect to how it impacts our homes over the long term" and "the proposed height is clearly inappropriate for the site and would impose unacceptable project impacts on the residents of the neighboring RF-1 zone"). Although it is difficult to evaluate non-particularized impacts, the Project improves upon the existing conditions and adds numerous, commendable benefits and amenities. The Commission finds no evidence to warrant mitigation for vague, unspecified allegations and finds no evidence of adverse impacts that are not capable of being mitigated or not acceptable in light of the benefits and amenities.
- (f) Objections to the Value of the Project's Benefits and Amenities.
 - (i) Ward 4 Affordable Housing. FOFS and others object to the Project providing too much new housing in Ward 4, and others object that the

Project is concentrating too much affordable housing in one building. (Ex. 213, 247, 369, 759 at 24 and 765.) One neighbor incorrectly asserts that “The neighborhood would simply not gain anything from this over matter-of-right development. The city would gain affordable housing, but this can only be considered an indirect benefit/amenity in the PUD process”. (Ex. 765.) These objections are unfounded and untrue. The Commission finds that the Application’s housing-related benefits are commendable and of high quality. The District is deficient thousands of units of affordable housing, especially the 30% and 50% MFI units and 3-bedroom units that the Project will include. The District’s Housing Equity Report demonstrates that there is a significant deficit of affordable housing within the Rock Creek East Planning Area where the Property is located. (Ex. 525H at 9.) Many of the projects cited by the party opponents are not new construction but are rehabilitation projects that do not add to the supply of affordable housing in Ward 4 (even if they importantly preserve affordable housing). (Ex. 791.) In addition, the Project’s affordable housing and other housing components (e.g., three-bedroom units) are among the highest priority benefits and amenities and are a direct benefit of the Project. Those benefits mitigate surrounding house price increases, add residents to support nearby businesses, and provide other benefits to “the neighborhood.” It is simply false that the neighborhood would not gain anything from this Project.

(ii) Minimal Public Benefits. FOFS also asserts that the Project provides only “minimal public benefits” and recommends additional benefits and amenities. (Ex. 537B and 788A.) The Commission disagrees that the Project’s benefits and amenities are “minimal”. The Project includes a commendable number of high-quality benefits and amenities, all of which satisfy the relevant criteria in Subtitle X. (See FF ¶¶ 50-51.) Moreover, the Applicant agreed to provide additional CBE/First Source benefits that FOFS requested. (Ex. 537B at 4.) Finally, the Project’s benefits and amenities are consistent with the Comprehensive Plan, especially the Project’s focus on affordable housing.¹⁴

(g) Objections to Pre-Hearing Process and Evidence.

(i) Support Letters. FOFS and other opponents discourage the Commission from considering the views of certain supporters of the Project, *viz.* those who do not live in the immediate vicinity of the Property. (Ex. 164, 185, 749, 759A, Tr. 2 at 28-30, Tr. 3 at 20, 28-30.) (“Most letters of support are from individuals that do not live in the immediate area surrounding this project and thus, are not representative of individuals that will be negatively directly impacted by this project.”) The Commission considers a wide view of perspectives in acting on a proposed PUD and is capable of appropriately weighting views of non-residents. Nevertheless, the significant support letters for the Dance Loft from supporters around the region indicate its importance as an institution for the District and surrounding region.

¹⁴ See 10-A DCMR § 224.9 (“[T]he following should be considered as high-priority public benefits in the evaluation of residential PUDs: The production of new affordable housing units above and beyond existing legal requirements or a net increase in the number of affordable units that exist on-site”).

- (ii) Plans and Drawings. FOFS and other opponents called into question the accuracy and validity of the Applicant's drawings. (Ex. 690, 737, 759 at 4, and 766.) The Commission closely scrutinized the Applicant's plans and drawings as evidenced by the granularity of comments about design elements in the Commission's questioning at the public hearing. The Commission also recognizes that the Project's architect is a District-licensed architect, who has been recognized by the Commission as an expert and whose credentials were unchallenged in his field. The Commission accepts the accuracy or validity of the Applicant's plans and drawings.
- (iii) Views. FOFS also asked for views from the perspective of abutting residences. (Ex. 787, 789.) The Applicant provided such views utilizing views provided by FOFS. (Ex. 795A.) FOFS objected to the vantage points of such views. (Ex. 798.) The Commission finds the Applicant's images are sufficient.
- (iv) Opponents Drawings. FOFS introduced photos of a physical model purporting to depict the Project. (Ex. 759 at 4 and 764.) FOFS also provided sample drawings. (Ex. 772A.) The Commission has accepted FOFS's depictions of the Project but appropriately understands that such depictions are crude and prepared by non-experts. The Commission is aware that the FOFS depictions were not audited, are based on imprecise topographic data, and omit important context. Some of FOFS's materials appear to be out of scale or to depict a building much larger than the proposed Project. The Commission gives much more weight to the Applicant's expert-prepared materials but does not entirely discount or strike FOFS's depictions.
- (v) Financial Viability and Transparency. FOFS and other opponents alternately criticize the Applicant for not providing more financial information and for not ensuring financial viability. (Ex. 343, 741, 759 at 10, 765.) The Applicant provided information about the subsidy required to construct the Project as partial justification for the Project's proposed density. (Ex. 525E, 795.) Ultimately, the Applicant's financial information does not bear on the Commission's evaluation of this PUD, and the Commission finds no errors or omissions in the Applicant's filings.
- (vi) Failure of Applicant to Make "Concessions". FOFS and others also object to the Applicant's "inadequate height and design concessions" and alleged failure to engage in good faith negotiation. (Ex. 185, 194, 213, 263, 267, 295, 297, 298, 343, 475, 521, 610, 741, 769, 772A, and 788A at 3.) Neighbors have asked for a project that is "half the size," (Ex. 267) or that "remove[s] levels off the back of the building." (Ex. 194.) The PUD regulations do not compel "concessions" to opponents, but in any event, the Commission disagrees with FOFS that the Applicant has not made concessions. The Commission finds that the Applicant has made numerous, material concessions. The Applicant introduced a list of nearly two dozen changes to the Project made in response to neighbors and District agencies. These changes include increasing the parking count, removing RPP eligibility for the Project, widening a portion of the alley south of the Project in the vicinity of the Project's garage entrance, agreeing to potential future

alley improvements, retaining retail uses, adding a CBE/First Source proffer, proposing the CMP, relocating amenity spaces, addressing rooftop generator noise concerns, improving the Project's façade design, committing to building electrification, adding a CaBi proffer, and agreeing to streetscape improvements, among other changes. (Ex. 525D.)

- (vii) Consideration of Alternative Massing Proposals. FOFS and other opponents advance a number of complaints about and requests for alternative massing for the Project. (Ex. 254, 298, 521, 599, 671, 690, 754, 758, and 759 at 8, 12-13, 15, 28-30, 769.) As a starting point, FOFS concedes that at least one alternative was proposed, which FOFS rejected. (Ex. 787 (“At the [June 2021] meeting, the Applicant provided a slightly lower building, with no setbacks at all—an obviously, equally, untenable proposal.”).) The Applicant testified that it studied other alternatives as well, but found them to be infeasible, in part because of significant increases in construction costs. (Tr. 3 at 109-110; Ex. 795.) FOFS also suggests alternatives that would not include any market rate housing or that would displace Dance Loft. (Ex. 759 at 13 and 787 (“The Applicant has not considered any reduction or restructure of the other 34 residential units not classified as affordable; or even reconfiguring the Dance Loft retail space.”).) Some members of FOFS and other opponents suggest reducing the height at the rear of the Project and increasing that density along 14th Street, N.W., whereas other members of FOFS wanted the density pushed to the interior of the Property away from 14th Street, N.W. (*Compare* Ex. 599, 759 at 13, 787, and 166 (“The alleged reasonable increase in density sought by the Dance Loft project should and could be accomplished at the front of the property along the 14th Street commercial corridor”) *with* Ex. 191 (“push the mass back away from the street and toward the center of the block”).) FOFS also advocates for no more than matter-of-right density at the middle of the Square. (Ex. 759 at 29-30, 789.) (“All we want is development of the interior alley portion within the constraints of the current zoning”). One opponent incorrectly states that a much smaller version of the Project was proposed. (Ex. 690.) (“Our understanding is that a proposal exists that would have 75 units and limit the height.”) Finally, other opponents request still further alternatives. (Ex. 754.) (“There are multiple reasonable proposals [the Applicant] could put forward that would assuage our concerns about size and maintain everybody’s commitment to affordable housing”). Although the Commission hopes to see project proponents and opponents work out a compromise, the reality is that is not always possible or necessary. And while the Commission understands FOFS’s preferences to see the Project’s density shifted to 14th Street, N.W. and does not oppose such a move categorically, the Applicant ultimately is responsible for preparing plans for a building that it can construct and is under no express obligation to put forth alternatives as part of the PUD process. The Commission is obligated to evaluate only the Project as proposed, and not a variety of theoretical alternatives when all of the contested issues are

resolved, as is the case here.¹⁵ The Commission finds no reason to compel the Applicant to consider further alternatives: the Project is not inconsistent with the Comprehensive Plan, as a whole, has no unacceptable impacts, and is zoning-compliant. Even if the Commission is obligated to consider alternatives, as it does below, the Applicant has provided substantial evidence that the primary alternative proposed by FOFS would create other potential concerns. (Ex. 795 (showing that the loss of density by reducing the rear of the Project would not be offset by a single-story addition at the front of the Project and would materially increase construction costs above the threshold for which the Applicant could reasonably expect to be eligible for DHCD subsidy).

- (viii) As noted above, FOFS and other opponents of the Application encourage the Commission and the Applicant to evaluate other alternative configurations for the Project. The Commission has evaluated two alternative configurations for the Project discussed during the pendency of this proceeding. Importantly, the Project and both alternative configurations maintained approximately the same overall density.
- (ix) First Alternative: Reduced Setbacks. The first alternative is one story shorter than the Project at the rear of the building with much smaller setbacks than those provided by the Project. This version was presented in the Applicant's supplemental submission and discussed at the public hearing. (Ex. 525E and 791.) The Commission concludes that the first alternative is inferior to the Project because the is more generally consistent with the Small Area Plan than the first alternative. (Tr. 2 at 131.) FOFS also appears to disfavor the first alternative. (Tr. 3 at 16.)
- (x) Second Alternative: Height on 14th Street, N.W. The second alternative configuration is also one story shorter than the Project at the rear of the building but retains the same setbacks as those provided by the Project and would be taller than the Project along 14th Street, N.W. The Applicant did not provide images of the second alternative. (Tr. 2 at 116; Tr. 3 at 109-110.) The Commission also concludes that the second alternative is inferior to the Project. The second alternative results in inefficiencies and increased construction costs that reduce its feasibility. (Ex. 795.) During cross-examination at the public hearing, the Applicant testified that financing for affordable housing construction is competitive. (Tr. 2 at 118-120; Ex. 525E (quoting DHCD's subsidy requirements: "Projects that maximize the allowable density on the project site under current zoning laws will receive preference under this criterion. Applicants can achieve maximum points if project density is increased through a [PUD], Map Amendment, or some other official mechanism.")) In sum, the Commission concludes that the Project is more likely to be constructed and deliver on its benefits and amenities if it is constructed to a height that the Applicant has credibly testified is more achievable than a structure that includes a taller component along 14th Street, N.W. and that requires compliance with a more-costly

¹⁵ See *Spring Valley–Wesley Heights Citizens Ass'n. v. District of Columbia Zoning Comm'n.*, 88 A.3d 697, 704 (D.C. 2013) (concluding that it is "not the function of the Commission to consider all the possible alternatives").

construction code and results in greater overall construction costs. (Ex. 525E and 795; Tr. 2 at 33-35.) Although FOFS disputes the Applicant’s specific construction cost calculations, the Commission is more inclined to credit the Applicant’s analysis relative to the unattributed post-hearing information provided by FOFS. Moreover, a taller building on 14th Street, N.W. under the second alternative is arguably less consistent with the Small Area Plan than is the Project.

(h) Objections Regarding Precedent.

(i) Lack of Precedent. FOFS and other opponents assert that the Project is flawed because of a lack of precedent for buildings situated similarly. (Ex. 191, 298, 475 and 759 at 16, 19, 765, 787.) (“Although its proponents frequently liken the height of the proposed development to several existing apartment buildings at the intersections of 14th and Allison, Webster, Upshur, Quincy, Randolph, and Spring in Ex. M-1, these existing buildings appear to be at least one story less in height. It should also be noted that some of these comparison buildings are more than one mile from the proposed project, situated in more commercial areas without surrounding homes to overshadow.” “Our research reflects no other lots like this in all of DC” “The Applicant has not provided any precedent for erecting a structure that will double in size, dwarfing surrounding homes, which by great measure changes the character and environment of the homes abutting the Applicant’s property.”) Besides being untrue these statements are irrelevant in a PUD proceeding. Notwithstanding that the provision of precedent is not a criterion upon which the Commission is obligated to evaluate a PUD, there are many examples from Ward 4 and along 14th Street, N.W. both new buildings and buildings that have co-existed alongside two-story rowhouses for decades, some even in projects approved by the Commission. (Ex. 791.)

(ii) Precedential Nature of Approval. Opponents also complain that the Project will become precedential. (Ex. 260, 262, 321, 399, 485, 486, 765, and 772A.) This Application does not create precedent.¹⁶ The Commission evaluates each application on a case-by-case basis on its own merits.

74. Objections to the Application in the FOFS Hearing Presentation. At the May 12, 2022 public hearing, FOFS presented more than an hour of direct testimony, largely consistent with the FOFS Pre-Hearing Filings. (Compare Tr. 3 at 6-59 with Ex. 759 at 2, 759A, 787, 789, and 790.)

75. Cross-Examination by FOFS at the Public Hearing. Pursuant to Subtitle Z §§ 103.13(f), 203.9, 203.11, 403.3, 403.7(c), 408.6, and 408.7, at the May 5, 2022 public hearing, counsel for FOFS cross-examined the Applicant’s witnesses and members of the public as follows:

¹⁶See 11-X DCMR § 300.4 (“PUD-related map amendments establish no precedent for the Zoning Commission’s consideration of permanent changes to the zoning of the PUD site or adjacent areas or for consideration of future PUDs.”)

- (a) Cross-Examination re. Alley Width and Traffic Movements. Mr. Zeid was asked about the existing width of the public alley south of the Property, confirmed that such public alley is ten feet, that the Application proposed to widen the alley to be effectively fifteen feet wide east of the Project's garage entrance. (Tr. 2 a 108-110.) Mr. Zeid also testified under cross-examination that the Application included analysis as to truck turns for the Project and for the public alley access generally, and that specifically trucks serving the Project could access the garage and loading area without traversing any portion of the public alley that remains only ten feet wide, including by turning around within the Project's garage. (*Id.* at 110-111.) One supporter testified in response to questioning that he understood DDOT required future review. (*Id.* at 190-191.)
- (b) Cross-Examination re. Parking Capacity. Mr. Zeid was also asked about the Application's on-street parking analysis and confirmed that such analysis was prepared at DDOT's direction and with DDOT's input and approval as to scope because the Application initially sought relief from the minimum parking requirements of the Zoning Regulations. Such study did not include areas west of 15th Street, NW or the WMATA Bus Garage, however, Mr. Zeid did not testify as to the size of the WMATA Bus Garage in his direct testimony. (*Id.* at 112-113.)
- (c) Cross-Examination re. RPP. Mr. Zeid testified that the block of 14th Street, N.W. on which the Property is located would not be considered for RPP today by DDOT and was RPP eligible previously only as a legacy. As a result, DDOT is unlikely to reinstate RPP eligibility for the Property. Mr. Zeid stated that the changed to RPP ineligibility was a permanent change. (Tr. 3 at 117-118.)
- (d) Cross-Examination re. WMATA Electrification. Mr. Zeid also testified that WMATA has published information that the WMATA electrification program will be final in 2045. (Tr. 3 at 117, 128.)
- (e) Cross-Examination re. Shadow Studies. Mr. Pichon confirmed that the shadow studies were prepared by his firm and that the study focused on winter months for adverse impacts because that is the season that has the largest shadow cast. Mr. Pichon confirmed that the Project did have additional shadow impact relative to existing conditions, but confirmed that the shadow studies did not compare against a matter-of-right building. (Tr. 2 at 114-115.)
- (f) Cross-Examination re. Renderings. Mr. Pichon confirmed that the rendered views of the Project depicted the screen element around the Project's mechanical penthouse. (*Id.* at 115-116.)
- (g) Cross-Examination re. Alternative Designs for the Project. Mr. Pichon confirmed that in June 2021 he prepared a version of the Project with three stories in the rear and decreased setbacks. (*Id.* at 116-117; Tr. 3 at 109-110.) Mr. James and Mr. Van Arsdale confirmed that the alternative design was presented at a community meeting, not a formal ANC meeting. (*Id.* at 120.)
- (h) Cross-Examination re. Construction Costs. Mr. James confirmed that construction costs have changed between 15 and 25 percent for certain line items of the Project's budget. He also confirmed that DHCD selects a construction cost limit as part of its RFP every year and that the Applicant's construction cost estimates are based on the most recently available data for construction. Finally, Mr. James confirmed that DHCD's "success rate" for projects seeking subsidies is approximately 20 to 25

percent or perhaps lower and that affordable housing financing is competitive. (*Id.* at 118-120.)

76. Objections to the Application Raised by Other Opponents. The Commission received approximately 65 letters or submissions of written testimony in opposition to the Application. Some of the opposition letters were filed by individuals who later identified themselves as part of FOFS (*see* Ex. 166, 191, 254, 297, 298, 320, and 369), some individuals filed multiple written documents, (*see* Ex. 185, 188, 193, 213, 263, 433, and 496), and like some of the support letters, some of the opposition letters are form letters (*see* Ex. 173, 174, 185, 188, 192, 193, 203, 204, 252, 262, 395, 399, 741, and 747) or from individuals who do not appear to live in the vicinity of the Property (Ex. 260, 321, 399, and 485). Nevertheless, the Commission has reviewed all of the opposition letters in the record and has evaluated the concerns and factual information contained in each.

(a) Objections to the Application’s Inconsistency with the Comprehensive Plan.

- (i) One opponent alleges the Project is inconsistent with objectives LU-1.4.6 and LU-2.4.5¹⁷ regarding development along transit corridors and nodal development notwithstanding some opponents’ challenges to the contrary. (Ex. 343.) The opponent’s primary challenge is that the Project does not “respect the integrity and character of [the] surrounding residential areas” and, allegedly in violation of the Comprehensive Plan, does “unreasonably impact” such areas. The Commission has reviewed the opponent’s argument against the analysis provided by OP and the arguments from the Applicant and finds the Project is not inconsistent with such individual objectives or with the Comprehensive Plan as a whole. The Applicant’s analysis of the above-cited objectives considers the full text and context of those items, whereas the opponent’s argument omits important language and context.
- (ii) Objective LU-1.4.6 requires a balancing of “respect [for] the character, scale, and integrity of [transit-corridor] adjacent neighborhoods” with “the District’s broader need for housing.” Given the District’s acute need for affordable housing and the Project’s provision of same (and the Project’s mitigations), in this instance the need for housing outweighs any, modest impacts on the character, scale, and integrity of adjacent rowhouses (which the Project mitigates). “Balancing” concerns about the “established character of the adjacent moderate density rowhouse blocks” “against the need for housing and that the project will provide approximately 101 rental multifamily residential units, of which approximately 24 will contain three (3) bedrooms and approximately 66 will be affordable”, OP agrees as well. (Ex. 667 at 7.) That is, the Project’s provision of affordable housing outweighs the modest, if any, character and scale impacts of the Project with respect to nearby rowhouses.

¹⁷ Page 2 of Exhibit 343 cites LU-2.4.5, though quotes from LU-1.4.6, the latter of which provides in full: “Encourage growth and development along major corridors, particularly priority transit and multimodal corridors. Plan and design development adjacent to Metrorail stations and corridors to respect the character, scale, and integrity of adjacent neighborhoods, using approaches such as building design, transitions, or buffers, while balancing against the District’s broader need for housing.” 10-A DCMR § 307.14.

- (iii) The opponents also suggest that the Project is inconsistent with LU-1.4.6, which the opponents purport limits future development to sites adjacent to Metrorail stations. (Ex. 343 at 4.) The Commission finds that LU-1.4.6 imposes no such limit. Rather, the second sentence of the cited objective refers to Metrorail stations AND “corridors”, the latter being the “priority transit and multimodal corridors” referenced in the immediately preceding sentence of LU-1.4.6. The Project is proximate to a designated priority transit corridor, 14th Street, N.W. (*See* 11-C DCMR § 702.1(c)(7).)
- (iv) Finally, the opponents cite but do not analyze objective LU-2.4.5. In the interest of completeness, the Project is not inconsistent with that objective either. First, the Project is pedestrian-oriented rather than auto-oriented consistent with the first sentence of LU-2.4.5 (“Discourage auto-oriented commercial strip development and instead encourage pedestrian-oriented nodes of commercial development at key locations along major corridors.”). Second, the Project’s height, mass, and scale do respect the integrity and character of surrounding residential areas, such as via the proposed setbacks at the rear of the Project. At the public hearing, OP noted as much. (Tr. 2 at 130-131.) Finally, even if the Project does have modest impacts on surrounding residential areas, such impacts would not make the Project inconsistent with this objective. Rather, this objective cautions against only “unreasonable impacts.” The Project’s impacts, if any, are quite reasonable and have been mitigated: to the extent the Project’s minor impacts directly facilitate the construction of 67 units of affordable housing, which is a “civic priority.” In sum, the opponents misreading of the Plan in Exhibit 343 should be disregarded.
- (v) Another neighbor alleges inconsistency with the Area Element of the Comprehensive Plan. (Ex. 756.) The cited language reads “The Comprehensive Plan makes a similar point “Development on these sites should be in keeping with the scale of the surrounding community...[and] address parking and traffic issues.” Likewise, Policy RCE-1.1.2 notes new developments should “respect the scale and densities of adjacent properties.””. This opponent misleadingly isolates individual passages from the Area Element of the Comprehensive Plan, which should be read “as a whole.” In any event the enumerated objective of the Area Element does not preclude the Project. The first passage, from the prefatory language in the Area Element also includes an objective to “serve a variety of incomes” which the opponents omit to reference. (*See* 10-A DCMR § 2207.3.) The Project is in “keeping with the scale” of the overall surrounding community, including the large buildings immediately across 14th Street, N.W. and the 4-5 story buildings elsewhere in the vicinity of the Property. Similarly, the Applicant has “addressed parking and traffic issues” not inconsistent with that language or with the Area Element as a whole. Policy RCE-1.1.2¹⁸ arguably does not even apply to the Project, and even if it does, includes

¹⁸ Policy RCE-1.1.2 reads in full: “Ensure that renovations, additions, and new construction in the area’s low-density neighborhoods respect the scale and densities of adjacent properties, provide new housing opportunities, and preserve parklike qualities, such as dense tree cover and open space.” 10-A DCMR § 2208.3 (emphasis added).

language contradicting the opponent's use of it. First, the objective applies to "low density neighborhoods." The residential blocks all surrounding the Property are designated as moderate density residential on the FLUM. Arguably this section does not apply to those blocks. Also, this section has an inherent contradiction in both encouraging "respect" and its objective to "provide new housing opportunities." The Project strikes that balance between respecting the scale and density of adjacent properties and providing new housing. The term "respect" does not mean "conform to". Instead, the Project "respects" the scale and densities of adjacent properties through setbacks, quality design on rear and alley façades and a modest height increase above surrounding residences.

- (vi) Some opponents complain about the MU-5A zone extending into the middle of Square 2704. (Ex. 254, 291, and 321.) The configuration of the MU-5A zone is not inconsistent with the Comprehensive Plan, which includes the FLUM showing the Property's Mixed-Use Moderate Density designation similarly extending into the middle of Square 2704. Likewise, the Small Area Plan calls for a FLUM and zoning change for the entire Property, which the Small Area Plan shows as extending into the middle of Square 2704 and which the Small Area Plan specifically, favorably notes has a "deep footprint," the clear implication of such feature being one of the elements making the Property the "best development site." That is, the Small Area Plan provides that the Property "has the best redevelopment potential within the next five years *because* it is located mid-block, has good visibility, a deep footprint, singularly owned, and two separate alley access points." (Small Area Plan at 34.) The emphasized "because" in the foregoing excerpt implies that the Property's deep footprint, single ownership, visibility, mid-block location, and multiple alley access points make the Property the "best" development site.

(b) Objections Regarding Alleged Project Impacts.

- (vii) Public Alley "Narrowing". Some opponents misstate that the Project is narrowing the existing public alleys. (Ex. 297, 737, 759 at 28-29, 789.) ("If Heleos/ Dance Loft are able to encroach upon the alley to decrease the width to 10 feet"; "they are unsafely narrowing the rest of the space that is utilized by existing residents."). The Project will occupy existing at-grade areas on the Property (private property) adjacent to the public alleys. That private property may be built upon as a matter-of-right and building upon it is not the equivalent of a narrowing the public alley. The Project is widening the existing 10-foot public alley to a minimum effective width of 15 feet between 14th Street N.W. and the garage entrance by setting the building back a minimum of five feet. (Ex. 525B.) Since the Property must be developed in accordance with the Applicant's plans showing that 15-foot widening, that widening will exist for as long as the Project exists. In addition, the Applicant provided evidence of its analysis of alley operations, including access for trash trucks, emergency vehicles, and loading operations, all of which will serve the Project from the widened alley at 14th Street, N.W. (Ex. 525J.) Further, the Applicant has chamfered the building

- at the southwest of the parking garage/loading entrance/exit to allow for truck turns to be made around this corner. (Ex. 525B.) The Applicant and DDOT will review other measures (lighting, one-way signage, mirrors, etc.) to improve operations throughout the entire alley network. The Commission finds that the Project does not narrow or adversely impact any public alleys.
- (viii) Traffic Safety and Transportation Impacts. Some opponents raised concerns about traffic safety and congestion. (Ex. 247, 310, 320, 741, 745, 748, 754, 765, 766.) The Commission finds that the PUD will not have adverse safety impacts that are not capable of being mitigated because the Project will add a relatively small number of cars to the neighborhood, and that number is no greater than the number of cars that could be added as part of a matter-of-right development of the Property. (Ex. 791.) Traffic safety impacts are mitigated by the Project's robust TDM measures. The Applicant's transportation study concluded that the Project is not expected to have adverse impacts in light of the mitigation measures proposed. (Ex. 308A.) The Project's transportation study evaluated the Project in accordance with DDOT-prescribed requirements. There is no indication that the WMATA Bus Garage's development will impose materially different conditions that would cause the Project to have adverse effects. (Ex. 791-792.)
- (ix) TDM Measures. One opponent encouraged "requiring the [Project's on-site management] to discourage car ownership by building residents using strong financial incentives (e.g., monthly subsidies for WMATA Smarttrip cards, Capital BikeShare, Free-2-Move Car-share and Uber use)". (Ex. 247.) The Applicant has included a robust TDM program, memorialized as a condition of this Order.
- (x) Trash and Pests. One opponent is concerned about trash and rodent impacts. (Ex. 754.) The Project's trash room is fully-enclosed within the Project's garage, a configuration that dramatically mitigates trash and rodent impacts on adjacent homes. Trash collection will occur regularly by professional services and pest control will occur as needed post-construction and as part of the CMP during construction. The Commission finds any trash and pest impacts capable of being mitigated and actually mitigated.
- (xi) Setbacks. Many opponents complain about the Project's setbacks. (Ex. 166, 173, 174, 185, 188, 192, 193, 197, 198, 199, 203, 204, 247, 252, 756. "[T]he distance from the Dance Loft property line to all abutting residential properties is far less than the distance to properties on the 14th street commercial corridor that are adjacent to the Dance Loft property"). The Project's setbacks relative to the neighboring residences range from 75 feet to the north (where the shadow impacts are greatest) to 66.5 feet to the west to 61.5 feet to the south (where the shadow impacts are negligible), all of which are sufficient and consistent with the guidance of the Small Area Plan. The Commission finds no adverse impacts from the Project's setbacks.
- (xii) Retail Tenants. Several opponents expressed concerns that "If [the Project] proceeds, six small businesses that many people use regularly would be displaced" and would "diminish the availability of local amenities that our neighbors rely on" (Ex. 191 and 320; *see also* Ex. 213, 247, 267, 295, 297,

310, 343, 426, 433, 677, 741, 756, 765, and Tr. 2 at 32.) The Retail Tenants themselves noted in a letter to the Commission accompanying its party status request withdrawal that “the agreement reached between the [Retail Tenants] and the [Applicant] mitigates potential adverse impact from the [P]roject on [the Retail Tenants’] businesses and corrects potential inconsistency between the project and the Comprehensive Plan’s objectives as it concerns our small businesses.” (Ex. 608C.) The Commission finds that any potential adverse effects on the Retail Tenants are adequately mitigated.

(xiii) Dance Loft and Residential Operations. One opponent speculated that “Given the limited financial means of the owners, with their dependence on grant money to survive, this PUD project could be abandoned, and allowed to fall into disrepair, leaving the immediate neighbors and tenants with major problems, and huge expenses.” (Ex. 213; *see also* Tr. 2 at 219.) The Applicant’s team will employ a professional management company to maintain the Project post-completion. (Ex. 525F.) Moreover, the Project’s affordable housing obligations will include maintenance covenants. (Ex. 525F.) The Commission finds any potential impact capable of being mitigated.

(c) Objections Regarding Benefits and Amenities.

(i) Green Space: One opponent objected that the Project lacks green space for existing and new neighbors to enjoy. (Ex. 343.) The Project does not include any new collective green space for existing residents (none exists today). The Project already includes commendable benefits and amenities. Public green space is not feasible on the Property given its size. However, multiple parks including Rock Creek Park, the Carter Barron recreational facility, and Upshur Park are located within a short walk away. The Commission finds that the Project’s benefits and amenities package is sufficient without public green space.

(ii) Dance Loft Benefit. One opponent questions the value of preserving Dance Loft as a “public benefit” under the PUD procedures of the Zoning Regulations because the Dance Loft is not “new”. (Ex. 213, 247, 249, 267, 302, 741, and 772A.) The preservation of an existing viable arts use is a *per se* public benefit under Subtitle X § 305.5(j) (“Public benefits of the proposed PUD may be exhibited and documented in any of the following or additional categories: Building space for special uses including, but not limited to, community educational or social development, *promotion of the arts or similar programs* and not otherwise required by the zone district.” Emphasis added.). That Dance Loft and Heleos have partnered on the PUD makes it an innovative model of arts preservation and does not diminish the benefits value of the Project. Similarly, Dance Loft would cease to operate at the Property if it had not acquired the property for the purpose of pursuing this Project via a PUD. As a result of the PUD, an arts use will be *required* to be in the Project. That requirement does not exist today, and that requirement to preserve and maintain arts programming is the heart of the benefit. The Commission finds that the Dance Loft is a well-run

organization capable of delivering on the benefits and amenities incorporated as part of this PUD and that it fills an important and much-needed arts function in the District. (Ex. 2G, 525G, 795C; Tr. 2 at 35-37, 146-149, 158-160, 169-170, 172-178, 184-186, 194-199.) Accordingly, the Commission finds that the preservation of Dance Loft is a benefit and amenity.

- (iii) Affordable Housing. Some opponents also question how the affordable housing will remain affordable for the life of the Project, how the units will be managed, and marketed, whether artists will have priority, and the value of one-bedroom and studio affordable units. (Ex. 213 and 247.) The Applicant confirmed that the Project's affordability requirements will be imposed for the life of the Project, and the units will be professionally managed. (Ex. 525F.) The Applicant anticipates marketing units to artists but cannot commit to reserving affordable units for anyone. (*Id.*) The Project's affordable one-bedroom and studio units are benefits, but the Project also includes 24 three-bedroom units, 16 of which will be affordable.
- (iv) Sustainability Benefits. Two opponents question the value of the Project's sustainability benefits ("There is no mention of the installation and use of water efficient and low energy appliances; no electrical car charging stations are being offered"). (Ex. 213 and 247.) The Project's sustainable design is also a *per se* benefit and amenity regardless of whether the existing non-LEED, non-EGC+ building provides solar panels. (*See* Subtitle X § 305.5(k)(5).) Further, one of the Project's parking spaces will include electric vehicle ("EV") stations for immediate use and an additional seven will be EV ready, for a total of 20% of the spaces when needed by residents. Finally, additional charging stations could be added in the future if demand so requires. (Ex. 525F; *see also* 755A6 at 10-16.) The Commission finds the Project's sustainability measures are a commendable benefit and amenity.
- (d) Objections Regarding Pre-Hearing Process.
 - (v) ANC and Community Outreach Process. Opponents complain about the nature of the ANC-led and Applicant-led meetings and about whether the Applicant proceeded in good faith during neighborhood discussions. (Ex. 185, 213, 254, 599, 661, 741, 744, and 772A.) One opponent complained about the virtual format of many meetings and her ability to participate in that forum. (Ex. 744.) The Commission finds that the ANC Report generally discredits these concerns. The ANC Report and testimony from Commissioners Campbell and Barry at the May 5, 2022 public hearing document in detail the exhaustive and lengthy community outreach effort. (Ex. 605, 775; Tr. 2 at 153-156.) Neither the ANC nor the Applicant stifled or limited community input or feedback. The ANC 4C03 commissioner held several meetings over the course of more than a year specifically for adjacent neighbors only and held a special in-person meeting on February 28, 2022 specifically for Project opponents to present. That meeting was well-attended by the public including three ANC commissioners and representatives of the Ward 4 Councilmember. While some might claim that

web meetings constrain participation in a way that in-person meetings do not, web meetings also enhance participation by allowing a much broader segment of the public to participate in ways that in-person meetings preclude. There are trade-offs, and the Commission finds that the Applicant met opponents both in person and online on numerous occasions over a lengthy period of engagement. (Ex. 525F and 605.)

- (vi) ANC Negotiations. Neighbors also ask for the ANC to “negotiate” or obtain additional benefits and amenities. (Ex. 185, 213, 254, 599, 741, 744, and 772A.) At the behest of the ANC, the Applicant augmented the already-robust benefits package directly in response to community-voiced concerns that were passed to the Applicant via the ANC. For instance, the Applicant added parking, a CBE commitment, First Source Employment Agreement, construction management commitments, a widened alley, a plan for retail tenants, and more. (Ex. 525F and 605.) The Commission grants the ANC’s views the statutorily-required great weight.
- (vii) DDOT and DC Water Reports. Opponents complained about the lack of a report from DDOT and DC Water. (Ex. 213 and 433.) Both DDOT and DC Water provided reports regarding the Project, taking no objections to the Application. (Ex. 658 and 667.)

77. FOFS Post-Hearing Response. Pursuant to Subtitle Z § 602.3, on June 14, 2022¹⁹ FOFS submitted a written response to the Applicant’s Post-Hearing Submission of May 26, 2022. (Ex. 798; the “**FOFS Post-Hearing Response**”.) The FOFS Post-Hearing Response raised the following objections in response to the Applicant’s Post-Hearing Submission:

- (a) Alternative Designs. FOFS asked for further analysis of alternative designs. (Ex. 798.) The Commission finds that alternative designs are not part of the Commission’s review, especially so when the proposal before the Commission complies with the Comprehensive Plan and has no unacceptable impacts that are not actually mitigated, as is the case with the Application.
- (b) Construction Costs. FOFS sets forth estimated construction cost information disputing the information previously provided by the Applicant. The information provided by FOFS is given without attribution, in an unsigned, unattributed portion of the FOFS Post-Hearing Response. (Ex. 798.) Contrastingly, the Applicant’s construction cost information was provided as part of materials provided by an expert in architecture. (Ex. 525E.) The construction costs cited by FOFS seem widely divergent from the corresponding figures in the excerpt of the DHCD RFP provided by the Applicant. (*Compare id.* (\$378/sf for concrete construction greater than five stores and \$318/sf for rehabilitation of concrete buildings greater than five stores) *with* Ex. 798 (\$250-295/sf for high-rise new construction).) In any event, the Commission finds that the Project’s construction costs and pro forma are not material to the evaluation criteria upon which the Commission bases its decision. Financial feasibility, and the relative feasibility of theoretical alternatives, are not

¹⁹ Pursuant to Subtitle Z §§ 403.7(a) and 407 on June 9, 2022, FOFS filed a motion seeking a time extension to file its response to the Applicant’s Post-Hearing Submission. (Ex. 797.) The Applicant filed no opposition to this motion, which the Commission granted.

the concern of the Commission when confronted with a proposal that satisfies the PUD standards otherwise, as the Application does.

- (c) Balancing Height and Density with Affordable Housing. FOFS questions how the Project balances impacts on neighbors with affordable housing benefits. (Ex. 798.) The Commission finds in favor of the Applicant’s analysis on this point: to the extent the Project’s height and density have adverse impacts on the surrounding rowhouses (e.g., shadow impacts, view impacts, and the like), those impacts are (i) modest (e.g., seasonal, in the case of shadows, and similar to impacts from existing rowhouses on other existing rowhouses), and (ii) acceptable because the impacts arise from the Project’s provision of affordable housing. A smaller, less impactful building would potentially have lesser impacts but also less benefit (i.e., less affordable housing). (Ex. 525E.) The magnitude of the Project’s benefit (and the Project’s mitigations) justifies its impact; hence, the Project satisfies the PUD balancing test.
- (d) Mitigation for Height and Density. FOFS also questions mitigation regarding height and density. (Ex. 798.) The Applicant previously provided testimony that the Project mitigates the impacts of its height and density. (Ex. 525E.) Namely, (i) the Project maintains a height that is similar to the tops of the highest structures in Square 2704; (ii) the Project has a four-sided design so that there is no “back” of the building; and (iii) the Project is setback from the property line above the second story to provide open space to the nearby residences. (*Id.*) The Commission finds the height and density of the Project appropriately mitigated.
- (e) Alternative Views. FOFS objected to the views provided in the Applicant’s Post-Hearing Submission. (Ex. 798.) The Applicant provided helpful views based on images that FOFS selected and provided in the record. The Commission finds no error in the views in the Applicant’s Post-Hearing Submission and no issue of contested fact.

78. Applicant’s Motion to Strike. On June 22, 2022 the Applicant moved to strike page 54 of the FOFS Post-Hearing Response as (a) non-responsive to any request by the Commission at the public hearing, and (b) erroneous and potentially harmful to Dance Loft. (Ex. 799.) *[Insert outcome of motion to strike]*

79. FOFS Draft Findings of Fact and Response to the Proposed Conditions. Pursuant to Subtitle Z § 403.7(d) and Subtitle X § 308.13, FOFS filed a response to the Applicant’s Proposed Conditions. (Ex. [__].)

CONCLUSIONS OF LAW

AUTHORITY

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve (a) a PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z and (b) a PUD-related amendment to the Zoning Map pursuant to Subtitle X § 303.12, Subtitle X, Chapter 5 and Subtitle Z.

STANDARD OF REVIEW FOR APPROVAL OF A PUD AND RELATED ZONING MAP AMENDMENT

2. **Public Review.** Pursuant to Subtitle X § 300.5, “A comprehensive public review by the Zoning Commission of a PUD is required in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits.”
3. **Land Area and Contiguity.** Pursuant to Subtitle X §§ 301.1, 301.5, the minimum area for a PUD in the applicable MU zones is 15,000 square feet, all of which must “be contiguous, except that the property may be separated only by public streets, alleys, or rights-of-way.”
4. **PUD Purpose.** Pursuant to Subtitle X §§ 300.1, 300.2, 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 building superior to what would result from the matter-of-right standards; (b) Offers a commendable number or quality of meaningful public benefits and project amenities; (c) Protects and advances the public health, safety, welfare, and convenience; and (d) does not circumvent the intent and purposes of the Zoning Regulations.²⁰
5. **Comprehensive Plan.** Pursuant to Subtitle X §§ 300.1, 300.2, 304.4(a), and 500.3, the Commission must find the PUD; “is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.” The Commission is directed to review the Application against the Comprehensive Plan “as a whole.”²¹ The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the Comprehensive Plan’s purposes are:
 - (1) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;

²⁰ The MU zones provide for mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities. The MU zones are designed to provide facilities for housing, shopping, and business needs, including residential, office, service, and employment centers. In the MU zones, buildings may be entirely residential, or may be a mixture of non-residential and residential uses. 11-G DCMR §§ 100.1-100.2, 100.4. In addition to the purpose statements of individual chapters, the purposes of the MU zones are to provide for (a) orderly development;” (b) “a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale”; (c) “shop-front buildings which may include a vertical mixture of residential and non-residential uses;” (d) “safe and efficient conditions for pedestrian and motor vehicle movement;” (e) “infill development [that] is compatible with the prevailing development pattern within the zone and surrounding areas”; (f) “preserv[ing] and enhance[ing] existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities; and (g) “buildings and developments around . . . transit hubs . . . to support active use of public transportation and safety of public spaces.” *Id.* § 100.3.

²¹ *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016) (“The Comprehensive Plan is a broad framework intended to guide the future land use planning decisions for the District. Even 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*. The Comprehensive Plan reflects numerous occasionally competing policies and goals and except where specifically provided, the Plan is not binding. Thus, the Commission may balance competing priorities in determining whether a PUD is consistent with the Comprehensive Plan as a whole. 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.”) (internal citations and quotations omitted.)

- (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.
6. Impacts. Pursuant to Subtitle X § 304.4(b), the Commission must find the Application “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”.
7. Benefits and Amenities. Pursuant to Subtitle X § 304.4(c), the Commission must find the PUD “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.” Pursuant to Subtitle X §§ 305.2, 305.3, 305.4, and 305.12, the PUD’s benefits and amenities must “benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions”, in majority part “relate to the geographic area of the Advisory Neighborhood Commission in which the application is proposed” and “meet the following criteria: (a) Benefits shall be tangible and quantifiable items; (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) Benefits may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need.” Moreover, a PUD “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.”
8. PUD Balancing Test. Pursuant to Subtitle X § 304.3, 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.” Pursuant to Subtitle X §§ 303.11 and 303.12: “The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission.” And “A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”
9. Evidentiary and Evaluative Standards. Pursuant to Subtitle X §§ 308.6 and 500.2 “the applicant shall carry the burden of justifying” the Application according to the applicable standards. Moreover, “the Commission must address each material contested issue of fact.”²²

²² *Barry Farm Tenants and Allies Ass’n. v. D.C. Zoning Comm’n.*, 182 A.3d 1214, 1224 (D.C. 2018) (citations omitted).

SATISFACTION OF PUD ELIGIBILITY STANDARDS

10. Land Area and Contiguity. The Commission concludes that the Application satisfies the minimum land area and contiguity requirements of Subtitle X §§ 301.1, 301.5 for a PUD because the Property consists of approximately 29,960 square feet of contiguous land area. (FF ¶ 14.)
11. Public Review. Based on the May 5 and May 12, 2022 public hearings (*see* Tr.2 and Tr. 3) and the Commission’s review of the record, the Commission undertook “A comprehensive public review . . . of [the Application] . . . to evaluate the flexibility or incentives requested in proportion to the proposed public benefits” in satisfaction of Subtitle X § 300.5.²³
12. PUD Purpose. The Commission concludes that the Project satisfies the purposes of a PUD:
 - (a) The Project is superior to a project that could be built under matter-of-right standards for the following reasons: (i) the Project provides significantly more affordable housing than would be required under the matter-of-right IZ requirements, (ii) the Project’s architecture and urban design are superior to what would be required without the design review requirement of a PUD, (iii) the Project’s Dance Loft retention and environmental benefits are superior to any matter-of-right requirements, and (iv) the Applicant’s public outreach and negotiation exercise, made possible by virtue of the Application being a PUD, is superior to any required of a matter-of-right development. (FF ¶ 52(a).)
 - (b) The Project also protects and advances the public health, safety, welfare, and convenience for the following reasons: (i) the Project’s sustainable building design and balconies protect and advance public health, (ii) the Project’s improvements to and along public alleys and to public street intersections protect and advance public health and safety, (iii) the Project’s affordable housing benefits protect and advance welfare, and (iv) the Project’s CaBi contribution, TDM measures, streetscape improvements, and overall design improve public convenience. (FF ¶ 52(b).)
13. Intent and Purposes of Zoning Regulations. The Project does not circumvent the intent or purposes of the Zoning Regulations because the Project does not require any flexibility from any single, specific element of the Zoning Regulations. (FF ¶ 52(c).) The Project is an orderly development with a mix of uses at an appropriate scale contemplated in the Small Area Plan and FLUM, in the form of a shop-front building with a vertical mix of residential and non-residential uses with a safe and efficient movement of vehicles via alley-access only and the effective widening of a public alley and improvements to pedestrian conditions. (FF ¶¶ 25-32.) The Project is infill development that is “compatible with”, though not the same as, the prevailing development pattern. The Project is compatible because of its high-quality design, comparable brickwork, setbacks at the second story and above from its north, west and east lot lines along the alleys of the “back” portion of the building, and use of prevailing topography to minimize differences in height between the Project and nearby residences. (*Id.*) The Commission concludes that the

²³ Commissioner Imamura reviewed the written transcript of the May 12, 2022 public hearing as noted on the record on July 14, 2022. (Transcript of Zoning Commission Public Meeting at x (July. 14, 2022) [“Tr. 4”].)

Project is “compatible” with nearby rowhouses notwithstanding that it taller and denser than such uses; that is, “compatibility” does not require uniformity, sameness, or lack of impacts. The Project preserves and enhances the existing 14th Street, N.W. commercial node with an appropriate scale of development and new shopping and arts opportunities. Finally, the Project, which is adjacent to the 14th Street, N.W. transit corridor, supports the active use of public transportation (both buses and CaBi) and enhances the safety of public space along 14th Street, N.W. and along public alleys in Square 2704. (FF ¶¶ 25-26, 31, and 52(c).)

CONSISTENCY WITH THE COMPREHENSIVE PLAN AND OTHER ADOPTED PUBLIC POLICIES RELATED TO THE PROPERTY (SUBTITLE X § 304.4(a))

14. The Commission concludes that pursuant to Subtitle X §§ 300.1, 300.2, 304.4(a), and 500.3, the Application—including the PUD, related amendment to the Zoning Map, and the benefits and amenities—is not inconsistent with the Comprehensive Plan and with other public policies and active programs, when the Comprehensive Plan is considered as a whole, for the following reasons:
- (a) GPM. The Application is consistent with the Property’s “Main Street Mixed Use Corridor” designation on the Comprehensive Plan’s GPM because the Project continues the form of a commercial business corridor with upper-story residential uses. The Application conserves and enhances the 14th Street, N.W. corridor with respect to economic and housing opportunities, with a disproportionate benefit for minority artists (who make up a disproportionate amount of Dance Loft’s artists and students) and residents (who disproportionately benefit from affordable housing programs). The Project supports transit use and the pedestrian environment through by enhancing CaBi and pedestrian infrastructure and by providing residents who will utilize transit. (FF ¶¶ 20, 46(a), and 54(a).)
 - (b) FLUM. The Application’s mix of uses and overall FAR of 3.79 is consistent with the FLUM designation. (FF ¶¶ 21, 46(b), and 54(a).)
 - (c) Land Use Element. The Application is not inconsistent with the Land Use Element as a whole. The Project advances the housing, cultural, and other use objectives of this Element notwithstanding that the Project necessitates demolishing existing structures. (FF ¶¶ 46(d) and 54(a).) The Commission has evaluated arguments that the Application is inconsistent with LU-1.4.6 and LU-2.4.5 specifically and concludes that it is not because those objectives do not require the Project to be the same height or density as nearby residences and concludes that the Application appropriately balances the need for additional affordable housing with the desire to respect surrounding residential blocks. (FF ¶¶ 46(d), 76(a).) The Commission gives OP’s analysis great weight on this issue. (FF ¶ 54(a).)
 - (d) Other District-Wide Elements. The Application is also not inconsistent with other District-wide Elements, which does not appear to be contested in the record. (FF ¶ 46(e)-(l).) The Commission recognizes that the Project may result in modest inconsistencies with individual policy objectives, but overall the Project advances the objectives of the other Elements, a conclusion in which OP concurs and to which the Commission gives great weight. (FF ¶ 54(a).)

- (e) Area Element. The Application is also consistent with the Area Element. The Commission has evaluated individual objections of opponents with respect to the Area Element and concludes that the better reading is that the Application is in keeping with the scale of surrounding development notwithstanding modest differences in size from nearby rowhouses. The Project also addresses parking and traffic issues through, among other things, TDM measures and a zoning-compliant parking count. The Commission gives OP's analysis great weight on this issue. (FF ¶ 54(a).)
- (f) Small Area Plan. The Commission also concludes that the Project is not inconsistent with the Small Area Plan, which was a materially contested issue. The Commission concludes that the Small Area Plan identifies the Property as a site for future development and a future upzoning consistent with the now-adopted FLUM. The Commission also concludes that although the Project may be taller, by a story, than a reference in the Small Area Plan, such a difference does not result in inconsistency with the Small Area Plan as a whole and the Project is also consistent with another reference in the Small Area Plan as to height and scale. The Small Area Plan clearly contemplates the entirety of the Property, to its full depth into the interior of Square 2704, to be a development site appropriate for multifamily residential use and ground floor non-residential uses. The Small Area Plan notes that the Property is the ideal redevelopment candidate for redevelopment in the area subject to such plan and notes its mid-block location and deep footprint as noteworthy characteristics to make it so. The Project's setbacks are consistent with the recommendations of the Small Area Plan as is the Project's responsiveness to parking concerns. Although the Small Area Plan notes the site is ideal for a grocery store, it also contemplates other types of uses, including a "healthy living studio" which is a broad enough definition to incorporate the Dance Loft use. The Commission concludes that the Small Area Plan does not foreclose arts uses at "Node Two" notwithstanding language encouraging such uses at "Node Three." (FF ¶¶ 23, 47, 54(b)-(c), 56, 73(a).) Even assuming FOFS's arguments that the Project is inconsistent with the Small Area Plan taken in part or in whole, the Small Area Plan is subordinate to the GPM, FLUM, and Land Use Element of the Comprehensive Plan, with which the Application is not inconsistent when those items are taken as a whole, when there is a conflict between those items and the Small Area Plan (e.g., with respect to height and/or density). (*See* 10-A DCMR § 2503.6.)
- (g) Mayor's Housing Order. The Application is not inconsistent with the Mayor's Housing Order to add units and affordable units. The Commission concludes there is no inconsistency with such Order and the Project's delivery of 67 affordable units in one location notwithstanding there are other affordable housing developments elsewhere in Ward 4. (FF ¶ 48.)
- (h) Historic Alley Buildings Survey. The Commission concludes that the Historic Alley Buildings Survey does not apply to the Application pursuant to the express terms of such Survey. Even if the Survey does apply to the Property, the Application is not inconsistent with any aspect of such Survey, which is given less weight than the GPM, FLUM, and Land Use Element of the Comprehensive Plan. The FLUM and

Small Area Plan contemplate the development of the entirety of the Property. (FF ¶ 73(b).)

- (i) Racial Equity Analysis. When viewed through the lens of racial equity, the Application is also not inconsistent with the Comprehensive Plan. The Project provides a meaningful amount of new affordable housing without displacing any residents. Although some minority-owned small businesses are displaced as a part of the Project, those effects have been mitigated according to a letter from the business owners themselves. The Project provides Black-led business opportunities and provides more opportunities for Black and other minority District residents to benefit from the amenities of Northwest DC. Moreover, the Application underwent an inclusive public outreach process. (FF ¶¶ 46(c), 76(d))
- (j) Benefits and Amenities. The Project's benefits and amenities are also consistent with the Comprehensive Plan, Small Area Plan, and Mayor's Housing Order. The Comprehensive Plan and Mayor's Housing Order identify new housing, affordable housing, family-sized housing, and deeply affordable housing as priorities, and the Project delivers those items as benefits. The Project's architecture and site planning benefits are also generally consistent with the relevant planning guidance. The sustainability, CBE/First Source, transportation, retail, and arts uses are also all consistent with the applicable planning and policy documents. (FF ¶¶ 50-51, 54(e).)
- (k) Overall. The Application is not inconsistent with the Comprehensive Plan, as a whole notwithstanding modest inconsistencies with individual policy objectives and notwithstanding minor inconsistencies with the Small Area Plan. The Application complies with the GPM and FLUM designation and achieves the objectives of the Land Use Element. The Commission gives OP's analysis great weight on this issue. (FF ¶¶ 54 and 56; Ex. 667 at 7: "OP continues to determine that, on balance, the proposal is not inconsistent with the Comprehensive Plan as a whole, including the maps and policy statements.") Although the Project's consistency with certain planning documents is a materially contested issue, the Commission concludes that the Applicant and OP have presented more compelling evidence that the Project is not inconsistent as a whole.

PROJECT IMPACTS – FAVORABLE, MITIGATED, OR ACCEPTABLE (SUBTITLE X § 304.4(b))

15. The Commission concludes that for the reasons given below and pursuant to Subtitle X § 304.4(b), the Application does not result in any unacceptable impacts on the surrounding area or District services or facilities that cannot be mitigated or that are not acceptable given the Project's benefits and amenities:

- (a) Height/Density-Related Impacts. The Commission does not agree with FOFS that the Project's height and density are *per se* impacts, although there are impacts that arise out of the Project's height and density. The Commission is sympathetic to FOFS and other opponents some of whom will experience a different condition than exists today in the center of Square 2704. The Commission concludes that the Project will result in some impacts on the surrounding area, including with respect to a modest increase in shadows, a change in views and light, modest loss of privacy, disruptions during construction of the Project, and future noises and lights. (FF ¶ 72, 75.) Such impacts are either capable of being mitigated or acceptable in

light of the Project's benefits and amenities. For instance, the Project's design (setbacks and façade materials) and the site topography mitigate shadow, view, and light impacts. Construction impacts are capable of being mitigated or are acceptable in light of the Project's ultimate benefits, which would not be possible but-for the proposed height and density. Likewise, potential changes in noise, light, and privacy are acceptable in light of the Project's benefits including its housing and arts benefits. (FF ¶ 50.)

- (b) Parking. The Commission concludes that the Project will have at most very modest parking impacts, which are either capable of being mitigated or acceptable in light of the Project's benefits. (FF ¶ 72.) The Project includes a DDOT-approved mitigation (i.e., TDM) plan. (FF ¶ 56.) The Project is also zoning-compliant with respect to parking. The Commission finds no unacceptable parking-related impacts.
- (c) Transportation. Similarly, with respect to transportation-related impacts generally, and impacts on the public alleys of Square 2704 specifically, the Commission concludes there are no impacts that are either incapable of being mitigated or unacceptable in light of the Project's benefits. (FF ¶ 72.) The Application's overall transportation impacts are modest, acceptable in light of adding affordable housing and preserving an arts use, and mitigated by the DDOT-approved TDM plan. (FF ¶ 56.) The alley impacts remain subject to further review in concert with DDOT, which the Commission concludes is adequate to mitigate any potential alley impacts. (FF ¶ 56.)
- (d) Environmental and Related Impacts. The Commission also concludes that the Project has no unacceptable impacts with respect to the environment, District facilities, and the like. (FF ¶¶ 72-76.) The Commission concludes that the Project will not have unacceptable impacts on future residents by virtue of the Property's proximity to the WMATA Northern Bus Garage in light of the ultimate planned mitigation of those impacts (through electrification of buses) and in light of the Project's benefits and sustainability measures. The Commission concludes there are no adverse environmental, infrastructure, or generalized impacts from the Project that cannot be mitigated or that are unacceptable in light of the Project's benefits.
- (e) Displacement of the Retail Tenants. The Commission concludes that the Project does have impacts on the Retail Tenants, but that such impacts are, by evidence from the Retail Tenants themselves, capable of being mitigated. (FF ¶ 76(b).)
- (f) Overall. The Project's potential impacts is a materially contested issue. Taken as a whole, the Project does result in some minor and modest impacts. However, none of those impacts, whether individually, collectively, or cumulatively with impacts from other development (e.g., the WMATA Northern Bus Garage) are unacceptable in light of the proposed mitigation and the benefits and amenities proffered by the Project.

BENEFITS AND AMENITIES (SUBTITLE X §§ 304.4(c))

- 16. The Commission concludes that for the reasons given below the Project's benefits and amenities satisfy the relevant criteria:
 - (a) Specific Benefits and Amenities. The Project includes eleven categories of benefits and amenities, each of which is specifically described. (FF ¶ 51.)

- (b) Not Inconsistent with the Comprehensive Plan. As described above, the Application is not inconsistent with the Comprehensive Plan nor are the benefits and amenities inconsistent with the Comprehensive Plan or other public policies applicable to the Property.
- (c) Relative to Matter-of-Right Development. The Project's benefits are superior to a matter-of-right development of the Property. The Project provides more affordable units, at deeper levels of affordability and with more three-bedroom units than would be possible as a matter of right. Likewise, the Projects sustainability features and Dance Loft component are superior to any matter-of-right development. The Project's other benefits would not be possible or required as part of a matter-of-right development.
- (d) Relate to Geographic Area of ANC. The Project's benefits relate primarily to the area of ANC 4C. (FF ¶ 51.)
- (e) Tangible and Quantifiable. Each of the Project's benefits is tangible and/or quantifiable. (*Id.*)
- (f) Measurable and Satisfied Prior to Certificate of Occupancy. Each of the Project's benefits is capable of being delivered or arranged prior to the issuance of a certificate of occupancy for the Project. (*Id.*)
- (g) Primarily Benefiting Neighborhood or Serving a Critical City-Wide Need. The Project's benefits primarily benefit the neighborhood around the Property (e.g., by mitigating house prices, by providing a sustainable building, by preserving an arts use and neighborhood retail, by providing a superior design), but some benefits serve a critical city-wide need (e.g., CBE/First Source commitments to District residents, affordable housing open to all residents of the District). (*Id.*)
- (h) Acceptable in All and Superior in Many. The Project's affordable housing, Dance Loft, sustainability, and other benefits are superior. All of the Project's benefits are acceptable. (*Id.*)
- (i) Overall. The Project's benefits and amenities are not a materially contested issue. FOFS and other opponents object to Dance Loft in certain respects and raise some concerns about affordable housing and sustainability benefits, however, those objections are not material. Even if such issues are material, each such concern is resolved in favor of the Application generally by the plain text of the Zoning Regulations and/or Comprehensive Plan. In sum, the Project's benefits and amenities satisfy the applicable criteria.

PUD BALANCING (SUBTITLE X §§ 304.3, 308.6)

- 17. The Commission concludes that the requested Zoning Map amendment and design 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, housing, family-sized housing, affordable housing, deeply affordable housing, environmental and sustainable benefits, CBE and First Source commitments, transportation improvements, arts uses of special value, and neighborhood retail uses. (FF ¶ 51.)
- 18. The Commission concludes that the benefits more than outweigh the requested flexibility and other development incentives and the potential adverse effects of the Project that are

not otherwise favorable or adequately mitigated. In particular, the Commission concludes that the Project's affordable housing benefits more than justify any potential modest impacts on nearby rowhouses (including shadow, view, privacy, design, parking, alley access and operations, noise, light, air, and construction period impacts) especially given the Project's mitigation of such impacts through thoughtful design and appropriate setbacks. The Project's provides more than six times the amount of affordable housing that would be required under IZ (67% proposed v. 8-10% per IZ) at much deeper levels of affordability than otherwise required. (FF ¶ 51(c).)

19. The Commission also concludes that the Applicant has carried its burden of justifying the request set forth in the Application by providing substantial evidence, reasonably acceptable, as to each element of the Commission's review of the Application as set forth above. The Commission concludes that the plans and drawings filed by the Applicant are expertly-prepared and highly-credible. (FF ¶¶ 33, 34, 36, 37, and 39.) The Commission has reviewed and evaluated FOFS's depictions of the Project and concludes that such evidence is less persuasive. (FF ¶ 73(g).) The Commission also evaluated the testimony and written evidence of the parties' respective transportation experts and finds that the Applicant's expert is credible and that his testimony was supported by DDOT's report. Accordingly, the Commission accepts the Applicant's reports as substantial evidence and believes that any inconsistencies or conflicts between the reports have been satisfactorily addressed in the Applicant's expert's testimony and rebuttal presentation.
20. The Commission also concludes that the information provided by the Applicant with respect to construction costs is reasonable and credible. (FF ¶¶ 36 and 39.) The information satisfactorily convinces the Commission that further analysis and discussion regarding shifting density on the site is not feasible. To the extent FOFS presented contradictory cost estimate information, the Commission is more inclined to give more weight to the Applicant's because the Applicant's information is consistent with the DHCD limits and was presented by a witness who was subject to cross-examination at the hearing, whereas the FOFS information was submitted an unattributed basis after the hearing. (FF ¶¶ 73(g), 77(b).) The Project satisfies the applicable standards as proposed and does not need to be optimized, redesigned, or reduced to satisfy the evaluation criteria. Ultimately, the Commission reviews the Application as proposed, and the proposed Application is satisfactory.
21. In addition, the Commission has made findings on "each material contested issue of fact." (FF ¶¶ 73, 75-77.) In particular, while the Commission notes that it is not its function to consider all the possible alternatives to development of the Property, but rather to evaluate whether the PUD satisfies the applicable standards for the Application (including whether the Project "results in unacceptable project impacts on the surrounding area"),²⁴ the

²⁴ See *Spring Valley-Wesley Heights Citizens Ass'n v. District of Columbia Zoning Comm'n*, 88 A.3d 697, 715 (D.C. 2013) ("It was not the function of the Commission to consider all the possible alternatives to development of the East Campus; its only task was to evaluate whether the proposed site will become objectionable to neighboring properties").

Commission has made findings regarding contested issues involving potential alternative configurations for the Project. (FF ¶ 77(g).)²⁵

GREAT WEIGHT TO RECOMMENDATIONS OF OP

22. The Commission is required to give “great weight” to the recommendation of OP pursuant to Section 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 § 405.8.²⁶
23. The Commission finds OP’s analysis of the Application, its conclusion that the Application satisfied the PUD requirements and is not inconsistent with the Comprehensive Plan or Small Area Plan, and its recommendation to approve the Application persuasive and concurs with OP’s recommendation. (FF ¶¶ 53-56.).

GREAT WEIGHT TO THE WRITTEN REPORT OF ANC 4C

24. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to Section 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, Section 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.²⁷ The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.”²⁸
25. The Commission evaluated concerns raised by FOFS and other opponents about the ANC Report and the ANC process (FF ¶ 76(d)) and sees no basis to not give the ANC Report the statutory weight it is due.
26. ANC 4C’s report stated its reasons for supporting the Application, and did not list any issues or concerns with the Project. The Commission found the explanation for the ANC’s support to be persuasive. (FF ¶¶ 67-68.) The Commission concurs in the ANC’s testimony that there is no basis to oppose the Project. (Ex. 775.)

²⁵ See *Barry Farm Tenants and Allies Ass’n v. D.C. Zoning Comm’n.*, 182 A.3d 1214, 1225 (D.C. 2018) (although “the Commission is not charged with evaluating all possible alternatives, it must make findings on all contested issues”).

²⁶ See *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).

²⁷ *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).

²⁸ *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).