

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF
COLUMBIA ZONING COMMISSION ORDER NO. 21-26
Z.C. Case No. 21-26
NRP Properties LLC
(Consolidated Planned Unit Development and
Related Zoning Map Amendment @ Square 772-N, Lot 3)
September 29, 2022**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a virtual public hearing on July 18, 2022, to consider the application (the “Application”) of NRP Properties, LLC (“Applicant”) to construct of a new mixed-use building with all-affordable dwellings (the “Project”) in Square 772-N. The Applicant requested the following relief under the Zoning Regulations for 2016, Title 11 of the District of Columbia Municipal Regulations (the “Zoning Regulations”):

- A consolidated planned unit development (“PUD”), pursuant to Subtitle X, Chapter 3, and Subtitle Z, Chapter 3;
- A related amendment to the Zoning Map (“Map Amendment”) from the PDR-1 zone to the MU-30 zone, pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 3;
- Flexibility from the vehicular parking requirements pursuant to Subtitle X § 303.1 and Subtitle C § 701.5;
- Flexibility from the loading requirements pursuant to Subtitle X § 303.1 and Subtitle C § 901.1;
- Flexibility from the minimum land area requirements for a PUD pursuant to Subtitle X § 301.3;

for the property located at 301 Florida Avenue NE (Square 772-N, Lot 3) (the “Property”). The public hearing was conducted in accordance with Subtitle Z, Chapter 4. For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

I. Background

Parties

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

- The Applicant;
 - Advisory Neighborhood Commission 6C (“ANC 6C”), the ANC in which the Property is located and, therefore, an “affected ANC” pursuant to Subtitle Z § 101.8.
 - Advisory Neighborhood Commission 5D (“ANC 5D”), which is located across Florida Avenue NE from the Property and, therefore, an “affected ANC” pursuant to Subtitle Z § 101.8.
2. The Commission received no requests for party status.

Notice

3. Pursuant to Subtitle Z § 301.6, on October 18, 2021, the Applicant mailed a Notice of Intent to file a Zoning Application to all property owners within 200 feet of the Property, to ANC 6C and to ANC 5D. (Exhibit (“Ex.”) 3B).
4. Pursuant to Subtitle Z § 402, the Office of Zoning (“OZ”) provided notice of the July 18, 2022 virtual public hearing by:
- A May 11, 2022 letter with the Notice of Public Hearing sent to: (Ex. 17, 18)
 - The Applicant;
 - ANC 6C;
 - ANC 5D;
 - ANC Single Member District (“SMD”) 6C06;
 - Councilmember Charles Allen;
 - Office of ANC;
 - Office of Planning (“OP”);
 - D.C. Department of Transportation (“DDOT”);
 - D.C. Department of Consumer and Regulatory Affairs (“DCRA”);
 - Zoning Commission lead attorney;
 - D.C. Department of Energy and Environment (“DOEE”);
 - At-Large Councilmembers and the Chair of the Council; and
 - Owners of property within 200 feet of the Property.
 - Publication of the Notice of Public Hearing in the May 20, 2022 edition of the *D.C. Register*. (Ex. 16).
5. Pursuant to Subtitle Z § 402.3, the Applicant posted notice of the hearing on the Property on June 7, 2022 and maintained such notice. (Ex. 19, 25).

The Property

6. The Property has approximately 8,720 sq. ft. of land area. The Property is a triangular-shaped lot with frontage on Florida Avenue NE, N Street NE, and 3rd Street NE. (Ex. 3). The Property is currently unimproved.

7. The Zoning Commission previously approved a PUD and map amendment application under Zoning Commission Case No. 15-22 for the Property. However, the project approved under Case No. 15-22 was not constructed. (Ex. 3).
8. The Property is located in the NoMa neighborhood across the street from the Union Market district. The surrounding area is primarily improved with high-density, mixed-use buildings, many of which were constructed pursuant to Zoning Commission approvals. (Ex. 3).
9. The NoMa/Gallaudet U Metrorail Station is 0.1 miles from the Property. There is a bus stop by the Property's frontage on Florida Avenue that provides access to bus lines 90 and 92. There are two nearby Capitol Bikeshare stations, and DDOT intends to construct dedicated bicycle lanes on each side of Florida Avenue. (Ex. 3).

Current Zoning

10. The Property is currently located in the PDR-1 zone, which is intended to "permit moderate-density commercial and PDR activities employing a large workforce and requiring some heavy machinery." Subtitle J § 200.1. The PDR-1 zone permits a maximum floor-area-ratio ("FAR") of 2.0 to 3.5 and a maximum building height of 50 feet. *See* Subtitle J §§ 202.1; 203.1. Multi-family residential uses are not permitted in the PDR-1 zone. *See* Subtitle U § 801.1(w).

Comprehensive Plan

11. The Comprehensive Plan's (Title 10A of the D.C. Municipal Regulations) Future Land Use Map ("FLUM") identifies the Property as mixed-use "High-Density Residential," "High-Density Commercial," and "Production, Distribution and Repair" uses. The "High-Density Residential" designation includes "neighborhoods and corridors, generally, but exclusively, suited for high-rise apartment buildings" where "density is typically greater than a FAR of 4.0, and greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development." 10A DCMR § 227.8. The "High-Density Commercial" designated is defined to include "commercial areas with the greatest scale and intensity of use in the District...with densities greater than a FAR of 6.0..." 10A DCMR § 227.13.
12. The Comprehensive Plan's Generalized Policy Map ("GPM") identifies the Property as "Central Washington," which is "the heart of Washington, DC" and a place "of greater important to the District, the region and the nation." 10A DCMR §§ 1600.1; 1600.3. The Central Washington Area Element refers to NoMa as a "former light industrial enclave [that] is today a vibrant and mixed-use neighborhood." 10A DCMR § 1600.9. As such, the Comprehensive Plan encourages a "mix of land uses in Central Washington to attract a broader variety of activities and sustain the area as a the hub of the metropolitan area." 10A DCMR § 1608.2.

NoMa Vision Plan

13. The Property is subject to the NoMa Vision Plan and Development Strategy (“NoMa Vision Plan”), a small area plan enacted in 2010. The NoMa Vision Plan proposes a vibrant, walkable, mixed-use neighborhood with housing and retail opportunities. The Property is within “Neighborhood Transition Area B,” which is encouraged to be a “mix of diverse residential and nonresidential uses, with greater height and density along rail tracks, Florida Avenue and N Street...” (Ex. 3).

II. The Application

The Project

14. The Project proposes to construct a new, 12-story plus penthouse, mixed-use building at the Property. (Ex. 3).
15. Overall, the Applicant proposes the Project to have:
- Approximately 101,268 sq. ft. of gross floor area (“GFA”), plus habitable penthouse space, for a total FAR of 11.6.
 - A maximum building height of 120 ft. plus a penthouse of 17 ft.
 - A lot occupancy of 98%.
 - 115 dwelling units to include 30 two-bedroom units and 24 three-bedroom units. The Project will also have residential amenities to include a children’s play room, a gym, a computer lab and library, and a conference room. All of the residential units will be affordable, and the Applicant proposes to make 57 units available at or below 50% Median Family Income (“MFI”) and 58 units available at or below 30% MFI. All units will have either external balconies or “Juliet” balconies.
 - Approximately 2,999 sq. ft. of ground level, non-residential space.
 - 51 long-term bicycle parking spaces and 26 short-term bicycle parking spaces.
 - No on-site parking or loading facilities.
 - Public space improvements to include a 2-foot setback on Florida Avenue NE to allow for a wider sidewalk area, new tree boxes around the site, and plantings and other landscape features.
- (Ex. 3, 3G1-3G4).

Applicant's Submissions, Revisions and Testimony

16. On December 3, 2021, the Applicant filed the initial Application and related materials. (Ex. 1-3G4).
17. On April 29, 2022, the Applicant filed a prehearing statement (Ex. 13-13B), which responds to the issues and comments raised by the Commission during the March 10, 2022 set-down meeting as well as OP's comments in its February 28, 2021 report (Ex. 12). In sum, the prehearing statement included the following:
 - Architectural Updates: The Applicant provided an updated architectural plan set that included changes to the Project's ground floor plan, the façade design, removal of an architectural embellishment that projected over a small national park abutting the Property, site plan updates and an updated plat;
 - Bay Projection: In response to OP comments, the Applicant incorporated a discussion of building code and public space requirements with respect to the proposed bay projections on Florida Avenue. The Applicant also referenced that its representatives met with DDOT and will be pursuing a public space application and a code modification for the bay projections;
 - Public Realm Design: The Commission requested more detail on the Applicant's public space design. The Applicant provided additional detail, including a discussion of new features. The revised public space design has a 75-foot lay-by on N Street that will function as a loading zone and a 62-foot-long no parking zone on 3rd Street that will provide space for ride-share pick-up and drop-off, food deliveries and package deliveries. The Applicant also enclosed a Loading Management Plan ("LMP") to review with ANC 6C and DDOT;
 - Affordability Levels: In response to the Commission's request, the prehearing submission provides further explanation of the Applicant's proffered affordability levels for the residential units; and
 - Racial Equity Analysis: The Applicant provide an analysis of the Application through a racial equity lens, as required by the Comprehensive Plan under § 2501.7.
18. On June 13, 2022, the Applicant submitted a Comprehensive Transportation Review ("CTR") prepared by Gorove/Slade, the Applicant's traffic and transportation expert. (Ex. 21-21B).
19. On June 29, 2022, the Applicant filed a supplemental statement (Ex. 22-22D), as permitted under Subtitle Z § 401.5, which included the following:
 - Architectural Updates: The Applicant provided an updated architectural plan set that included revisions to the public space design in response to ANC 6C comments, minor refinements to adjust for rendering errors in the previous plan set, and additional detailing for the balconies, signage and venting;

- Community Outreach: The Applicant included a discussion of community outreach with ANC 6C. The Applicant explained the community's requests to improve the on-street loading options. As such, the Applicant worked with DDOT to enhance the N Street lay-by with improved striping and stamping as well as new proposed signage. The Applicant also included signage for the 3rd Street no-parking zone. The submission also provides additional information on the non-residential trash room;
- Agency Outreach: The Applicant provided a synopsis of continued outreach to D.C. agencies in connection with the Application;
- Racial Equity Analysis: The Applicant provided a supplemental analysis of the Application through a racial equity lens, which included publicly available data on the neighborhood; and
- Witness Testimony: The Applicant included a summary of witness testimony with expert witness resumes.

20. Testimony at the public hearing on July 18, 2022, including a powerpoint presentation. (Ex. 27A1-A2). Four witnesses testified during the Applicant's presentation: Chris Marshall from NRP Properties LLC; Babatunde Oloyede from Marshall Heights Community Development Organization; Jeff Goins from PGN Architects; and Daniel Solomon from Gorove/Slade Associates. Mr. Goins and Mr. Solomon were accepted as expert witnesses by the Commission.

21. As part of its presentation, the Applicant testified that it agreed to two of three conditions requested by ANC 6C concerning commercial trash removal and Capitol Bikeshare membership. The Applicant testified it did not agree to ANC 6C's condition language concerning Residential Parking Permit ("RPP") program restrictions in residential leases for the Project, but, instead, proposed alternative condition language it would be willing to adopt.

22. On August 22, 2022, the Applicant filed a post-hearing submission responding to issues and comments from the Commission during the July 18, 2022 hearing. (Ex. 32-32C). The post-hearing submission included the following:

- Architectural Updates: The Applicant included revised architectural plans to address comments from the Commission during the July 18, 2022 hearing. The revised architectural plans provide more detail or requested revisions to the rooftop screening, ground level design at the corner of 3rd Street and N Street, E-Bike storage, increasing the size of balconies, green roof access and exhaust venting;
- Affordability Clarification: As requested by the Commission, the Applicant provided an additional explanation of the affordability proffer. The Applicant confirmed 57 units are reserved for households at or below 50% MFI and 58 units reserved for households at or below 30% MFI;
- RPP Discussion: As a follow up to discussion during the hearing about ANC 6C's

proposed RPP restrictions, the Applicant outlined that it will continue to work with ANC 6C, which does not meet until September. The Applicant also summarized a letter in the record from the D.C. Department of Housing and Community Development (“DHCD”) regarding its objections to ANC 6C’s proposed RPP restrictions; and

- Draft Proffers and Conditions: The Applicant enclosed draft proffers and conditions pursuant to Subtitle X § 308.8.¹

23. On _____, the Applicant filed proposed findings of fact and conclusions of law pursuant to Subtitle Z § 601.1. (Ex. ____).

Relief Requested

24. The Applicant requested the Commission approve a consolidated PUD with a related Map Amendment to the MU-30 zone district. As a result of the PUD and Map Amendment, the Project can achieve the additional height and density in the chart below:

Development Standards	PDR-1	MU-30	Proposed Project
Height	50 ft.	110 ft. (130 ft. with PUD)	120 ft.
FAR	2.0-3.5	10.0/12.0 with IZ (14.4 with PUD)	11.6
Penthouse Height	12 ft. plus 3 ft. for mechanical	20 ft.	17 ft. (10 ft. for habitable; 7 ft. for mechanical)

25. The Applicant requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1, as follows:

- To provide zero off-street vehicular parking spaces where 19 spaces are required for the Project pursuant to Subtitle C § 701.5;
- To provide zero loading berths or service-delivery spaces where 1 loading berth and 1 service-delivery space is required for the Project pursuant to Subtitle C §

¹ The Applicant included a Motion to late file the proffers and conditions because the filing was made more than seven days after the hearing, as required under Subtitle X § 308.8. On September 29, 2022, the Commission granted the Motion and accepted the filing into the case record.

901.1;

- To allow the minimum land area requirement for a PUD in the MU-30 zone to be decreased from the required 15,000 sq. ft. to the provided 8,720 sq. ft. pursuant to Subtitle X § 301.3.

26. The Applicant also requested certain design flexibility to vary elements of the final plan set approved by the Commission and still comply with the requirements of Subtitle X § 311.2 and Subtitle Z § 702.8 to construct the Project in complete accordance with the final approved plans.

III. Applicant's Justification for Relief

27. **Consistency with Comprehensive Plan and Other Public Policies (Subtitle X § 304.4(a))**. The Applicant provided evidence that the Application complies with Subtitle X § 304.4(a) because it is not inconsistent with the Comprehensive Plan and other public policies related to the Property, which includes the NoMa Vision Plan, as follows:

- *GPM*: The Project is not inconsistent with the GPM's designation for the Property of "Central Washington" because the Project is a vibrant, mixed-use building that will improve a currently vacant site in the middle of high-density and walkable neighborhood. (Ex. 3). More detailed policies are identified below under the Central Washington Area Element analysis.

- *FLUM*: The Project is not inconsistent with the FLUM's designation for the Property, which is a mix of uses to include "High-Density Residential," "High-Density Commercial," and "Production, Distribution and Repair." The Comprehensive Plan's Framework Element defines "High-Density Residential" to include "neighborhoods and corridors, generally, but not exclusively, suited for high-rise apartment buildings," where density greater than a 4.0 FAR "may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development." 10A DCMR § 227.8. Similarly, the Framework Element defines "High-Density Commercial" to include "commercial areas with the greatest scale and intensity of use in the District." 10A DCMR § 227.13. Densities greater than 6.0 FAR are predominant in the "High-Density Commercial" designation. *Id.* The Project will have a density, scale and mix of uses that is in context with the surrounding built environment, which is almost exclusively high-density, mixed-use development. Additionally, as noted in the OP reports (Ex. 12, 24), the provision of housing, and especially affordable housing, allows the High-Density Residential and Commercial designations to outweigh the "Production, Distribution, and Repair" designation even though the Project does not provide any PDR uses. (Ex. 3).

- *Citywide Elements*: The Project is not inconsistent with a number of policies reflected in the Comprehensive Plan's Citywide Elements, including:

- Land Use Element: The Project will provide 115 new units of affordable housing with ground level non-residential space within blocks of a

Metrorail station. The Project will provide infill development of a long-vacant site in the high-density NoMa neighborhood and directly across from Union Market. The Project encourages non-auto-oriented transit, such as public transportation, bicycling and walking. (Ex. 3).

- Transportation Element: The Project will improve the surrounding public space to encourage pedestrian and bicycle transportation. The Project discourages personal automobile use by not providing any on-site parking. Additionally, the removal of curb cuts from the site will allow better pedestrian and bicycle connections to metro and the surrounding neighborhood. The Project will exceed its long-term bicycle parking requirements and, therefore, residents will be more likely to utilize bicycle transportation. These findings are supported by the reports of both the Applicant's transportation expert, Gorove Slade, as well as DDOT. (Ex. 3, Ex. 13-13B, 21-21B, 22-22D, 23).
- Housing Element: The Project will be all-affordable and includes 54 family-sized, two- and three-bedroom units, in a high-cost, downtown neighborhood. The residential units are provided in perpetuity at 30% and 50% MFI, a deeper affordability level than required by IZ. The Property's location will ensure that families have access to one of the City's most "well-resourced" neighborhoods. (Ex. 3).
- Environmental Element: The Project will add new landscaping throughout the adjacent public space, including new street trees. The Applicant is committed to achieving an Enterprise Green Communities Plus certification, which is a higher level of performance in what is already a leading standard for affordable housing development. The Project will also have a green roof and a solar panel array. (Ex. 3, 22-22D).
- Urban Design Element: The Project will provide exceptional urban architecture through the use of a memorable flatiron design and articulation as well as high-quality materials. The Project will activate the surrounding streetscape by incorporating ground level retail, large amounts of glazing, and other improvements to the public realm. (Ex. 3, 22-22D, 32-32C).

- *Area Element*: The Application implements the goals of the Central Washington Area Element by proposing a high-density, mixed-use development with residences and street-activating commercial space. Through the 115 new affordable units, the Project furthers the Central Washington Area Element goals for new housing and housing diversity. The proposed public space improvements will make the site more pedestrian-friendly. (Ex. 3).

- *NoMa Vision Plan*: The Application is consistent with the over-arching development goals set forth in the NoMa Vision Plan, which include providing a diverse mix of uses, creating a pedestrian friendly neighborhood with improved transit accessibility and vehicular circulation, creating a vibrant, highly walkable environment with landscaped, attractive streets, contributing to strong architectural identity, and incorporating environmentally friendly and sustainability features. The NoMa Vision Plan also identifies

the Property as within "Neighborhood Transition Area B," where the plan calls for a "[m]ix of diverse residential and nonresidential uses, with greatest height and density along rail tracks, Florida Avenue and N Street." (Ex. 3).

- *Racial Equity Lens*: The Project furthers the Comprehensive Plan's "racial equity" goals by providing a new and all-affordable residential building in the middle of a vibrant highly-amenitized neighborhood that is proximate to the District's central business district. The Project will reserve all of its units for low- and moderate-income individuals and families in perpetuity. The Project will not result in the displacement of any existing residents as the Property is currently unimproved. The Project will also provide a Resident Resource Center that will be run by the MHCDO. The resource center will offer a wide range of services tailored to specific residents' needs, including financial planning, workforce development skills, environmental, health and wellness, community-building, and more. Based on publicly-available housing data, the Project will provide a substantial increase over the existing affordable housing stock in ANC 6C. Additionally, the Mayor's 2019 Housing Equity Report identifies a goal of creating 1,040 new affordable housing units in the Central Washington planning area, which the Comprehensive Plan identifies as much of Downtown DC and includes the NoMa neighborhood where the Property is located. *See* 10A DCMR § 1600. Overall, the Project supports the findings in the Mayor's Housing Equity Report, which states that "when low-income residents can move or afford to live in high opportunity neighborhoods, they thrive." (Ex. 13, 22).

28. **No Unacceptable Impacts on the Surrounding Area or to City Services (Subtitle X § 304.4(b))**. The Application asserted that the Project satisfies the requirements of Subtitle X § 304.4(b) because the Project will not result in any unacceptable impacts to the surrounding area or to city services and facilities, as the impacts are either favorable, capable of being mitigated or acceptable given the quality of public benefits, as follows:

- The Project will have a favorable impact on land use and zoning by improving a vacant lot in the NoMa neighborhood with a mixed-use building that includes 115 affordable residential units. The proposed MU-30 zone district is consistent with the surrounding buildings in terms of height and density. The planned improvements to public space will be a positive for the neighborhood and pedestrian system. (Ex. 3).
- The Project will not have unacceptable impacts on city services and facilities as the Property is already served by major utilities; the nearby school network can accommodate an increase to enrollment; and there are ample services such as recreation, library and fire and emergency personnel to meet the needs of the Project's residents. With respect to the transportation network, the Project provides excellent access to alternative forms of transportation, the Applicant's traffic expert from Gorove/Slade found no unacceptable impacts (Ex. 21-21B), and the Project's provision of bicycle parking in excess of requirements will encourage alternative forms of transportation to and from the site. Additionally, the Applicant has provided an extensive TDM plan and LMP to reduce impacts to the transportation network (Ex. 3, 21-21B, 22-22D).
- The Project will not have unacceptable environmental impacts because it is

designed to meet the Enterprise Green Communities Plus certification and will include a green roof and solar panels. (Ex. 3). The Project will also meet or exceed the green-area-ratio requirement under the Zoning Regulations. (Ex. 3).

29. The Project Provides Specific Public Benefits and Amenities (Subtitle X § 304.4(c)).

In accordance with Subtitle X § 304.4(c), the Project will provide specific public benefits and amenities that are not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to the Property. The Applicant's benefits and amenities 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. *See* Subtitle X §§ 305.2, 305.3. The Application proposes the following public benefits and project amenities:

- **Superior Urban Design and Architecture (Subtitle X § 305.5(a)):** The Project's flatiron design offers place-making architectural style and will create a memorable imprint on the NoMa neighborhood. The façade styling is intended to highlight the primary form of the flatiron design through different scales, detailed patterns, and projections. The ground floor will incorporate brick and glass on all three sides to enhance the pedestrian experience. The roof level will incorporate a three-foot metal embellishment to emphasize the corners of the Project and the triangular site. (Ex. 3, 22-22D, 32-32C).
- **Site planning and efficient and economical land utilization (Subtitle X § 305.5(c)):** The Application proposes to activate a vacant site in the middle of a vibrant neighborhood and improve a relatively small parcel with 115 new units of affordable housing and ground level commercial space. The Project efficiently utilizes the Property by not providing any on-site parking or loading but ensures limited impact through transportation mitigation measures and a loading management plan. (Ex. 3, 13-13B, 22-22D, 32-32C).
- **Housing (Subtitle X § 305.5(f)):** The Project will provide housing that exceeds the amount that would have been required through matter-of-right development under existing zoning and provides units with three or more bedrooms. Under the existing PDR-1 zone, the Property could only be improved with a single dwelling unit. Accordingly, the Project will provide an additional 114 units over the amount permitted through by-right development.² The Project also provides 24 three-bedroom units. (Ex. 3).
- **Affordable Housing (Subtitle X § 305.5(g)):** The Project proposes 115 affordable units at deeper level of affordability than required under IZ. The Project will have 57 units at or below 50% MFI and 58 units at or below 30% MFI. (Ex. 3)

² As set forth in the Application, the Project also provides an additional 33,252 sq. ft. of housing over that permitted in the MU-9 zone. The same site was subject to the Zoning Commission's approved PUD-related map amendment to the MU-9 zone under ZC Case 15-22.

- **Environmental and Sustainable Benefits (Subtitle X § 305.5(k))**: The Applicant proposes for the Project to achieve Enterprise Green Communities Plus certification, which is an increased level of rigor over-and-above the baseline 2020 Enterprise Green Communities criteria, the latter of which can be fairly regarded as compared to a LEED Gold certification. The Project also incorporates sustainability features such as a green roof and solar panel array. The Project will provide a 0.3 green area ratio, which exceeds the requirement of 0.2 by one-tenth. (Ex. 3).
- **Streetscape Plans (Subtitle X § 305.5(l))**: The Project will make significant improvements to the surrounding streetscape, which is currently dilapidated and insufficient to meet the multi-modal goals for the neighborhood. The Project's Florida Avenue façade will be setback two feet to allow for a sidewalk expansion that will create a more pedestrian-friendly atmosphere along Florida Avenue and encourage greater walkability in the neighborhood. The Project also proposes extensive landscaping around the site, including 14 new street trees. The Applicant designed a lay-by and a loading zone to address community concerns with regard to circulation and loading for the Project. Additionally, the Project's ground level is designed to activate the streetscape with more pedestrian-friendly features, including floor-to-ceiling windows and a bay projection for the commercial space along N Street. The Applicant has also designated an outdoor seating area for the commercial space. (Ex. 3, Ex. 13-13B, 22-22D, 32-32C).
- **Other Public Benefits Advancing Policy Objectives (Subtitle X § 305.5(r))**: The Project will dedicate approximately 1,377 sq. ft. to a toddler play area, 926 sq. ft. to a gym, and 1,213 sq. ft. to a computer lab/library. These Project amenities advance policy objectives in the Comprehensive Plan by offering space for families and to enrich the lives of residents. These amenities are not common in all-affordable projects, particularly those in a high-cost neighborhood. The toddler play area will provide a safe and secure space for residents to bring their small children. The gym will promote an active and healthy lifestyle amongst residents and offer a convenient and free alternative to expensive gym memberships that may not be realistic for the Project's lower income residents. (Ex. 3).

IV. Responses to the Application

Office of Planning

30. OP submitted a report dated February 28, 2022 (the "**OP Setdown Report**", Ex. 12) recommending that the Commission set the Application down for a hearing based on OP's conclusion that the Project is not inconsistent with the Comprehensive Plan or the NoMa Vision Plan and meets the requirements of Subtitle X, Chapter 3. The OP Setdown Report requested additional information from the Applicant regarding the bay projections on

Florida Avenue.

31. OP submitted a report dated July 8, 2022 (the "OP Hearing Report", Ex. 24) recommend that the Commission approve the Application. The OP Hearing Report concluded that:
- The Project, on balance, is not inconsistent with the Comprehensive Plan and would further policy statements under the Land Use, Transportation, Housing, Environmental Protection, Economic Development and Urban Design Citywide Elements, and the Central Washington Area Element. The Project is not inconsistent with the Property's FLUM and GPM designations. With respect to the "Production, Distribution and Repair" designation, the OP Hearing Report found that the emphasis on housing, and especially affordable housing throughout the Comprehensive Plan text, outweigh the PDR stripe in this case;
 - The Project is consistent with the NoMa Vision Plan;
 - The Applicant responded to the issues and concerns identified in the OP Setdown Report and raised by the Commission at the March 10, 2022 public meeting;
 - OP is supportive of the requested zoning flexibility from the standards for vehicular parking, loading and minimum land area; and
 - The Project provided benefits and amenities that are commensurate with the related Map Amendment and other requested zoning flexibility through the PUD.
32. At the July 18, 2022 public hearing, OP testified in support of the Application and noted the Project can "reduce the anticipated shortage of affordable units within the Central Washington Planning Area by 2025 by 40 percent." (Tr. 44-46).

DDOT Report

33. DDOT filed a report dated July 8, 2022 (the "DDOT Report," Ex. 23) stating that it has no objection to the Application and supports the requested zoning relief from the parking and loading requirements. DDOT conditioned its support on the Applicant implementing the proposed Transportation Demand Management ("TDM") Plan and LMP for the life of the project as reflected in the Applicant's Comprehensive Transportation Review (Ex. 21A). DDOT also noted it does not object to the 50-foot truck restriction the Applicant and ANC 6C were discussing but had not yet finalized.
34. At the public hearing on July 18, 2022, DDOT testified in support of the Application. (Tr. 46). DDOT also testified that the Project will not be eligible for the RPP program and, therefore, "any resident at this property, regardless of which of the three streets you choose as your address, would not be eligible when they go to the DMV to get a parking pass anyways. (Tr. 51).

Additional Agency Reports

35. In addition to OP and DDOT, the D.C. Department of the Environment and Energy (“DOEE”) submitted a report on the Application, which is included with the OP Hearing Report. (Ex. 24). Overall, DOEE applauded the Applicant for pursuing Enterprise Green Communities Plus certification and made other suggestions about how the Project can be designed in an energy- and environmentally-friendly manner.

ANC Report

36. ANC 6C submitted a resolution dated July 18, 2022 (the “ANC Report,” Ex. 28), which was adopted at a duly noticed and regularly scheduled monthly meeting, with a quorum present. The ANC Report states ANC 6C’s “strong support” for the Project and the proposed amount of affordable housing. However, the ANC’s support was subject to three conditions with respect to trash, parking, and alternative transportation measures:

- As to the trash, the ANC noted its concern as to whether the size of the trash room for the commercial space. The ANC requested conditions required “a) the commercial tenant being required in the lease to provide for frequent (6 days/week) collection and b) the lease further stipulating that if the tenant fails to do so, the landlord has the right to contract for such services on the tenant’s behalf and to bill back the costs.”
- As to parking, the ANC supported the Applicants request for parking relief but sought to mitigate any impacts to on-street parking by conditioning its support on “residential leases expressly a) barring tenants from seeking or obtaining such [RPP] permits/privileges and b) making violations a basis for termination of the lease.”
- As to alternative transportation measures, the ANC wanted the Applicant to encourage greater use of Capital Bikeshare by including a condition that “the building owner provide each residential unit with a free Capital Bikeshare annual membership (at \$5/year under the Capital Bikeshare for All program, <https://capitalbikeshare.com/pricing/for-all>) for the life of the building.”
- In addition, the ANC Report noted that the ANC had concerns with the Applicant’s proposal for curbside loading; however, the Applicant’s revised curbside management plan, which included improved surface treatment and signage and a 50-foot truck restriction, addressed the ANC’s concerns. (Ex. 28).

37. During the hearing on July 18, 2022, the ANC 6C’s representative testified and reiterated ANC 6C’s support for the Project as well as its request for the conditions enumerated in the ANC Report. With respect to RPP, ANC 6C’s representative stated that ANC 6C is seeking the condition because there are “not adequate controls administratively within

DDOT" to effectively police the RPP program. (Tr. 55-60).

38. ANC 5D did not submit a resolution into the case record, nor did a representative of ANC 5D appear at the public hearing on July 18, 2022.

Letters in Support or Opposition

39. On July 15, 2022 the Coalition for Smarter Growth submitted a letter of support for the Project. (Ex. 26). The Coalition for Smarter Growth expressed strong support for the Project, emphasized the racial equity analysis tool and the large number of home for individual and families who need them. (Ex. 26).
40. DHCD submitted a letter of support for the Project. (Ex. 31). DHCD's letter states that it has committed funding to the Project, and that ANC 6C's proposed condition with respect to RPP restrictions would be against the District's interests. Specifically, the DHCD letter states "any condition requiring the owner/management to terminate the tenant's lease if the tenant is found to have obtained a Residential Parking Permit (RPP) would be contrary to the District's interests, policy, and the efficacy of our affordable housing efforts. Such a condition may also result in Fair Housing Act (FHA) and Human Rights Act (HRA) violations." As such, DHCD encouraged the Commission to approve the Application without ANC 6C's proposed RPP condition. (Ex. 31).
41. There were no letters of opposition filed in the case record. Additionally, no individuals or groups spoke in support or opposition at the Commission's hearing.

National Capitol Planning Commission ("NCPC")

42. NCPC submitted letter dated September 1, 2022 stating that the Application was not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact any other identified federal interests. (Ex. 33).

IV. 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 Consolidated PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 300 and a PUD-related map amendment pursuant to Subtitle X, § 303.12.

Standard of Review for Approval of PUD and PUD-related Map Amendment

2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:

- (a) Results in a Building superior to what would result from the matter-of-right standards;
 - (b) Offers a commendable number or quality of meaningful public benefits; and
 - (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.
3. Pursuant to Subtitle X §303.11: “The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission.”
4. Pursuant to Subtitle X § 303.12: “A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”
5. Pursuant to Subtitle X §§ 303.1 and 303.13: “As part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards. Any such flexibility shall be considered the type of development flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”
6. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must: “Judge, balance, and reconcile the relative value of the public benefits and Building amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case;” and must find that the proposed development:
 - (a) Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;
 - (b) Does not result in unacceptable Building 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 Building; and
 - (c) Includes specific public benefits and Building 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.
7. A PUD’s proposed public benefits must comply with Subtitle X § 305.12: “A Building 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. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP’s purposes as: (1) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; (2) to

guide executive and legislative decisions on matters affecting the District and its citizens; (3) to promote economic growth and jobs for District residents; (4) to guide private and public development in order to achieve District and community goals; (5) to maintain and enhance the natural and architectural assets of the District; and (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.

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

"The Comprehensive Plan is a 'broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm'n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). '[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.' *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous 'occasionally competing policies and goals,' and, '[e]xcept where specifically provided, the Plan is not binding.' *Id.* at 1167, 1168 (internal quotation marks omitted). Thus 'the Commission may balance competing priorities' in determining whether a PUD is consistent with the Comprehensive Plan as a whole.' (*D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm'n*, 73 A.3d 107, 126 (D.C. 2013).) '[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.'" (*Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016).)

Compliance with PUD Eligibility Standards

10. For a PUD in the MU-30 zone, the Zoning Regulations require a minimum land area of 15,000 sq. ft. pursuant to Subtitle X § 301.1. However, the Property has 8,720 sq. ft. of land area. (Findings of Fact ("FF") 6).
11. For a parcel within Zone Group 6, which includes the MU-30 zone, the Commission may waive the minimum land area to no less than 5,000 sq. ft. if the Commission finds that the "development is of exceptional merit and is in the best interests of the District of Columbia" and one of the following: (a) The development is identified in an approved Small Area Plan and will be generally not inconsistent with the Small Area Plan; (b) the development will be constructed or operated by the District of Columbia or federal government and serves a compelling government interest; or (c) If the development is to be located outside the Central Employment Area, at least eighty percent (80%) of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto." *See*

Subtitle X § 301.3.

12. The Commission agrees with OP's analysis, as stated in the OP Hearing Report, and finds the Project meets the standard of Subtitle X § 301.3. As such, the Commission waives the minimum land area for the Application to 8,720 sq. ft. (FF 31).

Consistency with the Comprehensive Plan and Public Policies (Subtitle X § 303.4(a))

13. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the burden of proof that the Project, including the PUD and related Map Amendment, is not inconsistent with the Comprehensive Plan, considered in its entirety, and other public policies and active programs related to the Property.
14. The Commission concludes that the Application is not inconsistent with the GPM's "Central Washington" designation for the Property because the PUD and Map Amendment will allow for a new all-affordable, mixed-use building to be constructed in the middle of a vibrant and walkable neighborhood. The Commission also notes the Project's consistency with the Central Washington Area Element's emphasis on housing diversity, including highly affordable units. (FF 12, 27).
15. The Commission concludes the Application is not inconsistent with the FLUM's mixed-use High-Density Residential/High-Density Commercial/Production, Distribution and Repair designations for the Property because:
 - The Property's current PDR-1 zoning is inconsistent with the high-density, mixed-use FLUM designation, as multi-family housing is not permitted in the PDR-1 zone;
 - The Project's density and mix of uses are consistent with that envisioned by the High-Density Residential and High-Density Commercial designations;
 - The High-Density Residential designation is used to define neighborhoods with high-rise apartment buildings. While this designation is usually defined by densities up to 4.0 FAR, the Comprehensive Plan acknowledges that densities greater than 4.0 may be achieved through IZ compliance or the PUD process;
 - The High-Density Commercial designation is used to define the central employment district, other major office centers, and other commercial areas with the greatest scale and intensity of use in the District, and commonly includes densities with FAR greater than 6.0; and
 - The Commission agrees with OP's analysis that the Project's provision of 115 new all-affordable units in a highly-amenitized and transit-oriented neighborhood outweighs the FLUM's designation for Production, Distribution and Repair uses, which generally requires any development to include PDR space. (FF 11, 27).

16. The Commission concludes that the Project is not inconsistent with the Central Washington

Area Element. The Commission finds that the Area Element incorporates policies that encourage high-density, mixed use development with residences and street-activating commercial space. The Commission also notes the Area Element's support for new housing and housing diversity. The proposed public space improvements will make the site more pedestrian-friendly as called for in the Area Element. (FF 27).

17. The Commission concludes that the Project furthers the goals of the Comprehensive Plan's Citywide Elements, including the Land Use, Transportation, Housing, Environmental and Urban Design Elements. In particular, the Commission emphasizes the over-arching goal in the Land Use and Housing Elements to provide new affordable housing in the District. The Project will provide 115 new units of highly-affordable housing in an excellent location with access to amenities, public transportation and employment opportunities. The Project is designed to be family-friendly, with 30 two-bedroom units and 24 three-bedroom units as well as the toddler play-room and computer lab/library. The Project proposes substantial improvements to the surrounding public space in order to improve walkability and connectivity around the site, as well as includes both long-term and short-term bicycle parking that exceeds the minimum zoning requirements. The Project is also designed with exceptional and memorable architecture, high-quality materials, and to meet Enterprise Green Communities Plus standards. (FF 27).
18. The Commission concludes that the Project is not inconsistent with the Racial Equity goals of the Comprehensive Plan. Overall, the Project will provide affordable housing opportunities, at deep levels of affordability, in a neighborhood where many such opportunities do not currently exist as reflected in increases to median income levels over the past 20 years. The new housing will be provided without displacing any existing residents, as the Property is currently unimproved. To that end, the Commission agrees with the Applicant and OP's analysis finding that the Project's 115 units of new affordable housing will substantially increase the existing affordable housing stock in ANC 6C. Similarly, the Commission acknowledges the Project's contribution to the goals in the Mayor's 2019 Housing Equity Report to create 1,040 new affordable housing units in the Central Washington planning area. The Commission agrees that the location of the Project provides residents with substantial ability to improve their lives through access to opportunities and amenities in the context of job training, education and access to the Resident Resource Center. To that end, the Project's Resident Resource Center offers invaluable social services and education. (FF 27).
19. The Commission finds the Project is consistent with the NoMa Vision Plan, which incorporates policy goals encouraging high-density, mixed-use and walkable neighborhoods. The NoMa Vision Plan also specifically identifies the area along the rail tracks by Florida Avenue and N Street (where the Property is located) as a place to be improved with the "greatest height and density." (FF 27).

Potential Adverse Impacts – How Mitigated or Outweighed (Subtitle C § 304.4(b))

20. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts that are not capable of being

mitigated or outweighed by the Project's proffered public benefits and amenities as detailed below.

21. The Commission concludes the Project will not create any unacceptable impacts to land use and zoning because:

- The Project will improve a long-vacant parcel in the middle of a high-density, transit-friendly neighborhood;
- The increase to height and density permitted as a result of the Map Amendment to the MU-30 zone is being used to add substantially more affordable housing to the neighborhood on a relatively small site;
- The proposed height, density and mix of uses in the Project is consistent with the surrounding built environment in NoMa and the Union Market district, as many of the buildings are constructed to a similar building height of 11-12 stories; and
- Due to the Property's "island" location surrounding by three public streets, the Project is buffered from all neighboring uses and will not directly abut any lower density uses, which are located to the east on Florida Avenue. (FF 6, 8, 28).

22. The Commission concludes the Project will not create any unacceptable impacts to city services and facilities or that any impacts are capable of being mitigated or acceptable given the Project's public benefits because:

- The Property is already served by major utilities; the nearby school network can accommodate an increase to enrollment; and there are ample services such as recreation, library and fire and emergency personnel to meet the needs of the Project's residents; and
- The Project could result in impacts to the transportation network as a result of the Project providing no parking or loading; however, those impacts are capable of being mitigated or are otherwise acceptable given the level of public benefits in the Project. First, the Project's level of affordability reduces the likelihood of vehicular use in addition to the excellent access to alternative forms of public transportation, including Metrorail and Metrobus. The number of long-term and short-term bicycle parking spaces will also mitigate transportation impacts by encouraging the use of bicycles. Second, the pedestrian network will be improved through the Applicant's public space plan, which will improve pedestrian connectivity in and around the site. Third, the Applicant agreed to all of DDOT's proposed TDM plan and LMP. Fourth, the Commission finds that the Applicant's public space plan, which includes a 75-foot lay-by for loading and a 62-foot zone for ride share and package delivery, provides sufficient alternative loading arrangements to off-set the lack of on-site loading. The Commission also commends the Applicant, as did

ANC 6C, for working with the community on the public space plan to address loading concerns. (FF 9, 17, 19, 28, 36).

23. The Commission concludes the Project will not create any unacceptable impacts on the environment. The Project is designed to meet Enterprise Green Communities Plus certification and includes sustainability features such as a large green roof and solar array. The Project will also exceed its green-area-ratio requirement under zoning. (FF 28).

PUD Flexibility Balanced Against Public Benefits (Subtitle X § 304.4(c))

24. Based on the case record and the Findings of Fact above, the Commission concludes the Application satisfies the balancing test under Subtitle X §§ 304.3 and 304.4(c) because the requested zoning flexibility is outweighed by the Application's public benefits and amenities outweigh
25. The Commission concludes the Application's proposed amendment to the Zoning Map from the current PDR-1 zone to the MU-30 zone is appropriate because the MU-30 zone is consistent with the Comprehensive Plan and allows for a density that is consistent with the surrounding area. The Map Amendment is directly correlated with the primary public benefit of affordable housing by increasing the permitted density at the Property. (FF 29).
26. The Commission concludes that the Application's request for development flexibility from the standards for parking and loading are appropriate because:
- The Property's location with excellent access to alternative forms of transportation, including train, bus, bicycle and pedestrian networks;
 - The Property is relatively small with triangular dimensions that make the provision of parking and loading difficult. The Property's triangular shape makes access to a potential below-grade garage challenging due to required ramping and turning radii;
 - Alternatively, if the Project was to provide at-grade parking and loading, it would result in the loss of important square footage that could be dedicated to more affordable housing units or amenities for residents; and
 - The Applicant agreed to an extensive TDM plan and LMP proposed by DDOT, and worked with the ANC to refine the plans to add more conditions.
27. The Commission concludes the Application's request for flexibility from the minimum land area requirement is appropriate as described in Paragraph 12 above.
28. Whereas, the Commission concludes the Application provides superior public benefits that benefit the surrounding neighborhood or general public to a significantly greater degree

than what would result from a matter-of-right development at the Property. (FF 29).

29. The Commission concludes that the Project will provide superior urban design and architecture (Subtitle X § 305.5(a)) due to its memorable flatiron design that will provide an excellent addition to the neighborhood architecture. The Project features high-quality materials on all three sides of the fully-exposed building and will greatly improve the pedestrian experience through the use of large amounts of glazing. (FF 29).
30. The Commission concludes that the Project will provide superior site planning and efficient and economical land utilization (Subtitle X § 305.5(c)) because the Project will improve a long-vacant and relatively small site in the middle of a vibrant neighborhood with 115 new units of affordable housing and ground level commercial space. The Project will make efficient use of Property by not providing any on-site parking or loading, and instead focusing on improvements to the pedestrian network. (FF 29).
31. The Commission concludes that the Project will provide superior housing benefits (Subtitle X § 305.5(f)) because the 115 units of housing is significantly greater than that permitted under matter-of-right PDR-1 zoning. The Project also provides 24 three-bedroom units. (FF 29).
32. The Commission concludes that the Project's most substantial benefit is the amount of affordable housing (Subtitle X § 305.5(g)). The Project proposes 115 all-affordable units, with 57 units at or below 50% MFI and 58 units at or below 30% MFI. The Project exceeds the amount of affordable housing that would be normally required under the IZ program both in terms of amount and level of affordability. Under by-right PDR-1 zoning, there would be no IZ set aside requirement because the Property could only be improved with one dwelling. Even if IZ was applicable, the Zoning Regulations dictate that an IZ rental unit must be set aside at 60% MFI. By comparison, all of the Project's units will be set aside at levels of affordability below 50% MFI. (FF 29).
33. The Commission concludes that the Project will provide superior environmental and sustainable benefits (Subtitle X § 305.5(k)) by achieving Enterprise Green Communities Plus certification, and incorporating sustainability features such as a green roof and solar panel array. The Project will also exceed its green-area-ratio requirement. (FF 29).
34. The Commission concludes that the Project will provide superior streetscape plans (Subtitle X § 305.5(l)) because the Project will make significant improvements to the public space around the Property, which are critical given the Property's location and access to public transportation. The Project will sacrifice square footage by providing a two-foot setback along the Florida Avenue façade that will allow for an expanded sidewalk on Florida Avenue. The Project will beautify the site with extensive landscaping and street tree plantings. The Applicant worked extensively with ANC 6C to design the N Street lay-by and 3rd Street loading zone in order to address community concerns related to loading and traffic. Additionally, the Project's ground level is designed to activate the streetscape with more pedestrian-friendly features, including floor-to-ceiling windows and a bay projection for the commercial space along N Street. The Applicant has also designated an

outdoor seating area for the commercial space. (FF 29).

35. The Commission concludes that the Project provides other superior public benefits that advance policy objectives (Subtitle X § 305.5(r)), including the proposed toddler room, gym and computer lab/library. These Project amenities will provide space for individuals and families and are particularly commendable given the Project's affordability and high-cost location. (FF 29).

"Great Weight" to the Recommendations of OP

36. The Commission must give "great weight" to the recommendation of OP, pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016)).
37. The Commission finds persuasive OP's evaluation of the Application as having satisfied the applicable PUD standards, including that the Application is not inconsistent with the Comprehensive Plan as a whole and other applicable public policies; the requested zoning flexibility for the Map Amendment as well as from the standards for parking, loading, minimum lot area is appropriate; and that the Application's public benefits and amenities are commensurate with the zoning flexibility requested. (FF 30-32).

"Great Weight" to the Written Report of the ANC

38. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." *Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).
39. The ANC Report references "strong support" for the Application, and places a particular emphasis on the Project's provision of "dozens of family-sized units" at "deep levels of affordability." The ANC Report states that the affordable housing and family-sized housing, alone, "provides strong justification for the requested PUD flexibility." The ANC also commended the Applicant for "exemplary efforts" in engaging ANC 6C to understand its concerns and adjust the Project as needed. (FF 36; Ex. 28).
40. The ANC Report identifies four areas where ANC 6C has concerns with the Project:

loading, trash, parking, and promoting alternative transportation modes.

41. With respect to loading, ANC 6C expressed concerns regarding the adequacy of the Project's off-site loading. Within the ANC Report, ANC 6C acknowledges that the Project's current public space proposal "largely addresses our concerns," including the surface treatment and signage plan, and the limitation on 50-foot trucks. As such, the Applicant sufficiently addressed ANC 6C's loading concerns. (FF 36; Ex. 28).
42. With respect to trash, ANC 6C expressed concerns whether the proposed trash room for the commercial space would be adequate to accommodate the commercial tenant. (FF 36; Ex. 28). To address this concern, ANC 6C proposed a condition regarding the frequency of required trash pick-up from the commercial space, and an enforceability term within any lease for the commercial space. At the hearing, the Applicant stated it had agreed to this condition. (Tr. 24). Therefore, the Applicant sufficiently addressed ANC 6C's trash concerns.
43. With respect to parking, the ANC Report states that it "support[s] the request here to provide zero parking spaces." (FF 36; Ex. 28). ANC 6C's representative reiterated its support for the parking flexibility at the hearing. (Tr. 57). Yet, in an effort to mitigate impacts to on-street parking supply, the ANC proposed a two-pronged condition stating residential leases would expressly bar tenants from seeking or obtaining an RPP permit *and* that violations of that provision would be cause to terminate such residential lease. ANC 6C requested this condition because it believes there are inadequate controls for the RPP program within DDOT that potentially allow otherwise ineligible residents to obtain an RPP. (Tr. 57-59).
44. At the hearing, the Applicant stated it had agreed to incorporate the first prong of the condition to require that all residential leases have language barring tenants from seeking or obtaining an RPP. (Tr. 24-25). However, the Applicant did not agree to the second prong of the condition that a residential lease would be terminated if the resident sought or obtained an RPP permit. The Applicant asserted that impacts to on-street parking are already mitigated through the TDM plan, and that car ownership rates for low-income households are "extremely low." As such, there will be minimal need for any residents to utilize the RPP program. (Tr. 62-64).
45. DDOT testified that the Property is not eligible for RPP and, as such, the requested condition is not necessary. (Tr. 51). DDOT also acknowledged that the RPP database temporarily did not function properly but had since been corrected so that the database is "up-to-date." (Tr. 52). The Commission also notes DHCD's letter in the record, which establishes that the Project will be funded by DHCD and that any lease restriction allowing for termination of a tenant for an RPP violation is against the "District's interests, policy and the efficacy of our affordable housing efforts." (Ex. 31). The Commission acknowledges, as stated by DCHD, that such a condition may also result in Fair Housing Act (FHA) and Human Rights Act (HRA) violations." (Ex. 31). Overall, DCHD strongly opposes the inclusion of ANC 6C's requested condition allowing for lease termination due to RPP violations.

46. Taken as a whole, the Commission concludes that ANC 6C's issues and concerns with respect to on-street parking have been adequately addressed through the Applicant's TDM plan and the agreed-to condition to incorporate residential lease language notifying each tenant that the Project is not qualified for RPP and requiring the tenant to acknowledge that they are not eligible to apply for RPP. The Commission finds that ANC 6C supports the Project, including the requested flexibility to provide no off-street parking. The Commission also relies on the statements of DDOT that its database can accurately identify if a parcel is not eligible for RPP. The Commission further relies on DHCD's letter that ANC 6C's proposed condition is against public policy and could be in violation of the Fair Housing Act and Human Rights Act.
47. Finally, with respect to promoting alternative transportation modes, the ANC Report proposes a condition that would require the Project owner to provide each "residential unit with a free Capital Bikeshare annual membership for the life of the building." (FF 36; Ex. 28).
48. At the hearing, the Applicant stated it had agreed to provide every new resident with a free SmarTrip Card or a free Capitol Bike Share membership, as a way to reduce the adverse impacts of providing no parking. (Tr. 25). Therefore, the Applicant sufficiently addressed ANC 6C's alternative transportation concerns.

DECISION

Based on the case record, the testimony at the public hearing, and the above Findings of Fact and Conclusions of Law, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for:

- A Consolidated PUD;
- An amendment of the Zoning Map to rezone the Property from the PDR-1 zone to the MU-30 zone;
- Flexibility from the minimum land area requirements for a PUD (Subtitle X § 301.3);
- Flexibility from the requirements for vehicular parking (Subtitle C § 701.5); and
- Flexibility from the requirements for loading (Subtitle C § 901.1).

Said approval is subject to the following guidelines, conditions, and standards. Whenever compliance is required prior to, on or during a certain time, the timing of the obligation is noted in bold and underlined text.

A. Project Development

1. The Project shall be developed substantially in accordance with the architectural plans and drawings submitted on June 29, 2022 at Exhibits 22A1-22A8, as modified in the Applicant's Post-Hearing Submission dated August 22, 2022, and marked as Exhibit 32A1-A2 in the case record (collectively, the "Architectural Plans"), subject to the

following areas of flexibility:

- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided such variations do not change the exterior configuration or appearance of the building;
- b. To vary the final selection of the colors of the exterior materials, based on availability at the time of construction, provided such colors are within the color ranges shown on the Architectural Plans approved by the Commission;
- c. To make minor refinements to exterior façade details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, balcony railings and trim, or any other changes, providing such minor refinements do not substantially alter the Architectural Plans approved by the Commission and are necessary to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
- d. To vary the number of residential dwelling units by an amount equal to plus or minus 10% from the number depicted on the Architectural Plans approved by the Zoning Commission or as dictated by the D.C. Department of Housing and Community Development's financing requirements;
- e. To vary the location, attributes and general design of the streetscape incorporated in the project to comply with the requirements of and the approval by the D.C. Department of Transportation's Public Space Division;
- f. To vary the font, message, logo and color of the approved signage for the Project, subject to full compliance with applicable signage restrictions under the D.C. Building Code and consistent with the indicated dimensions and materials shown on the Architectural Plans approved by the Commission; and
- g. To vary the features, means and methods of achieving the required GAR and Enterprise Green Communities Plus Certification.

B. Certificate of Occupancy Requirements

2. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall furnish a copy of its preliminary Enterprise Green Communities Plus certification application to the Zoning Administrator demonstrating that the building has been designed to meet the Enterprise Green Communities Plus standard for residential buildings.

C. Requirements for the Life of the Building

3. **For the life of the Building**, The Applicant shall provide affordable housing as set forth in the following chart titled "Affordable Housing Chart" (the "Affordable Chart"):

Residential Unit Type	Percentage of Total	Unit Count	Income Type	Affordable Control Period	Affordable Unit Type
Total	100%	115			
DHCD Affordable Units	50%	57	Up to 50% MFI	Perpetual	Rental
DHCD Affordable Units	50%	58	Up to 30% MFI	Perpetual	Rental

- a. The Affordable Chart assumes that the Applicant will be granted an exemption from the Inclusionary Zoning Regulations (“IZ”) set forth in Subtitle C, Chapter 10 of the Zoning Regulations, pursuant to 11 DCMR Subtitle C § 1001.6. However, the Commission takes no position as to whether an exemption from the IZ Regulations should be granted;
 - b. Each control period shall commence upon the issuance of the first certificate of occupancy;
 - c. Should the exemption from the IZ Regulations be granted, the affordable housing requirements of this condition shall be stated in the covenant required under 11 DCMR Subtitle C § 1001.6(a)(4); and
 - d. Should the exemption from the IZ Regulations be denied, the Applicant shall provide affordable housing in accordance with this condition, unless the IZ Regulations impose more restrictive standards. The Applicant shall record the covenant required by the Inclusionary Zoning Act as to 10% of the residential gross floor of the Project, and shall execute the monitoring and enforcement documents required by 11 DCMR Subtitle X § 311.6 as to the remaining residential gross floor area.
4. **For the Life of the Project**, at least 24 of the dwelling units will be three-bedroom units.
 5. **For the Life of the Project**, the Applicant shall implement the following Transportation Demand Management (“TDM”) measures:
 - a. Identify a Transportation Coordinator for the planning, construction, and operations phases of development. The Transportation Coordinator will act as the point of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
 - b. Develop, distribute, and market various transportation alternatives and options to residents, including promoting transportation events (e.g., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications;

- c. Direct the Transportation Coordinator to subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
 - d. Provide welcome packets to all new residents that will, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map;
 - e. Post all transportation and TDM commitments on the building website, publicize availability, and allow the public to see what has been promised;
 - f. Offer a SmarTrip card and one (1) complimentary Capital Bikeshare coupon good for a free ride to every new resident;
 - g. Provide at least 26 short- and 51 long-term bicycle parking spaces, exceeding ZR-16 minimum requirements for at least six (6) short- and 38 long-term bicycle parking spaces; and
 - h. Accommodate non-traditional sized bicycles including cargo, tandem, and kids bicycles in the long-term bicycle storage room, with two (2) spaces that will be designed for longer cargo/tandem bicycles, six (6) spaces that will be designed with electrical outlets for the charging of electric bicycles and scooters, and dual electrical outlets installed at 6-foot intervals throughout the storage room to accommodate additional electrical bicycles and scooters in the future. There will be no fee to building employees or residents for the usage of the bicycle storage room, and strollers will also be permitted to be stored in the bicycle storage room.
6. **For the Life of the Project**, the Applicant shall provide the following loading management measures:
- a. Residential and retail loading managers will be on duty during delivery hours. Each loading manager will be responsible for coordinating and scheduling loading activities with tenants and will work with its counterpart loading manager (retail or residential) as well as the community and neighbors to resolve any conflicts should they arise;
 - b. Lease provisions will require all residential tenants to use only the designated loading zone for all move-in and move-out activities through coordination with the loading zone;
 - c. All tenants and retail vendors will be required to schedule deliveries that utilize the loading zone (any loading operation conducted using a truck 20-feet in length or larger);

- d. The residential and retail loading managers will schedule deliveries using the loading zone such that the zone's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the loading zone is full, that driver will be directed to return at a later time when the loading zone will be available so as to not compromise safety or impede N Street functionality;
- e. The residential and retail loading managers will coordinate with its counterpart loading manager (residential or retail) to ensure that double-parking does not occur adjacent to the loading zone and that trucks accessing the loading zone do not block vehicular or bicycle traffic along N Street;
- f. Trucks using the loading zone will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight);
- g. The residential and retail loading managers will be responsible for providing suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading zone as well as notifying all drivers of any access or egress restrictions. The residential and retail loading managers will also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The residential and retail loading managers will coordinate to post these materials and other relevant notices in a prominent location adjacent to the loading zone;
- h. The residential and retail loading managers will coordinate with building staff to roll trash receptacles from the building to the curb along N Street for collection. Trash bins will be rolled to the curb at the time of collection and will be expeditiously returned to the building trash room;
- i. The proposed signage for the 75-foot loading zone on N Street and the 62-foot no parking zone on 3rd Street shall be as reflected in the curbside management plan in Exhibit 22B of the case record. However, the restrictions and placards will be determined by DDOT's Curbside Management Division (CMD) during public space permitting;
- j. The loading zone along N Street will be approximately 75 feet in length and solely dedicated to residential and retail loading for the building. The pick-up/drop-off zone along 3rd Street will be approximately 62 feet in length and is intended for vehicular pick-up/drop-off. The loading zone on N Street shall be designed with striping and stamping as reflected in the curbside management plan in Exhibit 22B of the case record. However, the exact design and dimensions will be determined by CMD during public space permitting;
- k. Delivery trucks over 50 feet in length will be prohibited from serving the site;

- l. The residential and retail loading managers will use traffic cones to block off the loading zone and actively manage deliveries and move-ins/outs;
- m. The residential and retail loading managers will call 311 to obtain DPW enforcement of the parking restriction in the loading zone and pick-up/drop-off zone as needed; and
- n. The Applicant will provide a curbside management and signage plan, as well as a copy of this LMP, in the public space construction permit application.

D. ANC Mitigation

1. **For the Life of the Project**, the Applicant shall provide that all Commercial Leases for the Property will include language that shall require any commercial tenant to provide trash collection services for the commercial space at least six days per week and restricts tenant from storing or placing trash in public space, and that such lease shall permit Landlord to determine if tenant is in compliance, and if Landlord determines that trash services do not satisfy these obligations then Landlord shall have the right, but not the obligation, to contract for such services on tenant's behalf.
2. **For the Life of the Project**, the Applicant shall provide that all Commercial Leases for the Property will include language that shall require any commercial tenant to actively discourage its visitors, customers, or employees from unlawfully stopping or parking automobiles in front of the Property or elsewhere in the neighborhood in connection with visits to the premises.
3. **For the Life of the Project**, the Applicant will incorporate a provision in each residential lease notifying the tenant that the building is not qualified for a residential parking permit and that the tenant acknowledges that they are not eligible to apply for a residential parking permit.
4. **For the Life of the Project**, the Applicant will provide every new resident with a free SmarTrip Card or a free Capitol Bike Share membership, as a way to reduce the adverse impacts of providing no parking. The Applicant will assist every new tenant with the sign-up process unless tenant chooses to opt out at lease signing. The Applicant will be prohibited from providing any incentive or inducement that might discourage tenant from accepting membership.

E. Miscellaneous

5. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of Zoning Legal Division and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with

this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

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

Proposed Action

Vote (July 18, 2022): 4-0-1 (Anthony J. Hood, Robert E. Miller, Peter G. May and Dr. Joseph S. Imamura to APPROVE; one seat vacant)

Final Action

Vote (September 29, 2022): 4-0-1 (Anthony J. Hood, Robert E. Miller, Peter G. May and Dr. Joseph S. Imamura to APPROVE; one seat vacant)

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

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ANTHONY J. HOOD
CHAIRMAN

SARA A. BARDIN
DIRECTOR

ZONING COMMISSION

OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.