

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 20-06  
Z.C. Case No. 20-06  
Felice Development Group  
(First-Stage and Consolidated Planned Unit Development @ Squares 1025E and 1048S)  
November 19, 2020

Pursuant to notice, at its public hearing on September 10, 2020, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) from Felice Development Group (the “Applicant”) requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified):

- A first-stage planned unit development (“PUD”) pursuant to Subtitle X, Chapter 3, and Subtitle Z § 300, for the PUD Site (as defined below);
- A consolidated PUD approval for the East Tower (as defined below); and
- A PUD-related amendment of the Zoning Map for the PUD Site from the current PDR-4 zone to the MU-9 zone.

The Applicant proposes to construct a new mixed-use development on Lot 802 in Square 1025E; Lots 1, 801 and 802 in Square 1048S; and Reservation 129-299 (the “PUD Site”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z. For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**PARTIES**

1. The following are automatically parties in this proceeding pursuant to Subtitle Z § 403.5:
  - The Applicant; and
  - Advisory Neighborhood Commission (“ANC”) 6B, in which district the PUD Site is located and so an “affected ANC” pursuant to Subtitle Z § 101.8.
2. The Commission received no requests for party status.

**NOTICE**

3. On June 25, 2019, the Office of Zoning (“OZ”) sent notice of the September 10, 2020 public hearing (Exhibits [“Ex.”] 21 and 22) to:
  - ANC 6B;
  - The ANC 6B06 Single Member District Commissioner, whose district includes the PUD Site;

- The Office of the ANCs;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);
  - The Department of Consumer and Regulatory Affairs (“DCRA”);
  - The Office of the Attorney General;
  - The District Department of the Environment (“DOEE”);
  - The District of Columbia Housing Authority (“DCHA”) Relocation Committee;
  - The Ward 6 Councilmember, in whose district the PUD Site is located;
  - The Chair and At-Large Councilmembers; and
  - The owners of property within 200 feet of the PUD Site.
4. OZ published the September 10, 2020 public hearing notice, in the June 26, 2020, *D.C. Register* (67 DCR 7852) as well as on the calendar on OZ’s website. (Ex. 20 and 22.)

**THE PUD SITE**

5. The PUD Site is a triangular parcel containing 127,400 square feet of land area, located in the southeast quadrant of the District.
6. The PUD Site is bounded by:
- To the north - M Street, S.E., the Southeast/Southwest Boulevard, and freight rail tracks;
  - To the southeast - Water Street, S.E.; and
  - To the southwest - Virginia Avenue, S.E.
7. The PUD Site currently contains fuel pump storage facilities, paved and gravel parking areas, and unimproved land.
8. The area around the PUD Site includes:
- To the north – M Street, S.E., the Southeast/Southwest Boulevard, and train tracks the separate the PUD Site from the Capitol Hill residential neighborhoods;
  - To the east and south - the District Yacht Club, part of the Historic Boathouse Row, and community open space along the Anacostia River; and
  - To the west – the Maritime Plaza Development consisting of two five-story office buildings.

**CURRENT ZONING**

9. The PUD Site is currently in the PDR-4 zone, the intent of which is:  
*“[T]o permit high-density commercial and PDR activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones and minimize non-industrial uses.”* (Subtitle J § 200.4.)

**COMPREHENSIVE PLAN (TITLE 10A DCMR, THE “CP”)**

10. The CP’s Generalized Policy Map (the “GPM”) designates the PUD Site as a Land Use Change Area, which the CP establishes are intended to:

*“encourage and facilitate new development and promote the adaptive reuse of existing structures. Many of these areas have the capacity to become mixed-use communities containing housing, retail shops, services, workplaces, parks and civic facilities. The Comprehensive Plan’s Area Elements provide additional policies to guide development and redevelopment within the Land Use Change Areas, including the desired mix of uses in each area.” (CP § 223.11.)*

*“As Land Use Change Areas are redeveloped, the District aspires to create high quality environments that include exemplary site and architectural design and that are compatible with and do not negatively impact nearby neighborhoods. Programs to avoid and mitigate any undesirable impacts of development of the Land Use Change Areas upon adjacent neighborhoods should be required as necessary.” (CP § 225.12.)*

11. The CP’s Future Land Use Map (the “FLUM”) designates the PUD Site in two categories - Medium-Density Commercial and Institutional – defined by the CP as follows:

**Medium Density Commercial** (CP § 227.12) – *This designation is used to define shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation generally draw from a citywide market area. Buildings are generally larger and/or taller than those in moderate density commercial areas. Density typically ranges between a FAR of 4.0 and 6.0 with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-8 and MU-10 Zone Districts are consistent with the Medium Density category, and other zones may also apply.*

**Institutional** (CP § 227.18) – *This designation includes land and facilities occupied and used by colleges and universities, large private schools, hospitals, religious organizations, and similar institutions. Smaller institutional uses such as churches are generally not mapped, unless they are located on sites that are several acres in size. Zoning designations vary depending on surrounding uses. Institutional uses are also permitted in other land use categories.*

12. The CP’s Lower Anacostia Waterfront/Near Southwest Area Element covers the PUD Site and establishes the area’s development priorities that include:

- Providing diverse housing choices so that a mix of household types and incomes are accommodated;
- Encouraging environmentally sustainable development on the waterfront and throughout the watershed;
- Creating a variety of recreational areas, cultural facilities, and park environments, including trails and promenades to provide better access along the shoreline and to make the waterfront more accessible to surrounding communities; and

- Ensuring that new waterfront communities are not be visually overwhelming and are responsive to local concerns about traffic, crowd-control, displacement, community service impacts, and changing neighborhood character.

## II. THE APPLICATION

### INITIAL APPLICATION

#### **Project Overview and Phasing**

13. The Application, as submitted on March 13, 2020 (Ex. 1-3J, the “Initial Application”), proposed a mixed-use development to be constructed in three phases:
- Phase 1 will involve the construction of Building 1B<sup>1</sup> (the “East Tower”);
  - Phase 2 will involve the construction of Building 1A (the “West Tower”); and
  - Phase 3 will involve the construction of Building 2 (collectively, the “Project”).
14. The Initial Application described the Project as a mixed-use development with:
- Approximately 791,063 square feet of gross floor area (“GFA”), including:
    - 745,644 square feet of residential GFA comprising approximately 900 residential units;
    - 45,419 square feet of non-residential GFA;
  - A floor area ratio (“FAR”) of 6.20 for the PUD Site;
  - A lot occupancy of 63.1% for the PUD Site; and
  - The following specific development parameters for the Project’s three buildings:

<b>Development Standard</b>	<b>Phase 1: East Tower (Consolidated PUD (First &amp; Second Stage))</b>	<b>Phase 2: West Tower (First Stage PUD)</b>	<b>Phase 3: Building 2 (First Stage PUD)</b>
<b>GFA</b>	460,135 sf (34,711 sf for non-residential uses)	478,548 sf (9,504 sf for non-residential uses)	72,914 sf (1,204 sf for non-residential uses)
<b>FAR</b>	5.66	7.03	8.22
<b>Height</b>	130ft.	130 ft.	92 ft.
<b>Penthouse</b>	15 ft.	15 ft.	15 ft.
<b>Lot Occupancy</b>	61.7%	60.3%	87.5
<b>Vehicle Parking</b>	168 spaces		None
<b>Loading<sup>2</sup></b>	One 55ft. loading berth One 30 ft. loading berth One service space	One 30 ft. loading berth One service space	None
<b>Uses</b>	Residential & Retail	Residential & Retail	Residential & Retail
<b>Residential Units</b>	529	294	77

(Ex. 3A1 at A-6, updated at 10A1 at A-6.)

15. The Project’s design provides sight lines to the Anacostia River through the PUD Site by:
- Two view corridors at the private road and 14<sup>th</sup> Street, S.E. right of way; and
  - The “cut-out” at floors three through six along the East Tower’s façade. (Ex. 3.)

<sup>1</sup> The West and East Towers/Buildings 1A and 1B are considered one building for zoning purposes.

<sup>2</sup> As one building for zoning purposes, the East and West Towers will have a single 55-foot berth, two 30-foot berths, and two service spaces.

16. The Project also includes numerous landscaping and public space improvements including:
  - A “Great Lawn” and park, and plaza to a pedestrian retail plaza at the terminus of Virginia Avenue;
  - Numerous shade trees, seating benches, and planted panels;
  - A retail plaza designed in a flexible manner to accommodate outdoor dining space, farmers markets, and other activities; and
  - A grand staircase including amphitheater seating that will provide a connection to the Anacostia River. (Ex. 3.)
  
17. The Project includes the following transportation elements:
  - Parking will be provided in two underground levels with ingress and egress located along M Street, S.E.;
  - Loading for the East and West Towers will occur along a private road bisecting the PUD Site connecting M Street, S.E., to Virginia Avenue, S.E.; and
  - Loading for Building 2 will occur along M Street, S.E.
  
18. The Application requested specific design flexibility for the East Tower to vary from the Application’s final plans as approved by the Commission that reflect what the Commission has approved in recent PUD cases and still comply with the requirement of Subtitle X § 3011.2 and Subtitle Z § 702.8 to construct the Project in complete compliance with the final plans approved by the Commission.

**Initial Application - Development Flexibility Requested  
Map Amendment**

19. The Application proposes to rezone the PUD Site pursuant to Subtitle X § 300.4 from the current PDR-4 zone to the MU-9 zone (the “Map Amendment”).
  
20. Subtitle G § 400.8 establishes the intent of the MU-9 zone proposed by the Map Amendment:
  - To permit high-density mixed-use development including office, retail, and housing, with a focus on employment; and
  - For locations in or near the Central Employment Area, on arterial streets, in uptown and regional centers, and at rapid transit stops.
  
21. The Map Amendment would change the standards applicable to the PUD Site as follows:

	Current PDR-4 zone	Proposed MU-9 zone
Height	90 feet (ft.)	90 ft.; 100 ft. (Inclusionary Zoning [“IZ”]); 130 ft. (PUD)
Density (FAR)	6.0 (Subtitle J § 202.2 uses); 1.0 (all other uses)	6.5; 7.8 (IZ); 9.36 (PUD); 6.5 non-residential (Subtitle G § 402.1)
Lot Occupancy	N/A	100%

	<b>Current PDR-4 zone</b>	<b>Proposed MU-9 zone</b>
<b>Yards</b>	Rear Yard: 2.5 inches per 1 foot of height but not less than 12 feet	Rear Yard: 2.5 inches per 1 foot of height but not less than 12 feet
<b>Permitted Uses</b>	Commercial, Institutional, and others; Residential uses generally not permitted (Subtitle U § 801)	Residential, Commercial and others. (Subtitle U §§ 515-516)

**Relief – West Tower**

22. The Initial Application requested following relief:
- For the West Tower – relief from the rear yard and court width requirements;
  - For Building 2 – relief from the rear yard, court width, and loading requirements; and
  - For the Project – relief from the vehicle and bicycle parking requirements.

**Initial Application - Public Benefits**

23. The Initial Application noted that the Project would provide public benefits and amenities in the following categories:
- Superior urban design and architecture;
  - Superior landscaping or creation or preservation of open space;
  - Site planning and efficient and economical land utilization;
  - Affordable housing that exceeds what would have been required through matter-of-right development under the existing zoning;
  - Environmental and sustainable features; and
  - Streetscape plans.

**APPLICANT’S REVISIONS/SUBMISSIONS**

24. The Applicant submitted a March 27, 2020 filing that responded to OP’s questions by providing: (Ex. 10-10B, the “Supplemental Submission.”)
- **Added Development Flexibility:**
    - *West Tower* – relief from the side yard requirements; and
    - *Building 2* – relief from the court, parking, and loading requirements;
  - **Updated Public Benefits:**
    - *Superior Urban Design and Architecture* – The Project’s design incorporates elements of its historic context, particularly the architectural character of Boathouse Row, while providing both visual and physical connections to the waterfront through the building “cut-out” and public space improvements;
    - *Site Planning and Land Utilization* – The Project would help reactivate the Anacostia riverfront and will connect the neighboring communities and developments to the waterfront;
    - *Housing Exceeding Matter-of-Right Development under Existing Zoning* – The Map Amendment to the MU-9 would allow the PUD Site to be developed with 900 new residential units which are prohibited under the PUD Site’s current PDR-4 zoning;
    - *Affordable Housing* – The Project would set aside 10% of the residential GFA for IZ units, more than the required 8%, all of which exceed what is allowed under the matter-of-right provisions of the current PDR-4 zoning;
    - *Environmental and Sustainable Benefits* – The Project would provide:



- Riparian-orientated plant material for areas in close proximity of the waterfront to mitigate stormwater runoff and tolerate flood events;
    - Bioretention planters placed throughout the streetscapes and interior open spaces in order to collect, filter, and detain runoff;
    - Extensive green roof systems incorporated on the building terraces to collect, filter, and detain stormwater runoff;
    - A community garden on the roof of East Tower; and
    - Incorporation of key elements of the Waterfront Regulations of Subtitle C, Chapter 11;
  - **Streetscape Plans** – The Project would include enhancing and reconstructing the roadways and related infrastructure adjacent to the Project including M Street, S.E., Virginia Avenue, S.E., and a private drive connecting the two;
  - **Transportation Improvements** – The Project would:
    - Reconstruct M Street, S.E., to DDOT standards, including the provision of a traffic circle at the intersection of M and Water Streets, S.E.;
    - relocate and reconstruct a portion of the Anacostia Bike trail north of M Street, S.E.; and
    - Reestablish Virginia Avenue, S.E.;
  - **Mass Transit Improvements** – The Project would be subject to a Traffic Demand Management Plan (“TDMP”) that identifies strategies and/or infrastructure improvements to encourage non-automotive modes of transportation;
  - **Uses of Special Value to the Neighborhood or District as a Whole** – The Project would include:
    - A connection to the retail promenade on the southern and eastern edges of the Project including space for outdoor dining and events and expansive views of the river; and
    - A new bike trail along M Street, S.E., constructed to DDOT standards that would connect the PUD Site to existing bike trails, and neighboring developments; and
  - **Other Benefits** – Redevelopment of the PUD Site will require environmental cleanup of a contaminated, formerly industrial site; and
  - **Revised Architectural Plans:**
    - Reduction of the number of theoretical lots from three to two, with the West and East Tower sharing a theoretical lot;
    - Increase in the Project’s total GFA from 791,063 square feet to 792,715 square feet;
    - Increase in the FAR from 6.20 to 6.22;
    - Changes in the residential unit counts for each building as follows:
      - West Tower increased from 294 to 307 units;
      - East Tower decreased from 529 to 496 units; and
      - Building 2 increased from 77 to 97 units; and
  - Additional information regarding the Application’s consistency with the CP.
25. The Applicant submitted an April 28, 2020, filing (Ex. 12-12A, the “Second Supplemental Submission”) responding to OP by providing:
- Revised architectural drawings showing the parking structure to be constructed in Phase 1; and

- Additional information regarding the proposed public space improvements.
26. The Applicant submitted a June 8, 2020, filing (Ex. 16-17E, the “Prehearing Statement”) that made the following revisions to the plans, design flexibility, and public benefits:
- **Added Design Flexibility** – To permit the conversion of up to 25,000 square feet of proposed retail space in the East Tower to residential uses or any other use permitted in the MU-9 zone, subject to:
    - The approval of the Commission of the conversion as a Modification of Consequence; and
    - The provision that any additional residential square footage be subject to the IZ requirements;
  - **Added Public Benefits**
    - Increasing the proposed IZ set aside from 10% to 11% of the Project’s GFA for households earning up to 60% of the median family income (“**MFI**”);
    - Providing an itemized list of the proposed Public Space improvements projected to cost approximately \$6.7 million; and
    - Noting that while the Project would not achieve LEED Gold, it would provide, in addition to the previously proffered environmental benefits:
      - Permeable paver street parking spaces in order to collect, filter, and detail stormwater runoff; and
      - Solar panels on the roof of Building 2 as part of the second stage PUD approval;
  - **Changes to the Plans**
    - Reduced the Project’s total GFA from 791,063 square feet to 786,160 square feet, including reducing the Project’s non-residential GFA from 45,455 square feet to 44,092 square feet, that resulted in a reduced FAR of 6.17 (Ex. 17A1 at A6); and
    - Design refinements to the West and East Towers including:
      - Façade changes, including the removal of the arched windows;
      - Adding additional balconies to the East Tower; and
      - The addition of a pedestrian stair at the end of the public 14<sup>th</sup> Street lookout bridge to facilitate pedestrian movement to the riverfront; and
  - **Additional Information**
    - Project views and shadow studies (Ex. at Sheets A29-A42);
    - The location and extent of the 100-year flood plain;
    - The paved path between Virginia Avenue, S.E., and Water Street, S.E., which will be limited pedestrian and bicycle traffic.
    - Signage details; and
    - The elevated connecting bridge between the West and East Towers including how it meets the requirements of Subtitle B § 309 to qualify as a “meaningful connection.”
27. The Applicant submitted an August 10, 2020, Comprehensive Transportation Review (Ex. 28-28B, the “CTR”) that concluded:
- The Project would result in significant impacts to four of the nearby intersections;
  - The Project would not likely have a significant impact on the Study Area if the Applicant implemented the TDMP (Ex. 28A at 36-38) and additional improvements; and
  - The Applicant should implement the following improvements:



- At the intersection of M and 8<sup>th</sup> Streets, restripe the southbound approach to provide an exclusive left turn lane and a shared left/right turn lane in lieu of the existing left turn lane and an exclusive right turn lane; and
  - At the intersection of 11th and I Streets, implement “No Parking” during the PM rush on the North side of I Street, S.E., which is already posted “No Parking” during the AM rush.
28. The Applicant submitted an August 21, 2020, filing (Ex. 29-30B, the “Second Prehearing Submission”) that made the following changes to the Application:
- **Reduced Development Flexibility**
    - Withdrawal of the request for vehicle and bicycle parking relief for the Project as the Applicant now proposed to provide all required vehicular and long-term bicycle parking spaces; and
  - **Added Public Benefits:**
    - Increasing the IZ proffer from 11% to 12% of the residential GFA that would be set aside for households earning up to 60% MFI;
    - Committing to design the Project to the LEED Gold Standard;
    - Committing to install solar panels, green roof elements, and a community garden on the roofs of West Tower and Building 2 as part of the second stage PUD applications; and
    - Committing to make a \$25,000 contribution, prior to the issuance of a building permit, to a non-profit or the District to fund:
      - Items or services for an event or programming for seniors in Ward 6; or
      - The cost of professional services related to securing a site for an adult daycare center in Ward 6.
29. At the September 10, 2020, public hearing, the Applicant:
- Presented the Application, supported by the testimony of:
    - Mr. Craig McClure, accepted by the Commission as an expert in landscape architecture;
    - Ms. Jami Milanovich, accepted by the Commission as an expert in transportation engineering;
    - Mr. Shane Dettman, accepted by the Commission as an expert in planning and zoning;
    - Ms. Colline Hernandez-Ayala of GTM Architects of Washington DC, LLC; and
    - Mr. Rick Felice of Felice Development Group; and
  - Confirmed the increase in its proposed public benefits by raising the monetary for senior services from \$25,000 to \$250,000 to be distributed as follows:
    - \$25,000 to the Department of Parks and Recreation (“DPR”) to support programming for seniors at the Arthur Capper Recreation Center; and
    - \$225,000 to the Department of Aging and Community Living with the request that the funds be earmarked to assist a non-profit organization with the cost of professional services related to securing the site for an adult daycare center in the Capitol Hill area of Ward 6. (September 10, 2020, Public Hearing Transcript [“Tr.”] at 7-8, 11.)

30. The Applicant submitted a September 25, 2020, filing (Ex. 70-70F, the “Post Hearing Submission”) that provided:
- Revised building designs and additional plans incorporating the Commission’s design comments from the public hearing;
  - A copy of the signed Memorandum of Understanding (“MOU”) between the Applicant and the ANC;
  - Reports from Phoenix Noise & Vibration, LLC which concluded that the noise level increase from the construction of the Project and from railway and helicopter traffic reflecting from the completed Project will be imperceptible and most likely immeasurable at the residences on L Street (Ex. 70C-D);
  - Information about parking accommodation and confirmation of the Applicant’s agreement to the DDOT conditions;
  - An updated discussion of the Application’s consistency with the CP; and
  - Updated PUD benefits and amenities, including revising, based on consultations with ANC 6B and Capitol Hill Village, the proposed \$225,000 contribution for senior programming to the Department of Aging and Community Living, whose budget process prevented it from accepting the monetary contribution, to instead engage one or more consultants or non-profits to research and site a potential adult day care facility. (Ex. 70 at 9-11.)

**FINAL APPLICATION**

31. The Applicant filed a final comprehensive set of architectural plans (Ex. 79A1-79C and 80A1-80C, collectively, the “Final Plans”) on November 3, 2020, that established the final Project as having:
- Approximately 786,160 square feet of GFA, including:
    - 44,092 square feet of non-residential GFA;
    - Approximately 900 residential units;
  - A FAR of 6.17 for the PUD Site;
  - A lot occupancy of 63.1% for the PUD Site; and
  - The GFA spread between three buildings on two theoretical lots as follows:

Development Standard	Phase 1: East Tower (Consolidated PUD (First & Second Stage))	Phase 2: West Tower (First Stage PUD)	Phase 3: Building 2 (First Stage PUD)
<b>GFA</b>	237,516 sf. (9,971 sf. of non-residential uses)	475,671 sf. (32,217 sf. of non-residential uses)	72,973 sf. (1,904 sf. of non-residential uses)
<b>FAR</b>	2.00	4.01	8.23
	6.01 total		
<b>Height</b>	130 ft.		92 ft.
<b>Penthouse</b>	15 ft.		15 ft.
<b>Lot Occupancy</b>	61.3%		87.5%
<b>Vehicle Parking</b>	174 spaces		None

Development Standard	Phase 1: East Tower (Consolidated PUD (First & Second Stage))	Phase 2: West Tower (First Stage PUD)	Phase 3: Building 2 (First Stage PUD)
Loading <sup>3</sup>	One 30-ft. loading berth One service space	One 55-ft. loading berth One 30-ft. loading berth One service space	None
Uses	Residential (307 units) Retail	Residential (496 units) Retail	Residential (97 units) Retail

(Ex. 80A1 at A-6.)

### Final Application - Development Flexibility Requested

32. The Final Application requested the following development flexibility pursuant to Subtitle X §§ 303.1 and 303.13:

- The Map Amendment for the PUD Site from the current PDR-4 zone to the MU-9 zone;
- **For the West Tower:**
  - Court C1 – from Subtitle G § 202.1’s minimum 39 foot, 7 inch court width (based on court height) to permit a court width of 36 feet, 7 inches; and
- **For Building 2:**
  - Rear Yard – from Subtitle G § 405’s minimum 23-foot, 5-inch yard (based on building height) to permit a 12-foot, 7-inch rear yard;
  - Court C-7 – from Subtitle G § 202.1’s minimum 32 foot, 8 inch court width (based on court height) to permit a court width of 17 feet, 1 inch; and
  - Loading – from Subtitle C § 901’s requirement of one loading berth and on service space to permit all loading activities curbside on M Street, S.E.

33. The Final Application requested the following design flexibility from the Final Plans:

- **For the East Tower:**
  - Specific 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; and
  - Flexibility to convert up to 25,000 square feet of retail space in the East Tower to residential uses, or to any other use permitted in the MU-9 zone, provided:
    - The Commission approved the proposed conversion as a Modification of Consequence; and
    - Any additional residential uses would be subject to IZ.

### Final Application - Public Benefits

34. The Final Application proffered the following benefits and amenities (Ex. 83):

- **Affordable Housing:**
  - 12% of the Project’s residential GFA set aside as IZ units at 60% MFI;
  - Three of the six two-bedroom IZ units in the East Tower – the Project’s Phase 1 - reserved at 50% MFI; and

<sup>3</sup> As one building for zoning purposes, the East and West Towers will have a single 55-foot berth, two 30-foot berths, and two service spaces.

- One two-bedroom IZ unit in the West Tower – the Project’s Phase 2 - reserved at 50% MFI;
- ***Public Space Improvements:***
  - Reconstruction of M Street, S.E., including the provision of a traffic circle and a new bike trail on the north side of the street;
  - Reestablishment of Virginia Avenue, S.E.;
  - Construction and maintenance of the Arrival Plaza;
  - Construction and maintenance of the Waterfront Plaza;
  - Construction and maintenance of the 14<sup>th</sup> Street, S.E. Corridor Plaza providing connectivity between the proposed Southeast Boulevard Pedestrian Bridge and the lower Retail Promenade and Water Street, S.E.; and
  - Construction and maintenance of the Lower Retail Promenade including the great lawn and connections to Water Street, S.E., and the Anacostia Bike Trail;
- ***Environmental:***
  - The Project will be designed to the equivalent LEED Gold standard;
  - The Applicant will install solar panels on the roof of the West Tower sufficient to generate at least 1% of the West Tower’s energy needs;
  - The Applicant will install a composite of extensive, intensive green roof systems on no less than 45% of the roof terrace on Building 2, exclusive of areas required for mechanical equipment; and
  - The Project will achieve a GAR of no less than 0.225, exceeding the minimum 0.2;
- ***Monetary Contribution for Senior Programming:***
  - The Applicant will contribute a total of \$250,000 split between a contribution to DPR and the cost of professional services related to efforts to identify and secure a site for an adult day center in Capitol Hill (Finding of Fact [“FF”] 29-30);
- ***Operation and Use of the Project:***
  - The open space and green areas on the PUD Site adjacent to the areas identified as Waterfront Plaza, Arrival Plaza, the 14<sup>th</sup> Street, S.E., Corridor Plaza, and Water Street, S.E., as reflected on Sheet L-24 of the landscape plans for Phase 1, shall be accessible to the public at all times;
  - Public access to the open space adjacent to the Lower Level Retail Plaza, building elevators, and lobby areas may be limited to 9 a.m. to 9 p.m.; and
  - The public will also have access to public restrooms in the Project from 9 a.m. to 9 p.m.;
- ***Superior Urban Design and Architecture***
  - Two view corridors to preserve views of the Anacostia River and Hills from the north of the PUD Site; and
  - Dynamic pedestrian experiences created out of the steep topography of the PUD Site as it runs down to the Anacostia Waterfront; and
- ***Site Planning and Efficient Economical Land Utilization:***
  - Contextual building and site design.

## **JUSTIFICATION FOR RELIEF**

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

35. The Application asserted that the Application is not inconsistent with the CP, when reviewed as a whole, or with any other adopted public policies or active programs related to the PUD Site, for the reasons discussed below.
36. The Application is not inconsistent with the GPM's Land Use Change Area designation for the PUD Site because:
- The Land Use Change Area designation expressly contemplates new land uses and specifically "encourage[s] and facilitate[s] new development," particularly mixed-use developments like the Project; and
  - The Map Amendment to the MU-9 zone would allow the PUD Site to be developed with a broader mix of uses than what is permitted under the current PDR-4 zoning, with these additional uses more appropriate to the PUD Site's location along the waterfront.
37. The Application is not inconsistent with the FLUM's Medium Density Commercial/Institutional designation for the PUD Site because:
- The PUD Site's current industrial improvements are inconsistent with the FLUM's Medium Density Commercial/Institutional designation that anticipates a broad range of uses, including residential uses that are generally prohibited in the current PDR-4 zone;
  - The Map Amendment to the MU-9 zone would render the PUD Site more consistent with the FLUM designation;
  - Unlike a zoning map, the FLUM is intended to be interpreted broadly and in conjunction with the rest of the text of the CP and also permits additional height and density to be utilized through the PUD process;
  - Although the proposed MU-9 zone is described as a high density zone, its additional height and density would allow the redevelopment of the PUD Site to concentrate density so as to allow greater sight lines to the Anacostia River and for more of the PUD Site to be dedicated to open public spaces; and
  - The Project's overall density of 6.17 FAR will be:
    - Within what is permissible for a PUD utilizing IZ in in a Medium Density Commercial area (5.67 to 8.64 FAR);
    - Below the maximum densities permitted in the MU-8 and MU-10 zones that the CP expressly identifies as consistent with the FLUM's Medium Density Commercial designation (Ex. 3 at 28-29, Ex. 80A1); and
    - Well below the maximum 9.36 FAR permitted for a PUD utilizing IZ in the MU-9 zone.
38. The Application asserted that it is not inconsistent with the CP's Lower Anacostia Waterfront/Near Southwest Area Element because the Project would redevelop the PUD Site with mixed-use development and significant increases in residential use as specifically encouraged by the area element and further other identified Area Element policies. (Ex. 3.)
39. The Application asserted that it is not inconsistent with the CP's Land Use Element because:

- The Map Amendment will rezone a previously industrial area for mixed use that is more compatible with the surrounding development;
  - The Project will provide new mixed-use, infill development in the Near Southeast/Navy Yard Area including housing and public space improvements; and
  - The Project would further other identified Land Use Element policies. (Ex. 3.)
40. The Application asserted that the Project is consistent with the CP's Transportation Element because the Project includes number of improvements to the surrounding roadways including M Street, S.E., Virginia Avenue, S.E., and a new bike trail and pedestrian connections and walkways, in addition to furthering other identified Transportation Element policies. (Ex. 3.)
41. The Application asserted that it is not inconsistent with the CP's Housing Element because:
- The Map Amendment to the MU-9 zone would allow for residential uses to be provided on the PUD Site whereas none are permitted under the current zoning;
  - The Project would provide a new mixed-use development, including approximately 900 units of high quality affordable housing, on an underutilized property; and
  - The Project would further many specified Housing Element policies. (Ex. 3.)
42. The Application asserted that it is not inconsistent with the CP's Environmental Protection Element because the Project would facilitate the redevelopment of the current vacant and contaminated PUD Site with sustainably designed buildings and substantial landscaping and public space improvements as well as furthering other identified Environmental Protection Element policies. (Ex. 3.)
43. The Application asserted that it is not inconsistent with the CP's Parks, Recreation and Open Space Element because the Project's design takes into account the proximity to the Anacostia River through the design of the buildings and the surrounding public space including numerous common open spaces, including rooftop green areas and open, landscaped areas between the Project and the Anacostia River, as well as furthering other identified Parks Recreation and Open Space Element policies. (Ex. 3.)
44. The Application asserted it is not inconsistent with the CP's Urban Design Element because the Project would provide facilitate a mixed-use development along the Anacostia waterfront which would help connect nearby neighborhoods to the waterfront, and newly activated waterfront public spaces, in addition to furthering other identified Urban Design Element policies. (Ex. 3.)

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

***Land Use***

45. The Application asserted that the Project would will not create any unacceptable land use impacts because:
- The Project's utilization of underutilized land and the provision of substantial new housing (market rate and affordable) constitutes a favorable impact; and



- The Applicant’s use of multiple buildings, retention of viewsheds through the PUD Site, provision of substantial open space, and the substantial distance between the PUD Site and existing residential neighborhoods to the north will mitigate any potential impacts resulting from the redevelopment of the PUD Site.

***Open Space, Urban Design, and Massing Impacts***

46. The Project will not create any unacceptable impacts, but instead will have favorable impacts on open space, urban design, and massing because:

- The Project would remain well below the maximum density permitted in the MU-9 zone;
- The 130-foot height of the East and West Towers would allow for the concentration of density in those two buildings which will free up more of the PUD Site for open public space and ensure that view corridors to the Anacostia River are maintained; and
- The Applicant’s shadow studies (Ex. 79A12 - 79A14, Sheets A-37-A42) and noise analysis (Ex. 70C-70D) demonstrate that the Project will not result in any unacceptable impacts to the neighboring communities.

***Transportation***

47. The Project will not create any unacceptable transportation impacts that were not capable of being mitigated, as discussed above in the CTR (FF 27), because:

- The implementation of the Applicant’s proposed TDMP, would mitigate the Project’s significant impacts to four of the nearby intersections;
- The Applicant had agreed to all of DDOT’s proposed conditions as contained in the DDOT Report; and
- The transportation impacts are acceptable when considered against the quality of the Application’s proffered transportation related public benefits including the reconstruction of M Street, S.E. and Virginia Avenue, S.E.

***Environmental***

48. The Project will not create any unacceptable environmental impacts because the Project:

- Would replace an obsolete, contaminated, impervious site in close proximity to the waterfront with a sustainable, mixed-use development;
- Would be designed to LEED Gold design equivalency; and
- Would employ renewable energy sources in the form of rooftop solar panels on the West Tower.

***Requested Zoning Flexibility (To Be Balanced Against Public Benefits (Subtitle X § 304.4(c)))  
Map Amendment***

49. The Application asserts that the Map Amendment is necessary because:

- The current PDR-4 zoning does not permit residential use and is inconsistent with the FLUM’s Medium Density Commercial designation;
- The proposed MU-9 zoning will allow for the PUD Site to be developed with a mix of uses at a density that will allow for the provision of a substantial number of new housing units, as well as multiple public space improvements; and
- The development permitted under the MU-9 zoning will allow for more beneficial use of a key location along the Anacostia waterfront.

### ***Conversion of Non-Residential GFA***

50. The Application asserts that the flexibility to convert up to 25,000 square feet of retail space in the East Tower to residential, or any other use permitted in the MU-9 zone, is necessary to respond to potential changes in market demand for different uses within the Project. The Application noted that any change in use will be subject to the filing of a modification of consequence with the provision that any additional residential square footage would be subject to the IZ requirements.

### ***Rear Yard, Court, and Loading Relief***

51. The Application asserts that the flexibility for the rear yards, courts, and loading is necessary because:

- West Tower:
  - *Side Yard* - Due to the irregular side lot lines at the west end of the PUD Site, the West Tower cannot provide a compliant side yard. The Application noted that there are no properties immediately adjacent to the non-complaint side yard and the Virginia Avenue, S.E. right-of-way will provide substantial open space, light, and air to the West Tower; and
- Building 2:
  - *Rear Yard* - Due to the small size and irregular shape of Theoretical Lot 2, the Applicant is unable to provide a compliant rear yard for Building 2. The Application noted that the reduced rear yard will be mitigated by the fact that there are no immediately adjacent properties to Building 2 and the presence of the Water Street, S.E. right-of-way and waterfront to the immediate south will provide for adequate light and air for Building 2;
  - *Court Width* - Due to the angle at which two of the lot lines meet, Building 2 is unable to provide a court of compliant width. As with the rear yard, there are no adjacent properties that will be impacted by the non-complaint court and Building 2's location relative to Water Street, S.E. and the waterfront will provide adequate light and air; and
  - *Loading* – The smaller loading area along M Street, S.E. will accommodate the lower loading demand generated by the modestly sized Building 2. The Application noted that the Applicant agreed to implement the Loading Demand Management Plan (“LDMP”) developed with DDOT to mitigate any impacts from the proposed curbside loading plan.

### **Public Benefits**

52. The Application asserts that the Project's urban design, architecture, landscaping, and provision of open space are superior public benefits pursuant to Subtitle X § 303.5(a) and (b) because:

- The Project utilizes superior architectural design and materials to maximize use of the irregularly-shaped Property and reflect the Project's proximity to the Anacostia Riverfront and the historic “Boathouse Row”;
- The Project provides two view corridors through the site at the private road and the 14<sup>th</sup> Street right-of-way ensuring views of the river and Anacostia Hills will be preserved

- from the north. The introduction of a “cut-out” at floors three through six along the façade of the East Tower provides additional porosity;
- The Project utilizes the steep topography running north/south across the site through a series of retail plazas, amphitheater seating, outdoor courtyards, and private terrace spaces that have been organized to create dynamic pedestrian experiences overlooking the Anacostia Waterfront at multiple levels; and
  - The Project includes numerous public space improvements valued at approximately \$6.7 million as described at FF 26 and 34.
53. The Application asserts that the Project’s site plan and efficient land utilization constitute superior public benefits pursuant to Subtitle X § 305.5(c) because:
- The Project will reactivate a section of the Anacostia Riverfront by redeveloping an underutilized site with a mix of uses and public space improvements;
  - The PUD Site has been designed to concentrate building density to allow for more of the PUD Site to be used as public space and to provide visual connections to the Anacostia River; and
  - The Project is designed to accommodate a potential bridge connection over Southeast Boulevard and will serve as a connection point between the Capitol Hill neighborhood and the historic “Boathouse Row” and the waterfront.
54. The Application asserts that the Project provides housing and affordable housing public benefits pursuant to Subtitle X § 305.5(f) and (g) because:
- The Project will provide approximately 900 new housing units across the West and East Towers and Building 2;
  - The Project will provide a substantial amount of new affordable housing with 12% of residential GFA to be set aside for households earning up to 60% MFI;
  - Three of the six two-bedroom IZ units in the East Tower, the Project’s first phase, will be reserved for households with incomes not exceeding 50% MFI; and
  - One two-bedroom unit in the West Tower, the Project’s second phase, will be reserved at 50% MFI.
55. The Project includes the following environmental benefits per Subtitle X § 305.5(k):
- The Project will be designed to LEED Gold standards;
  - Solar panels will be provided on the top of the West Tower that are capable of generating at least 1% of the energy for the tower;
  - The Applicant will install green roof systems on at least 45% of the roof area on Building 2 (exclusive of areas needed for mechanical equipment and elevator overruns); and
  - The Project will achieve a Green Area Ratio no less than 0.225 where 0.2 is required;
56. The Project includes the following benefits of special value to the surrounding neighborhood and District as a whole per Subtitle X § 305.5(q):
- The Applicant will make a contribution of \$25,000 to DPR to support programing for seniors at the Arthur Capper Recreation Center; and

- The Applicant will expend \$225,000 to cover the cost of professional services related to efforts to identify and secure a site for an adult day care center in the Capitol Hill neighborhood of Ward 6 or Hill East Reservation.

### III. RESPONSES TO THE APPLICATION

**OP**  
57.

OP filed a May 1, 2020, report (Ex. 14, the “OP Setdown Report”) that:

- Concluded that the Application was not inconsistent with the CP because:
  - The proposed MU-9 zoning would not be inconsistent with the FLUM’s designation of the PUD Site for Medium Density Commercial/Institutional designation because the Project would:
    - Qualify as a PUD to which “other densities may apply”; and
    - Permit residential uses on the PUD Site and would allow for concentrations of density and height to allow a greater portion of the site to be reserved for open space and sightlines to the river; and
  - The Project would significantly further the Housing and Urban Design Elements of the CP;
- Identified no potential impacts of the Project other than potential traffic congestion that DDOT would evaluate in its report; and
- Recommended that the Commission set down the Application for a public hearing and that the Applicant submit the following prior to the public hearing:
  - Additional information regarding the proffered public benefits and the increase in density;
  - An increased IZ proffer;
  - Clarification about the proposed landscape improvements in public space;
  - Identification of the party that would bear liability responsibility for the portions of the privately constructed plazas, promenade, monumental staircase, and connections to Water Street that are located in public space;
  - Commitment to LEED Gold certification;
  - Exploration of the feasibility of installing solar panels atop the consolidated PUD, and an illustration of their possible appearance; and
  - Determination of whether a commitment will be made to signing a Certified Business Enterprise agreement.

58. OP submitted an August 31, 2020, report (Ex. 31, the “OP Hearing Report”) that recommended approval subject to provision of information and clarification for items summarized in its report in Table 1 (*Id.* at 6-10), Table 3 (*Id.* at 22-24, and 28) including:

- Clarification on the number and type of units and their distribution throughout the PUD;
- Commitment to a set number of solar panels for the West Tower;
- Information regarding the change to the number of balconies;
- Consideration of potential changes to the landscaping to maintain more consistent view corridors to the river;
- Additional details regarding loading procedure for Building 2;
- Additional information regarding signage;

- Clarifications regarding the bike trail on M Street, S.E.;
- Additional information regarding the proposed public benefits:
  - Recipient of the \$25,000 contribution; and
  - Details about a publicly accessible community garden;
- Consideration of reducing the +/- 10% flexibility for the number of dwelling units; and
- Details regarding hours of public access to improvements on private space.

59. At the September 10, 2020, public hearing, OP testified that:

- Although the Application might not be completely consistent with some policies of the CP, OP had concluded that the Project's contribution in terms of benefits and amenities, as well as its furtherance of other CP policies outweighed the requested flexibility and made the Project not inconsistent with the CP;
- The Map Amendment would allow for residential development consistent with the GPM's Land Use Change Area designation, and would also be consistent with the Anacostia Waterfront Framework Plan;
- The Project's 6.17 FAR would fit within the PUD Site's Medium Density Commercial/Institutional FLUM designation, especially for a PUD, and the concentration of density would allow not only allow for more housing and affordable housing, but would allow for more of the PUD Site to be dedicated to publicly accessible open space amenities on the waterfront;
- OP supported the Applicant's revisions including the increased IZ proffer, the change from LEED silver to LEED gold design standards, the increased number of balconies, the provision of a view corridor down Virginia Avenue, S.E., and the increased senior services proffer; and
- OP recommended that the Commission grant preliminary approval to the Application. (Tr. at 119-125.)

60. OP submitted an October 5, 2020, report (Ex. 74, the "OP Post Hearing Report") responding to the Applicant's post-hearing submissions by recommending that:

- The Applicant provide renderings of the prospective view from the 1300 block of L Street, S.E.;
- The Applicant consider providing more bench seating along the ramp and power outlets in the paved area at the bottom of the ramp to allow the area to function as a location for performances or other events; and
- The Applicant provide a timeline for the delivery of the report/services related to locating an adult daycare facility in compliance with Subtitle X § 305.3(b).

And noting that, with regard to the status of planning for the Boathouse Row Area, the land in question is currently in DGS's portfolio.

### **DDOT**

61. DDOT filed a September 3, 2020, report (Ex. 34, the "DDOT Report") that:

- Analyzed the Building's site design, the travel assumptions of the CTR, the sufficiency of the provided parking and loading, and the proposed transportation mitigations;
- Concluded that:

- The PUD Site does not currently have easy access to transit options, though once the pedestrian bridge is constructed over the Southeast/Southwest Boulevard, the PUD Site will only be approximately 0.35 miles from the Potomac Avenue Metrorail Station;
- The Application did not include any electric vehicle charging stations, and DDOT recommended that the Applicant provide the required four charging stations;
- The Project would result in degraded service levels at four of the nearby intersections and DDOT recommended changes to the Applicant’s TDMP in order to address the issues; and
- The Applicant’s TDMP, as proposed in the CTR, was not “robust” enough to mitigate the expected transportation impacts and that DDOT recommended additional measures be taken; and
- Had no objection to the Application provided that an order approving the Application impose the following conditions:
  - The Applicant implement the TDMP proposed in the CTR, with the DDOT Report’s suggested additions, subject to DDOT approval, for the life of the Project unless otherwise noted;
  - The Applicant implement DDOT’s LDMP for the life of the Project unless otherwise noted to support the loading relief for Building 2; and
  - The Application develop a concept to convert Water Street, S.E., from an automobile-oriented connection between 12th and M Streets, S.E., to a shared street (a.k.a. “neighborhood greenway”) in which bikes and pedestrians have priority over vehicles, subject to DDOT approval.

62. At the September 10, 2020, public hearing, DDOT testified that:

- The Project would achieve substantial upgrades to the transportation network;
- DDOT requested the Commission include three conditions in the final order; and
- DDOT supported the Application. (Tr. at 125-126.)

**ANC 6B**

63. ANC 6B submitted an April 22, 2020, report (Ex. 11, the “ANC Setdown Report”), stated that at its duly noticed April 14, 2020, public meeting at which a quorum was present, the ANC voted to:

- Not identify any issues or concerns regarding the Application; and
- Support the setdown of the Application for a public hearing.

64. ANC 6B submitted an August 7, 2020, report (Ex. 27, the “August 7 Report”) stating that at its duly-noticed July 14, 2020, public meeting, at which a quorum was present, the ANC voted to submit the report to the Commission stating that the ANC:

- Would take final action on the Application at its September 8, 2020 public meeting and would submit its final written report immediately afterwards; and
- Intended to participate in the Commission’s public hearing on the Application and authorized Commissioner Corey Holman, SMD Commissioner for 6B06 and head of ANC 6B’s Planning and Zoning Committee, to serve as the ANC’s representative before the Commission.



65. ANC 6B submitted a September 9, 2020, report (Ex. 54, the “ANC Hearing Report”) stating that at its September 8, 2020, duly noticed public meeting, at which a quorum of commissioners present, the ANC voted to:
- Express the following issues and concerns with the Application:
    - The Applicant’s initial proffer of \$25,000 for senior services was insufficient. The ANC noted that an increase in the contribution to \$250,000 for the purposes of covering the costs of professional services related to securing a site for an adult day center would be sufficient to meet the threshold of Subtitle X § 300.1(b);
    - The ANC supported the Applicant’s increased affordable housing proffer, although the ANC believed the proffer should also include two-bedroom IZ units;
    - The required bikeshare station should have the capability to expand to 47 docks;
    - The ANC questioned the proposed design for Virginia Avenue, S.E. and encouraged the Commission to require more environmental improvements related to the roadway;
    - The ANC disagreed with OP’s recommendation that the Applicant reduce the landscaping in the public plaza along Virginia Avenue, S.E. to increase views of the river, noting that tree cover on the site was being greatly reduced and trees should be conserved as much as possible;
    - The ANC noted that it found the “cut out” in Building 1 to be only partially successful in breaking up the mass of the building;
    - The ANC recommended that the Applicant provide the hours of public accessibility for the public space improvements and the ancillary features like the lower level retail area, elevator lobbies. The ANC also noted that while it commended the public restrooms being provided on the lower retail level that the Applicant should provide the hours of access in the final order;
    - The ANC noted that it supported the Applicant’s increased environmental proffer of designing the Project to meet LEED Gold standards but requested that the LEED scorecard be submitted to the record and incorporated into the final order; and
    - The ANC noted that it had entered into the MOU with the Applicant primarily relating to construction and operation of the Project and requested that any items enforceable by zoning be incorporated in the final order; and
  - Oppose the Application due to the insufficiencies identified above.
66. Commissioner Corey Holman, the ANC 6B06 Single Member District Representative authorized to represent the ANC in August 7 ANC Report, testified at the September 10, 2020, public hearing that:
- The ANC Hearing Report opposed the Application because of the insufficiency of the Applicant’s initial proffered public benefits;
  - The ANC would find the proffered benefits sufficient if the contribution to support senior programming was increased to \$250,000, and since the Applicant had testified that it agreed to increase the monetary contribution to \$250,000, this concern had been addressed; and
  - The ANC continued to have concerns about other elements of the Application as detailed in the ANC Hearing Report. (Tr. At 133-142.)

### **Supplemental ANC Report**

67. ANC 6B submitted a September 30, 2020, report (Ex. 73, the “Supplemental ANC Report”), stated that at its properly noticed September 29, 2020, virtual special meeting, at which a quorum of six commissioners was present, the ANC voted to:
- Express the following:
    - The Applicant’s follow-up monetary proffer in the post-hearing statement addressed the concerns outlined in the Senior Programming Proffer section of the ANC Hearing Report;
    - The Applicant and the ANC had signed the MOU regarding several zoning and non-zoning issues related to the Project;
    - The Applicant had addressed to the ANC’s satisfaction the issues of the affordable housing proffer, the senior housing proffer, the unit mix and flexibility, the public space and public restroom proffers, and the LEED Gold Design commitment;
    - The ANC would defer to the Commission’s judgement about the final architectural design and potential sound impacts;
    - The location of the bikeshare station was not shown on plans but conceded that this is also subject to DDOT Public Space review;
    - There were no proposed changes to public space along Virginia Avenue, S.E.; and
    - The ANC continued to have concerns about the accessibility between the Project and the 11<sup>th</sup> Street Bridge and requested that this be made a condition of approval rather than being subject to the DDOT Public Space program; and
  - Therefore withdraw the ANC’s objection to the Application and now support approval of the Application.

### **PERSONS IN SUPPORT**

- The Commission received written submissions in support of the Application (Ex. 23-25, 36, 37-52, 61-67) in which several individuals provided testimony that conditioned their support of the Application upon the provision of an adult daycare center and/or funds that would facilitate the establishment of a comparable center in the Capitol Hill area that would enable seniors to age in place.
68. No individuals testified in support of the Application at the public hearing.

### **PERSONS IN OPPOSITION**

69. The Commission received three written submissions opposing the Application:
- Ms. Kelly Waud, a resident of the 1300 block of L Street, S.E., raised concerns about the anticipated noise pollution and the Project’s incompatibility with the surrounding area (Ex. 53);
  - Mr. Peter Byrne and Mrs. Karen Byrne asserted that the Application’s proffered public benefits were inadequate (Ex. 56); and
  - Mr. Neil Flanagan expressed concerns with the Application’s public benefits, the Project’s urban design and architecture, and alleged inconsistencies with the CP. (Ex. 60.)

70. At the September 10, 2020, public hearing, the following persons testified in opposition to the Application:
- Dr. Deborah Edge testified citing the need for an adult daycare center in Ward 6, however stated that she was encouraged by the Applicant’s increased monetary proffer related to an adult day care center in the Capital Hill area (Tr. at 146-49);
  - Mr. Lawrence Johnston expressed speculation that the Applicant’s monetary proffer would achieve the intended objective (Tr. at 149-51);
  - Mr. Neil Flanagan reiterated the sentiments expressed in his written testimony dated September 10, 2020 (*see* Ex. 60) (Tr. at 151-55);
  - Ms. Judy Berman, the executive director of Capitol Hill Village, stated that she was no longer necessarily opposed and was happy that the Applicant “is now willing to provide a meaningful proffer” related to an adult day care center in the Capital Hill area (Sept. 10 Tr. at 158-160);
  - Ms. Mary Procter, a founding member of Capitol Hill Village, was pleased with the Applicant’s increased monetary proffer related to an adult day care center in the Capital Hill area (Tr. at 160-162); and
  - Mr. Chander Jayaraman expressed appreciation for the Applicant’s monetary proffer related to an adult day care center in the Capital Hill area (Tr. at 164-65).

**NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)**

71. NCPC submitted a November 4, 2020, letter 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. 82.)

**CONCLUSIONS OF LAW**

1. Pursuant to the authority granted by the Zoning Act of 1938 (approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 300.
2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
  - (a) *Results in a project superior to what would result from the matter-of-right standards;*
  - (b) *Offers a commendable number or quality of meaningful public benefits; and*
  - (c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
3. Pursuant to Subtitle X §§ 303.1 and 303.13:

*As part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards. Any such flexibility shall be considered the type of*

*development flexibility against which the Zoning Commission shall weigh the benefits of the PUD.*

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

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

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 project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
  - (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
5. A PUD's proposed public benefits must comply with Subtitle X § 305.12:  
*A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.*
6. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as:
- (1) *to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
  - (2) *to guide executive and legislative decisions on matters affecting the District and its citizens;*
  - (3) *to promote economic growth and jobs for District residents;*
  - (4) *to guide private and public development in order to achieve District and community goals;*
  - (5) *to maintain and enhance the natural and architectural assets of the District; and*
  - (6) *to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*

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

*"The Comprehensive Plan is a 'broad framework intended to guide the future land use planning decisions for the District. Wisconsin-Newark Neighborhood Coal. v.*

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

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

8. The Application satisfies Subtitle X § 301.1's minimum 15,000 square foot of land area for a PUD in the PDR-4 zone, because the PUD Site has approximately 127,400 square feet.

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

9. Based on the case record and the Findings of Fact above, the Commission concludes that Application is not inconsistent with the CP, when considered in its entirety, because the Application will further the following CP map designations and policies.
10. The Commission concludes that the Application is not inconsistent with the GPM's Land Use Change Area designation for the PUD Site, but will instead further this GPM designation for the reasons advanced by the Applicant and OP specifically because:
  - The Map Amendment to the MU-9 zone will facilitate new development of the PUD Site with a mix of uses not permitted under the current zoning including, housing, retail uses, parks and civic facilities in a key location along the waterfront; and
  - The Project will result in a high-quality development that includes exemplary site and architectural design, and a mix of new uses and public spaces and amenities that will be compatible with the nearby neighborhoods of Capitol Hill.
11. The Commission concludes that the Application is not inconsistent with the FLUM's Medium Density Commercial/ Institutional designation for the PUD Site because:
  - The PUD Site's current PDR-4 zoning is inconsistent with the broad mix of uses anticipated by its FLUM designation;
  - The PUD Site's FLUM designation expressly anticipates that a PUD will have greater density than the 4.0 to 6.0 FAR typical of this FLUM designation; and

- The Project’s 6.17 FAR is less than the maximum 7.2 FAR allowed for IZ developments in the MU-10 zone that the CP specifically identifies as consistent with the FLUM’s Medium Density Commercial designation.
12. The Commission concludes that the Application is not inconsistent with the CP’s Lower Anacostia Waterfront/Near Southwest Area Element because:
- The Map Amendment to the MU-9 zone will allow the redevelopment of the PUD Site consistent with many of the development priorities of the Area Element, with the MU-9 zone’s additional height and density allowing the concentration of density to protect sight lines to the Anacostia River and provide for more publicly accessible open space;
  - The Project will address several of the Area Element development priorities including:
    - Providing mixed-income housing on a site where none currently exists;
    - Utilizing environmentally sustainable design elements for both the proposed buildings and for the public space improvements on the waterfront and throughout the watershed;
    - Providing a variety of open public spaces, which can support events and cultural activities near the waterfront as well as transportation infrastructure improvements which will help surrounding communities access the new public spaces and the waterfront; and
    - Utilizing design features to ensure that the development respects the historic character of the waterfront and maintains a visual connection to the river.
13. The Commission concludes that the Application furthers the CP’s Land Use, Transportation, Housing; Environmental Protection, Parks, Recreation and Open Space, and Urban Design Elements because the Application:
- Will redevelop an underutilized property on the Anacostia River with a mixed-use, mixed-income project that would revitalize the area while still respecting the character of the nearby historic Boathouse Row and maintaining public connections to the waterfront;
  - Proposes multiple improvements to the surrounding transportation infrastructure including reconstructing M Street and Virginia Avenue, a new bike trail, and pedestrian connections to the waterfront;
  - Will provide approximately 900 new, high quality, housing units with 12% of the total residential GFA being set aside for 50 and 60% MFI;
  - Utilizes environmentally sustainable materials and features including green roofs, rooftop solar panels, sustainable landscaping, and has been designed to LEED Gold Standards; and
  - Utilizes building “cut-outs”, height, massing, and other architectural elements to respond to the architectural character of nearby Boathouse Row while maintaining significant sightlines to the Anacostia River and keeping large areas of the PUD Site open for public space.



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

14. Based on the case record and the Findings of Fact above, the Commission concludes that the Building will not result in any unacceptable impacts that are not capable of being mitigated or outweighed by the Building's proffered public benefits as detailed below.
15. The Commission concludes that the Project will not create any unacceptable land use impacts, even though the Map Amendment will allow the Project to be constructed to a much greater height and density than currently permitted because:
  - The Project's design with multiple buildings, two of which at the maximum 130 foot height allows for the retention of viewsheds through the site and provision of substantial open space, which the Commission finds to be particularly important given the PUD Site's location on the Anacostia waterfront;
  - The substantial distance between the PUD Site and existing residential neighborhoods of Capitol Hill to the north will mitigate any potential impacts resulting from the redevelopment of the PUD Site; and
  - Any remaining impacts from the redevelopment of the PUD Site will be acceptable given the quality of the Applicant's public benefits, particularly the provision of publicly accessible public space and the Applicant's contribution to senior services in the Capitol Hill neighborhood.
16. The Commission concludes that the Project will not create any unacceptable urban design, massing, or open space impacts because:
  - The Project will remain well below the maximum density permitted in the MU-9 zone;
  - The height of the East and West Towers will allow the concentration of density in those two buildings to will free up more of the PUD Site for open public space and ensure that view corridors to the river are maintained; and
  - The Commission credits Applicant's shadow studies and noise analysis that demonstrate that the Project will not result in any unacceptable impacts to the neighboring communities.
17. The Commission concludes that the Project will not create any unacceptable transportation impacts that are not capable of being mitigated because:
  - The Applicant agreed to all of DDOT's proposed conditions and the DDOT Report's proposed additions to the TDMP and LDMP; and
  - The Commission finds that the transportation impacts are acceptable when considered against the quality of the Application's proffered transportation related public benefits including the reconstruction of M Street, S.E., and Virginia Avenue, S.E.
18. The Commission concludes that the Project will not create any unacceptable environmental impacts because the Project will:
  - Replace the current obsolete, contaminated, impervious site in close proximity to the waterfront with a sustainable, mixed-use development;
  - Be designed to LEED Gold design equivalency; and
  - Will employ renewable energy sources in the form of rooftop solar panels on the West Tower.

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

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

### **Requested Development Flexibility**

#### ***Map Amendment***

20. The Commission concludes that the Application's proposed amendment of the Zoning Map to move the PUD Site from the current PDR-4 zone to the MU-9 zone is appropriate because:
- As discussed above, the Map Amendment is not inconsistent with the CP when taken as a whole;
  - The PUD Site is currently underutilized given its key location along the Anacostia River and the Map Amendment will allow for the PUD Site to be redeveloped with a mix of uses, including residential uses that are currently not permitted;
  - The MU-9 zone's higher heights and densities will allow for the development of the PUD Site in a manner that provides visual connection to the river, as well as a considerable amount of public open space while still providing a substantial amount of housing and affordable housing; and
  - The Commission concludes that the flexibility is balanced by the proffered benefits and amenities resulting from the Project.

#### ***Loading, Courts and Yard Relief***

21. The Commission concludes that the Application's requests for development flexibility from the loading, court, and rear yard requirements of the Zoning Regulations as detailed in FF 32 are appropriate because:
- The requested flexibility is relatively minor in light of the overall scale of the Project;
  - The relief for the non-compliant courts and yards for the West Tower and Building 2:
    - Is due to the unusually shaped lots;
    - The requested flexibility will not adversely impact any adjacent properties; and
    - The West Tower and Building 2 will retain adequate light and air because of the substantial amount of public space around both buildings and the overall site design; and
  - The loading relief for Building 2 to allow curbside loading will be mitigated by the Applicant's LDMP developed with and approved by DDOT.

#### ***Residential Use in East Tower***

22. The Commission concludes that the Application's request to have the flexibility to convert 25,000 square feet of non-residential GFA in the East Tower to residential uses, or to another use permitted in the MU-9 zone, is not flexibility from the development standards of the MU-9 zone or any PUD standards that must be considered in the PUD balancing test, but instead is design flexibility from the requirement of Subtitle X § 311.2 and Subtitle Z § 702.8 to construct the Project in accordance with the final plans approved by the

Commission. The Commission concludes that this design flexibility is appropriate because it will allow the Applicant to efficiently develop the Project in a manner that responds to potential changes in market demands; provided that the Applicant obtains the Commission's approval of any such change as a Modification of Consequence and that any resulting residential uses are subject to IZ.

### **Public Benefits**

23. The Commission concludes that the Project's urban design, architecture, and landscaping qualify as superior public benefits pursuant to Subtitle X § 303.5(a) and (b) that will improve the surrounding neighborhood to a significantly greater extent than would likely result from matter-of-right development.
24. The Commission concludes that the Project's site planning and land utilization qualifies as a superior public benefit pursuant to Subtitle X § 303.5(c) because:
  - It replaces a vacant and underutilized property with a new mixed-use development, including mixed-income residential; and
  - The Project includes numerous public space improvements worth approximately \$6.7 million.
25. The Commission concludes that the Project will provide superior housing and affordable housing benefits pursuant to Subtitle X § 303.5(f) and (g) because:
  - The CP's Framework Element explicitly identifies new affordable housing above and beyond the existing legal requirements is a "high-priority" public benefit (CP § 224.9);
  - The Application proposed to set aside 12% of the residential GFA for IZ for households earning up to 60% MFI – a 50% increase over the required 8% set-aside; and
  - Three of the six two-bedroom IZ units in the East Tower, the Project's first phase, and one two-bedroom unit in the West Tower, the Project's second phase, will be reserved at 50% MFI.
26. The Commission concludes that the Project will provide the following meaningful environmental benefits pursuant to Subtitle X § 303.5(k), as recognized by DOEE and OP:
  - The Project will be designed to the equivalent LEED Gold standard;
  - The Applicant will install solar panels on the roof of the West Tower sufficient to generate at least 1% of the tower's energy;
  - The Applicant will install a composite of extensive, intensive green roof systems on no less than 45% of the roof terrace on Building 2, exclusive of areas required for mechanical equipment; and
  - The Project will achieve a GAR of no less than 0.225.
27. The Commission concludes that the following are public benefits that constitute uses of special value to the neighborhood and the District as a whole pursuant to Subtitle X § 303.5(q):
  - The Applicant's \$250,000 contribution for senior programming split between a contribution to DPR and the cost of professional services related to efforts to identify

and secure a site for an adult day center in Capitol Hill constitutes a use of special value to the nearby Capitol Hill neighborhood of Ward 6; and

- The Applicant’s commitment to make the open public space and green areas publicly accessible, as well as to provide public access to the Lower Level Retail Plaza and public restrooms constitutes a public benefit because it will support public access to the parklike features near the Anacostia River.

#### **GREAT WEIGHT TO RECOMMENDATIONS OF OP**

28. The Commission must give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).
29. The Commission finds persuasive the OP Reports’ analysis of the Application, particularly OP’s conclusions that:
- The Application is not inconsistent with the CP as a whole, although aspects of the Application might be slightly inconsistent with parts of the CP;
  - The Project’s density permitted by the Map Amendment, while slightly higher than that contemplated by the FLUM for matter-of-right projects, would allow the Project to provide more housing and affordable housing in a concentrated location which would allow for large portions of the PUD Site to be dedicated to waterfront public space;
  - The Application would not result in potential adverse impacts that are not capable of being mitigated; and
  - The Applicant was proffering sufficient public benefits and amenities to balance the development flexibility requested by the Application as well as any potential adverse impacts not capable of being mitigated.
- Therefore, the Commission concurs with OP’s recommendations to approve the Application.

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

30. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).”
31. The Commission finds the Supplemental ANC Report’s concerns with the Project persuasive, notes that the Applicant has made significant changes to the Project’s public benefits, including increasing the affordable housing offer, a ten-fold increase in the monetary contribution for senior services, and achieving LEED Gold or equivalent, as well

as executing the MOU with the ANC, and concurs with the Supplemental ANC Report's support of the Application in its final form.

## DECISION

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

- A First Stage PUD for the PUD Site;
- A Consolidated PUD for the East Tower of Building 1; and
- An amendment of the Zoning Map to rezone the PUD Site from the PDR-4 to the MU-9 zone; subject to the following guidelines, conditions, and standards (where compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

### **A. PROJECT DEVELOPMENT**

1. The approved project (the "Approved PUD") shall be developed in accordance with the following plans and as modified by the guidelines, conditions, and standards herein:
  - The First Stage Plans, dated November 19, 2020, and marked as Ex. 80A1-80C of the record; and
  - The Consolidated PUD plans dated November 19, 2020, and marked as Ex. 79A1-79C of the record (collectively, the "Approved Plans").
  
2. The Approved PUD shall have the following flexibility from the requirement of the Zoning Regulations:
  - West Tower of Building 1
    - Court C1 is permitted to have a width of 36 feet, 7 inches where a width of 39 feet, 7 inches is required, as reflected on the Court and Yards Diagram on Sheet A-7 of the First-Stage PUD Plans for the West Tower (Ex. 80A1);
  - Building 2
    - A Rear Yard measuring 12 feet, 7 inches is permitted where a rear yard of 23 feet, 5 inches is required;
    - Court C-7 is permitted to have a width of 17 feet, 1 inch where 32 feet, 8 inches is required, as reflected on the Courts and Yards Diagram on Sheet A-7 of the First-Stage PUD Plans, for Building 2 (Ex. 80A1); and
    - Loading – loading and service facility requirements are waived.
  
3. The East Tower of Building 1, constructed as Phase 1 of the Project, shall have the following design flexibility from the Approved Plans:
  - Conversion of Retail Space. To convert up to 25,000 square feet of retail space in the Building 1 East Tower to residential use or any other use permitted in the MU-9 zone district, provided that any such conversion shall require the Applicant to file an application for a Modification of Consequence for the Commission's approval of the revised building design and any additional residential square footage shall be subject to the IZ requirement approved for the PUD;

- Number of Dwelling Units – Phase One. To alter the 496 units to increase the number of units by up to five percent (5%) or decrease the number of units by up to ten percent (10%), provided that the East Tower, Phase 1 of the Project, shall not have fewer than 64 two-bedroom units;
  - Interior Components. To vary the location and design of all interior components, including amenities, partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configurations of the building;
  - Exterior Details. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the approved plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylight;
  - Exterior Materials: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown in the approved plans;
  - Retail Use Types. To vary the types of uses designated as “retail” use on the approved plans to include all uses permitted within the MU-9 zone district.
  - Signage. To vary the message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved plan;
  - Affordable Units. To vary the number and mix of IZ units of the total number of dwelling unit changes, provided that the location and proportionate mix of IZ units generally conforms to the layout shown in the approved plans;
  - Streetscape Design. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division; and
  - Sustainable Features. To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the PUD does not decrease below the minimum required for the LEED standard specified by this Order, which is LEED Gold equivalency.
4. In accordance with the Approved Plans, the Approved PUD shall have:
- A maximum building height of:
    - 130 feet (East and West Towers of Building 1); and
    - 92 ft (Building 2);
  - Approximately 786,160 square feet of GFA, including 44,092 square feet of non-residential GFA; and
  - An FAR of 6.17 for the PUD Site;
  - Lot occupancy of 63.1% for the PUD Site;
  - Approximately 900 residential units with 12% subject to the Inclusionary Zoning requirements; and
  - Approximately 174 on-site parking spaces.



## B. BUILDING PERMIT REQUIREMENTS

1. **Together with its application for the first Building Permit for the Approved PUD**, the Applicant shall:
  - a. ***Environmental*** - Submit a checklist evidencing that the Project has been designed to LEED-Gold standards under the LEED-v4 for BD+C: New Construction and Major Renovation standard.
2. **Prior to the issuance of the first Building Permit for the Approved PUD**, the Applicant shall:
  - a. ***Public Space Improvements*** - During DDOT Public Space Committee review of the First Phase of the Approved PUD, the Applicant shall submit to DDOT a signage and striping plan for Water Street, S.E., between 12th and M Streets, S.E. (either as a part of the public space application for M Street, S.E., and Virginia Avenue, S.E. or as a separate public space application). Subject to DDOT's review and approval, implement the signage and striping plan during construction of the West Tower in the second phase of the Approved PUD.
  - b. ***Monetary Contribution for Senior Programming*** - Contribute \$25,000 to the Department of Parks and Recreation to support the programming for seniors at the Arthur Capper Recreation Center.

## C. CERTIFICATE OF OCCUPANCY REQUIREMENTS

1. **Prior to the issuance of the first Certificate of Occupancy for the Approved PUD**, the Applicant shall:
  - a. ***Public Space Improvements*** - construct the following improvements in public space and/or for the use by the public:
    - **M Street**. As reflected on Sheets L-08 and L-09 of the Applicant's Consolidated PUD Plans, (Ex. 79A1-79C), the Applicant will relocate the Anacostia Bike Trail to the north side of M Street, S.E., in order to provide a better connection to the existing trail to west. The Applicant will reconstruct the bike trail to DDOT's current standard width of ten feet.
    - **Virginia Avenue**. The Applicant will re-establish Virginia Avenue, S.E., and construct the roadway to current DDOT standards and will include bioretention facilities.
    - **Arrival Plaza**. The Arrival Plaza will be improved with an expansive green lawn and function as a pedestrian promenade and plaza. The Applicant shall maintain the improvements in the Arrival Plaza **for the life of the project**.
    - **Waterfront Plaza**. The Waterfront Plaza at the terminus of Virginia Avenue, S.E., will include a monumental staircase and accessible walkways, and is designed to accommodate outdoor dining, small gatherings, art fairs, a farmers' market and other similar community activities. The Applicant shall maintain the improvements in Waterfront Plaza **for the life of the project**.
    - **14<sup>th</sup> Street Corridor Plaza**. The 14<sup>th</sup> Street Corridor Plaza is designed to provide connectivity between the proposed Southeast Boulevard Pedestrian Bridge and the

lower Retail Promenade and Water Street, S.E. The Applicant shall maintain the connectivity **for the life of the project.**

- **Lower Retail Promenade.** The Lower Retail Promenade will be improved with a great lawn and provide access to Water Street, S.E., and the Anacostia Bike Trail. The Applicant shall maintain the Lower Retail Promenade **for the life of the Project.**

2. **Prior to the issuance of a Certificate of Occupancy for the East Tower of Building 1,** the Applicant shall:

a. ***Monetary Contribution for Senior Programming***

- Expend \$225,000 to cover the costs related to identifying and securing a site for an adult day care center in the Capitol Hill neighborhood of Ward 6 or Hill East Reservation 13. The funds will be used to engage Iona and/or Capitol Hill Village to produce a report including but not limited to the following:
  - An evaluation of the demand and demographic data for adult day care;
  - Production of a matrix of prioritized adult day care service needs and the square footage required to meet those needs;
  - Identification of potential sites for an adult day care center serving Capitol Hill;
  - Development of test fits or preliminarily designs of a proposed space;
  - Identification of the cost to secure a site and develop such a facility;
  - Development of a proposed timeline for completion of the activities necessary to develop the proposed center; and
  - Identification of potential adult day care providers to develop and run the proposed center; and
- File documentation, including a copy of the final report, with the Zoning Administrator demonstrating that this condition has been satisfied as set forth above. Copies of the final report will also be made publicly available on the website of the organization overseeing the production of the report.

3. **Prior to the issuance of the final Certificate of Occupancy for the Second-Stage PUD,** the Applicant shall:

a. ***Environmental***

- Install solar panels on top of the West Tower of Building 1 that will generate at least one percent (1%) of the energy for the tower;
- Install a composite of extensive, intensive green roof systems, and hardscaped areas for the roof terrace on Building 2, which shall include a garden or other green roof infrastructure that is as large as commercially and operationally feasible, but not smaller than 45% exclusive of roof areas needed for mechanical equipment and elevator overruns; and
- Achieve a Green Area Ratio for the Project of no less than 0.225.

4. **Prior to the issuance of the final Certificate of Occupancy for the Approved PUD,** the Applicant shall:

- a. ***Environmental*** - Provide a signed affidavit to the Zoning Administrator evidencing that the Applicant has registered the Project under the LEED-v4 for BD+C: New Construction and Major Renovation standard. The signed affidavit shall also include

the steps taken by the Applicant towards certification of the Project under the LEED-v4 for BD+C: New Construction and Major Renovation standard.

**b. *Transportation Demand Management Measures***

- Construct the missing curb ramp on the east side of 12th Street, S.E., approximately 200 feet south of M Street, S.E. (Maritime Plaza I driveway), subject to DDOT approval;
- Install one (1) four-dock expansion plate to the existing CaBi station at Potomac Avenue, S.E., and 8<sup>th</sup> Street, S.E, subject to DDOT approval;
- Construct and install at least five (5) missing tree boxes and street trees along the off-site segment of M Street between 12th Street and Virginia Avenue, subject to DDOT approval;
- Install a Transportation Information Center Display (electronic screen) within each residential lobby containing information related to local transportation alternatives. At a minimum, the display should include information about nearby Metrorail, Circulator, and Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
- Increase the number of lockers and showers provided for retail employees to meet the minimum required by the Zoning Regulations;
- Establish the minimum cost of residential parking based on the average market rate within a quarter mile of the site;
- Provide one (1) collapsible shopping cart (utility cart) for every 50 residential units, for a total of 18 utility carts, in order to encourage residents to walk to the grocery store and run errands; and
- Work with another entity (*e.g.*, Capitol Riverfront BID) to provide a shuttle service between the PUD site and a nearby Metrorail Station. The shuttle shall operate with headways between 10-15 minutes and shall operate during the weekday AM and PM commuter peak periods. The exact shuttle route and pick-up/drop-off areas in public space shall be coordinated with DDOT. The shuttle shall run until such time as the pedestrian bridge over Southeast Boulevard is constructed and open for use. In the event there is a desire to eliminate shuttle service prior to the construction of the pedestrian bridge due to low ridership, the Applicant will work with DDOT to understand reasons why the ridership is low (*e.g.* other alternative transportation options are available, biking/walking is preferred over shuttle, etc.) and collaborate on how to improve service and ridership. If increased vehicular traffic related to the project is determined to be the reason for low ridership, the Applicant will work with DDOT to determine if a substitute TDM measure is necessary.

**D. REQUIREMENTS FOR THE LIFE OF THE APPROVED PUD**

**For the life of the Approved PUD**, the Applicant shall:

**1. *Affordable Housing*:**

- Reserve no less than 12% of the Project's residential gross floor area (including cellar floor area dedicated to dwelling units, projections dedicated to residential use, and non-communal penthouse space in the Project), as determined by the Zoning Administrator to be compliant with the Inclusionary Zoning requirements at permit issuance for

households with incomes not exceeding 60% of median family income (“MFI”), except that:

- Three (3) of the six (6) two-bedroom IZ units in the East Tower of Building 1, the first phase of the Approved PUD, shall be reserved for households with incomes not exceeding 50% of MFI; and
- One two-bedroom unit in the West Tower of Building 1, the second phase of the Approved PUD, shall be reserved at 50% of MFI.
- In the East Tower of Building 1, the first phase of the Approved PUD, the affordable units shall be in accordance with the following chart:

Residential Unit Type	Residential GSF*/ Percentage of Total	# of Units	Reserved for household earning equal to or less than	Affordable Control Period	Affordable Unit Type
<b>Total</b>	443,454 / 100%	496			
<b>Market Rate</b>	390,239 / 443,454 = 88%	417	Market Rate		
<b>IZ (Total)</b>	53,215 / 443,454 = 12%	79	Varies	Life of the Project	
<b>IZ** (Studio, 1-BR, and 2-BR)</b>		76	60% MFI	Life of the Project	
<b>IZ** (2-BR)</b>		3	50% MFI	Life of the Project	

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

\*\* The number of IZ units is approximate based on the current dwelling unit count and layout. In accordance with the flexibility requested by the Applicant, the mix of IZ units may change if the total number of dwelling units changes within the range of flexibility requested, provided that the location and proportionate mix of the inclusionary units substantially confirms to the layout shown on the IZ Unit Location Plan included with Exhibit 79A1 of the record (see Sheet A-6).

2. **Environmental & Sustainability** - Provide the following sustainable design elements and features in the Approved PUD:
  - Riparian oriented plant material for areas in close proximity of the waterfront to mitigate stormwater runoff and tolerate flood events;
  - Bioretention planters strategically placed throughout the streetscapes and interior open spaces in order to collect, filter, and detain runoff in close proximity to each planter;
  - Extensive and intensive green roof systems incorporated on the building terraces to collect, filter, and detain stormwater runoff; and
  - Permeable paver street parking spaces in order to collect, filter, and detain runoff.
3. **Public Space Improvements** – Maintain the following public space improvements required by Condition No. C.1:
  - The Arrival Plaza;
  - The Waterfront Plaza at the terminus of Virginia Avenue, S.E.;

- The 14<sup>th</sup> Street Corridor Plaza’s connectivity between the proposed Southeast Boulevard Pedestrian Bridge and the lower Retail Promenade and Water Street, S.E.; and
- The Lower Retail Promenade providing a great lawn and access to Water Street, S.E., and the Anacostia Bike Trail.

4. ***Operation and Use of the Project***

- The following uses, even though permitted as a matter of right, with a special exception, or with a variance in the MU-9 zone district shall not be permitted on the PUD Site:
  - Sexually-oriented business establishment as defined in Subtitle B § 100.2;
  - Check-cashing establishment;
  - Pawnbroker;
  - Nightclub as defined by the Alcoholic Beverage Regulation Administration; and
  - Firearm sales.
- The open space and green areas on the PUD Site adjacent to the areas identified as Waterfront Plaza, Arrival Plaza, the 14th Street Corridor Plaza, and Water Street, S.E., as reflected on Sheet L-24 of the landscape plans for the Consolidated PUD (Ex. 79C), shall be accessible to the public at all times; except that public access to the open space adjacent to the Lower Level Retail Plaza, building elevators, and lobby areas may be limited to 9 a.m. to 9 p.m.
- The restrooms identified on A-10 of the architecture plans for the Consolidated PUD (Exhibit 79A2) shall remain open to the public from 9:00 a.m. to 9:00 p.m. The Applicant or subsequent owner shall ensure that the restrooms are maintained in a safe and sanitary condition.

4. ***Transportation Demand Management Measures*** - Implement the Loading Management Plan that is set forth below:

- The Transportation Coordinator shall submit documentation to DCRA summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case.
- The Transportation Coordinator shall submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the project) summarizing continued substantial compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT.
- The Applicant shall develop a concept to convert Water Street, S.E. from an automobile-oriented connection between 12<sup>th</sup> and M Streets, S.E., to a shared street (a.k.a. “neighborhood greenway”) in which bikes and pedestrians have priority over vehicles, subject to DDOT approval, with the additional guidance:
  - This will be limited to new signage and pavement markings, including Anacostia Riverwalk Trail branding.
  - Other elements would be limited to lower speed limit, use of flex posts, and automobile restrictions achieved through geometric changes at Water Street’s intersections with both 12<sup>th</sup> and M Streets, S.E., to discourage non-local vehicle use. Any geometric changes at the intersection of Water and M Streets, S.E. will be

incorporated into the Applicant's plans to reconfigure the intersection with a traffic circle. Any geometric changes at the intersection of Water and 12<sup>th</sup> Streets, S.E., would be limited to installation of flex post delineators.

- The Applicant will collect current daily traffic counts on Water Street, S.E., and at driveways along Water Street, S.E., (at the time the concept is being developed) to better inform the design.
- The Applicant will involve a representative from the ANC throughout the design process.
- If DDOT is unable to come to an agreement with the Applicant on the design of Water Street, S.E., then a new ten-foot trail along the Water Street, S.E., frontage will be constructed.
- A one-year bikeshare membership for each residential unit at initial occupancy.
- Fund and install a 23-dock Capital Bikeshare (CaBi) station with 12 bikes and fund one year of maintenance and operations costs. Subject to DDOT's approval, the Bikeshare station shall be sited in such a way to allow expansion of the dock up to 47 docks, being free and clear of obstructions such as utility access holes, trees, or other locations that would prevent expansion of the station.
- Provide a bicycle repair station in the garage.

5. **Loading Management Plan** - Implement the Loading Management Plan that is set forth below:

- A member of the on-site management team will be designated as a loading coordinator (duties may be part of other duties assigned to the individual). The loading coordinator will coordinate all loading activities for Building 2 (including deliveries, trash disposal, and residential move-in and moveout activities) and ensure bicycle and pedestrian safety is not compromised or traffic impeded on M Street, S.E., from these activities.
- The loading coordinator will be responsible for informing residential and retail tenants of the guidelines and procedures for loading and delivery operations.
- The loading coordinator will inform tenants of DDOT's regulations for moving trucks and will work with tenants when applying for DDOT "Emergency, No Parking" signs for moving trucks.
- The Applicant or loading coordinator will file a permit application with DDOT and coordinate with DDOT's Parking and Ground Transportation Division (PGTD) on the appropriate signage and size of loading or "no parking" zone on M Street, S.E., adjacent to Building 2.
- In the event the designated on-street loading or "no parking" zone is full, the loading coordinator may direct the truck driver to return at another time, reroute trucks to the loading berths of the East and West Towers of Building 1, or reroute trucks to Virginia Avenue, S.E., or the internal north-south private driveway.
- All tenants of Building 2 will be required to notify the loading coordinator before moving in or out. The tenant shall provide the loading coordinator the following information: time and date that the truck is anticipated to arrive, size of truck being used, and name of the moving service (if applicable).
- The loading coordinator will ensure that moving trucks use the designated loading zone on M Street, S.E., adjacent to Building 2. If multiple move-in/move-out events overlap,



additional moving trucks will be required to obtain a permit from DDOT to establish a temporary on-street no parking zone nearby.

- The privately hired trash company will roll trash bins out the side of the building to the M Street curb at the time of trash pick-up and then back inside as soon as trash collection is complete. Trash and recycling bins will not be stored in public space.
- Trash and delivery trucks will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to Title 20 DCMR, 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](http://godcgo.com/freight)). The loading coordinator will distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws.
- The loading coordinator will be responsible for disseminating suggested truck routing maps to drivers from delivery and trash pick-up services that frequently serve Building 2, as well as notifying drivers of any access or egress restrictions.

#### **E. VALIDITY**

1. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Administrator, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of two (2) years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three (3) years of the effective date of this Order.
3. The Applicant 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 (October 15, 2020):** 5-0-0 (Peter A. Shapiro, Michael G. Turnbull, Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**)


#### **Final Action**


**Vote (November 19, 2020):** 5-0-0 (Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, Michael G. Turnbull, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-06 shall become final and effective upon publication in the *D.C. Register*; that is, on April 23, 2021.

**BY ORDER OF THE D.C. ZONING COMMISSION** one text here

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

  
\_\_\_\_\_  
**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
\_\_\_\_\_  
**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

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