

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

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**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 22-06**  
**Z.C. Case No. 22-06**  
**801 Maine Ave SW PJV, LLC**  
**(Consolidated Planned Unit Development and Related Map Amendment**  
**@ Square 390, Lot 53)**  
[insert date of final action]

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on October 6, 2022, to consider the application (the “Application”) of 801 Maine Ave SW PJV, LLC (the “Applicant”) requesting approval of the following under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016), to which all subsequent citations refer unless otherwise specified):

- A consolidated planned unit development (“PUD”), pursuant to Subtitle X, Chapter 3, and Subtitle Z, Chapter 3; and
- A PUD-related map amendment from Mixed Use (MU)-12 to the MU-9A zone.

The Applicant proposes to construct a new mixed-use building consisting of residential and ground floor retail uses at Square 390, Lot 53 (the “Property”), which is currently zoned MU-12. 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. 801 Maine Ave SW PJV, LLC (the “Applicant”) is a sub-entity of Jair Lynch Real Estate Partners, a local real estate firm headquartered in Washington, DC. The Applicant is the current owner of the Property and authorized land use counsel to file and process the Application on its behalf. (Exhibit [“Ex.”] 3 – 3B.)
2. Advisory Neighborhood Commission (“ANC”) 6D, in which the Property is located, is an “affected ANC” pursuant to Subtitle Z § 101.8.
3. The Applicant and ANC 6D are automatically parties in this proceeding pursuant to Subtitle Z § 403.5.
4. There were three requests for party status in opposition to the Application:

- Request filed by Erin Berg, President of the Capitol Square Place Homeowners Association, Inc. (the “Capitol Square HOA”), on behalf of the Capitol Square HOA (Ex. 22 – 22A);
  - Request filed by Gustavo Mathias Alves Pinto (“Mr. Pinto”), citing address of 817 G Street, SW (Ex. 33); and
  - Request filed by Corrine Carroll (“Ms. Carroll”), citing address of 670 9<sup>th</sup> Street, SW (Ex. 39 – 39A.)
5. As a preliminary matter during the public hearing held on October 6, 2022 (the “Public Hearing”), the Commission:
- Granted the party status in opposition request of the Capitol Square HOA; and
  - Denied the party status in opposition requests of Mr. Pinto and Ms. Carroll, on the basis that Mr. Pinto’s and Ms. Carroll’s interests were common to the Capitol Square HOA. (October 6, 2022, Public Hearing Transcript [“Tr.”] at 7-11.)

### **Notice**

6. The Office of Zoning (“OZ”) sent notice of the October 6, 2022, public hearing in accordance with Subtitle Z § 402.1 to:
- Authorized counsel for the Applicant;
  - The affected ANC 6D
  - The ANC 6D01 Single Member District (“SMD”) Commissioner, whose district includes the Property;
  - The Office of the ANCs;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);
  - The Department of Consumer and Regulatory Affairs (“DCRA”);
  - The Office of Zoning Legal Division (“OZLD”);
  - The District Department of Environment (“DOEE”);
  - Councilmember Charles Allen, the Ward 6 Councilmember in whose district the Property is located;
  - The Chair and At-Large Members of the D.C. Council; and
  - The owners of property located within 200 feet of the Property.
- (Ex. 18-19.)
7. OZ published notice of the public hearing in the June 24, 2022, *D.C. Register* (69 DCR 7384) as well as on the calendar on OZ’s website. (Ex. 17-19.)
8. The Applicant submitted evidence that it had posted notice of the public hearing on the Property as required by Subtitle Z § 402.3 and maintained said notice in accordance with Subtitle Z § 402.10. (Ex. 20 and 52.)

### **The Property**

9. The Property is a triangular shaped parcel located in the southwest quadrant of the District and has a total land area of approximately 53,363 square feet ( $\pm$  1.23 acres). The Property

is generally bounded by G Street on the north, Maine Avenue on the south, 9th Street on the west, and government-owned land to the east. The Property gently slopes from its higher grade at G Street to its lowest point along Maine Avenue. There are two curb cuts located near the northern corner of the Property – one along 9<sup>th</sup> Street and one along G Street – that enable vehicular ingress and egress to and from the Property.

10. There are two underground tunnels that service the Washington Metropolitan Area Transit Authority (“WMATA”) Yellow Line located approximately 50 feet below grade.
11. The Property currently is improved with a four-story office building that was recently leased by the National Institute of Food and Agriculture, an agency of the U.S. Department of Agriculture. The building is now occupied with a concierge and building maintenance services, as well as a few temporary uses. The Property also includes an underground garage that is being actively used for public parking.
12. The Property is located within the boundaries of Ward 6 and ANC 6D-01.

### **Surrounding Area**

13. The Property is located in the northwestern portion of the Southwest-Waterfront neighborhood, which is generally bordered by the Francis Case Memorial bridge to the west, the Southwest Freeway to the north, and the Navy Yard neighborhood to the east.
14. The Property’s immediate surroundings include Benjamin Banneker Park to the west, the Thomas Jefferson Middle School Academy and Jefferson Field to the east, The Wharf planned unit development to the south, and a moderate-density townhome planned unit development to the north, which is known as the Capitol Square Place townhome community (“Capitol Square”).<sup>1</sup>
15. The Property is generally surrounded by a mix of residential and non-residential uses. The Capitol Square townhouses line G Street to the north, which is a one-way street (eastbound). The activity of the neighborhood increases moving southward, where the higher density project known as “The Wharf” serves existing residents and visitors with its diverse range of commercial and recreational offerings.
16. As such, the Property is situated at a transitional location between two developments of contrasting urban character: (i) the mixed-use, high-rise scale of The Wharf along Maine Avenue; and (ii) the residential, mid-rise scale of the Capitol Square townhome community along G Street.
17. The Property is well-served by public transit options. The L’Enfant Plaza Metrorail station is located to the northeast and services the Blue, Orange, Silver, Green, and Yellow lines, and the Waterfront Metrorail station is located to the southeast and services the Green line.

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<sup>1</sup> The Wharf was the subject of Z.C. Case Nos. 11-03 and 11-03A-J. The Capitol Square townhome development was the subject of Z.C. Case No. 98-10.

Both stations are approximately 0.5 miles away (approximately 10-minute walk) from the Property. In addition, the Property is served by the 52 and 74 Metrobus routes.

18. Across 9<sup>th</sup> Street is Benjamin Banneker Park, which provides walking access to the National Mall, the Smithsonian Museums, and other landmarks in the District.

### **Current Zoning**

19. The Property is currently zoned MU-12. Subtitle G § 100.3 establishes that the purposes of the MU Zones are to, among other things:
  - Provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale throughout the city;
  - Reflect a variety of building types, including, but not limited to, shop-front buildings which may include a vertical mixture of residential and non-residential uses, buildings made up entirely of residential uses, and buildings made up entirely of non-residential uses;
  - Ensure that infill development is compatible with the prevailing development pattern within the zone and surrounding areas; and
  - Preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities.
20. The MU-11 through MU-14 zones are mixed-use zones that are intended to be applied generally in the vicinity of the waterfront. The MU-12 zone is specifically intended to permit moderate-density mixed-use development generally in the vicinity of the waterfront. (Subtitle G §§ 500.1 and 500.3.)
21. The MU-12 zone permits the following:
  - A maximum density of 2.5 floor area ratio (“FAR”), with up to 3.0 FAR for IZ projects, and with a maximum non-residential FAR of 1.0 (Subtitle G § 502.1);
  - A maximum building height of 45 feet, with up to 50 feet for IZ projects (Subtitle G § 503.1); and
  - A maximum lot occupancy of 80% for residential use (Subtitle G § 504.1).
22. The MU-12 zone is subject to the use permissions of MU-Use Group C, where residential and certain non-residential uses are permitted as a matter-of-right, including but not limited to, eating and drinking establishments, lodging, retail, and services uses, both financial and general. (Subtitle G §§ 500.2 and 507.1.)

### **Comprehensive Plan (Title 10-A DCMR, the “CP”)**

23. The CP’s Generalized Policy Map (“GPM”) designates the Property as a “Neighborhood Conservation Area” (Ex. 3F):
  - The CP’s Framework Element states that “Neighborhood Conservation areas have little vacant or underutilized land. They are generally residential in character. Where change occurs, it will typically be modest in scale and will consist primarily of infill housing, public facilities, and institutional uses. Major changes in density over current (2017)

- conditions are not expected but some new development and reuse opportunities are anticipated, and these can support conservation of neighborhood character where guided by Comprehensive Plan policies and the Future Land Use Map." (§ 225.4.)
- The Framework Element further states that "[t]he guiding philosophy for Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map and Comprehensive Plan policies. Approaches to managing context-sensitive growth in Neighborhood Conservation Areas may vary based on neighborhood socio-economic and development characteristics. In areas with access to opportunities, services, and amenities, more levels of housing affordability should be accommodated." (§ 225.5.)
24. According to the GPM, the Property also is located in a Resilience Focus Area, where:
- Future planning efforts are intended to guide resilience to flooding for new and existing development and infrastructure projects; and
  - Watershed resilience is explored to encourage the implementation on a neighborhood scale, as well as site-specific solutions, design guidelines and policies for a climate adaptive and resilient District. (§ 304.8.)
25. The Future Land Use Map ("FLUM") designates the Property as Medium Density Commercial (Ex. 3G):
- The CP's Framework Element states that this designation "is used to define shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial Areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate Density Commercial areas. [Matter-of-right] 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." (§ 227.12.)
26. The CP's Lower Anacostia Waterfront/Near Southwest ("AWNS") Area Element, which applies to the Property, includes the following development priorities, among others:
- The Area Element seeks to "[r]evitalize and preserve established neighborhoods...while promoting infill development to provide new housing opportunities, including accessory dwelling units, to meet a range of affordability levels and housing needs. Continued investment in the existing housing stock and in established local commercial areas should be strongly encouraged." (§ 1907.2; AW-1.1.1: Conservation of Established Waterfront Neighborhoods);
  - The Area Element promotes the creation of "new mixed-use, mixed-income neighborhoods on vacant or underused waterfront lands[.] A substantial amount of new

- housing and commercial space should be developed in these areas, reaching households of all incomes, types, sizes and needs. Opportunities for grid interconnected neighborhood-scale energy utilities systems as part of the development of these areas should be evaluated, using renewable energy sources to provide greater environmental benefits for the community.” (§ 1907.3; AW-1.1.2: New Waterfront Neighborhoods);
- The Area Element “encourage[s] commercial development in the waterfront area in a manner that is consistent with the Future Land Use Map...A mix of high-density commercial and residential development should be focused along key corridors, particularly along Maine Avenue[.]” (§ 1907.8; AW-1.1.7: Waterfront Area Commercial Development);
  - The Area Element seeks to “[i]mplement the policies and recommendations of the Southwest Neighborhood Plan” and to use the plan as a framework for evaluating new development per plan recommendations and design guidelines (§ 1914.5; AW-2.5.2: Southwest Neighborhood Plan); and
  - The Area Element “promote[s] a mix of affordable and market rate residential units that better serve the community needs in Southwest [and] prioritize[s] the creation of a greater number of affordable units than the Inclusionary Zoning requirement or more family-sized units (§ 1914.14; AW-2.5.11: Affordable and Family-Sized Housing in Southwest).

### **The Southwest Neighborhood Plan**

27. The Property is also subject to the objectives and recommendations of the Southwest Neighborhood Plan (the “SW Plan”), a Small Area Plan (“SAP”) that was adopted by the D.C. Council on July 14, 2015, which:
- Focuses on a planning area that extends from South Capitol Street, west to Maine Avenue SW; from P Street SW, north to the I-395 Freeway (SW Plan, p. 2);
  - Reflects a community-based plan to enhance parks, pedestrian and street connections, bolster retail, integrate community amenities, enhance transportation choices, and accommodate and guide the direction of future growth in the Southwest Neighborhood (SW Plan, p. 2);
  - Provides several recommendations to address key concerns identified by the community, which include:
    - The need for varied housing choices;
    - Enhancement of neighborhood-serving retail;
    - Preservation of park-like neighborhood character;
    - Maintaining economic and racial diversity; and
    - Promotion of the area’s unique development pattern and architectural legacy (SW Plan, p. 4); and
  - Frames its goals and recommendations around the following seven core concepts:
    - Model Community;
    - Modernist Gem, which includes eight Design Guidelines to ensure that new development achieved through the PUD process is “[i]n keeping with the unique character of the Southwest Neighborhood”:
      - Encourage a mix of building heights;

- Achieve design excellence for high quality and timeless development;
  - Promote variation in building frontages along streets with continuous massing;
  - Enhance green space through landscaped perimeters and internal green or amenity spaces;
  - Incorporate sustainable building and site design;
  - Ensure parking is not a detractor;
  - Maximize transparency and visibility of ground floor uses along key commercial corridors; and
  - Encourage connectivity for pedestrians, bicycles, and vehicular access, including transit where feasible (SW Plan, pp. 81-84);
  - Green Oasis;
  - Arts and Cultural Destination;
  - Thriving Town Center;
  - Optimized District Parcels; and
  - Vibrant Connections (SW Plan, pp. 5-8).
28. The SW Plan cites to the 2006 version of the FLUM, which designated the Property as Medium Density Commercial. (SW Plan, p. 31.)

## II. THE APPLICATION

### The Project

29. The Application, as amended, proposes to redevelop the Property with a new mixed-use, mixed-income building consisting of residential and ground-floor retail uses (the “Project”). The overall Project will provide:
- A maximum height of 130 feet along Maine Avenue, and will step down to a height of 90 feet along G Street;
  - A total density of approximately 7.99 FAR;
  - Approximately 458,644 square feet of gross floor area (“GFA”), of which:
    - Approximately 434,475 square feet of GFA will be devoted to residential use, yielding approximately 498 new residential units; and
    - Approximately 24,169 square feet of GFA devoted to neighborhood-serving, ground-floor retail and/or services use;
  - A significant affordable housing component broken down as follows:
    - An allocation of at least 15% of the residential GFA, or approximately 65,171 square feet, to rental Inclusionary Zoning (“IZ”) units;
    - An allocation of at least 15% of any penthouse habitable space, or approximately 800 square feet, to rental IZ units;
    - 67 IZ units that will be reserved for households with incomes not exceeding 60% MFI; and
    - Eight (8) three-bedroom IZ units that will be reserved for households earning no more than 50% MFI;
  - Approximately 234 below grade parking spaces;
  - Approximately 120 long-term and 32 short-term bicycle parking spaces;

- Extensive outdoor spaces and amenities including balconies, penthouse habitable spaces for recreation, a communal pool, and courtyards for residents and neighbors. (Ex. 3 – 3J, 12 – 12A, 14 – 15G, 37 – 38I, 99A1 – 99A2, 112 – 112I, [REDACTED].)

30. The proposed building integrates the following design elements:
- Ground-floor retail spaces that wrap around the southwestern corner of the Property and front along Maine Avenue, with facades that are designed to optimize views and activate abutting pedestrian pathways;
  - A primary residential lobby that extends north on the west elevation along 9<sup>th</sup> Street, culminating to a primary residential entrance that is framed by a landscaped entry court;
  - An elevated courtyard along Maine Avenue that will support on-building rainwater management with intensive bio-retention roof systems;
  - Height transitions that are intended to respond to the surrounding context, particularly the abutting school and low-density townhomes to the north across G Street; and
  - A diverse mixture of exterior materials that are intended to distinguish the architectural character of the northern and southern sections of the building.
- (Ex. 38A1 – 38A5, 99A1 – 99A2.)
31. With respect to circulation, the Project involves the construction of a private driveway pursuant to the DDOT Public Space Committee’s (“PSC”) concept approval of a new curb cut on Maine Avenue and a shifted curb cut along G Street. The private driveway will have one-way operations from Maine Avenue to a 67’ loading berth, and two-way operations from the 67’ loading berth to G Street. The alternative access points will only accommodate right-in/right-out maneuvers, and the Maine Avenue access point will be restricted to certain large trucks. (Ex. 38D.)
32. The Project also proposes various improvements to reconfigure and redesign 9th Street that will significantly enhance vehicular traffic flow and pedestrian and bicycle safety along and around the Property (the “9<sup>th</sup> Street Improvements”). The 9th Street Improvements, which exceed the mitigation measures required to minimize the Project’s impacts to the surrounding traffic network, include, but are limited to:
- The reduction of excess travel lanes;
  - The widening of sidewalks along the east side of 9th Street and the addition of generous landscaped areas;
  - The removal of the slip lane from 9th Street to G Street;
  - The addition of a pick-up/drop-off (“PUDO”) zone in front of the main residential lobby of the Project; and
  - A reconfiguration that enables the installation of a future traffic signal at the intersection of 9th and G Street.
- (Ex. 38C.)



### **Application Requests**

33. The Application requested the Commission approve a Consolidated PUD with a related Zoning Map amendment to rezone the Property from the MU-12 to the MU-9A zone. (Ex. 3D, 3E.)
34. As a result of this Zoning Map amendment, the Project can achieve the additional height and density as follows:
  - Height: 130 feet proposed; gain of 70 feet when compared to matter-of-right and PUD height permitted under existing MU-12 zoning (maximum 60 feet); and
  - Density: 7.99 proposed; gain of 4.99 FAR when compared to matter-of-right density permitted under existing zoning (maximum 3.0 FAR with IZ), and gain of 4.39 FAR when compared to PUD density under existing MU-12 zoning (maximum 3.6 FAR).
35. The Application further requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1 to allow:
  - The proposed side yard of nine feet on the eastern side of the building, where a minimum of 21 feet, 8 inches is required pursuant to Subtitle G § 406.1.
36. The Application also requested the Commission approve design flexibility to vary certain elements in the Application’s final plans as approved by the Commission and still comply with the requirement of Subtitle X § 311.2 and Subtitle Z § 702.8 to construct the Project in complete compliance with the final plans.

### **Applicant’s Submissions**

37. On February 11, 2022, the Applicant filed its original Application that included:
  - A Statement in Support of the Application that provided an overview of the Project and justifications relating to the PUD evaluation criteria of Subtitle X § 304;
  - An initial list of public benefits and amenities proffered in connection with the Consolidated PUD; and
  - An initial set of architectural drawings and elevations;  
(Ex. 3 – 3J.)
38. On March 22, 2022, the Applicant filed a supplemental statement and accompanying exhibit, which provided an amended list of public benefits and amenities and supplemental information in support of the Applicant’s affordable housing proffer (the “Supplemental Submission”). (Ex. 12 – 12A.)
39. The Commission voted to set down the Application for public hearing at its public meeting on April 28, 2022. At that meeting, the Commission requested clarification on the proposed building height. The Commission also requested additional information regarding the proposed mix of market rate versus affordable housing units, and the location of the affordable housing units.
40. Following the Commission’s public meeting held on April 28, 2022, the Applicant filed a prehearing statement and accompanying exhibits on June 4, 2022 (the “Prehearing

Submission”), which responded to the Commission’s questions and OP’s requests for additional information, and included:

- Updated architectural plans, showing adjustments to the building’s design, massing, and height;
- Revised shadow studies and a corresponding explanation validating the Applicant’s methodology;
- A request for technical flexibility from the minimum side yard requirement;
- A clarification of the proposed building height and associated building height measuring point;
- Updates regarding the Applicant’s community outreach and meeting history with the affected ANC, the ANC 6D PUD Subcommittee, the Capitol Square HOA, the Town Square Towers Homeowners Association, and the Jefferson Middle School Academy Parent-Teacher Organization; and
- A summary of changes and features of the Project in response to the community feedback, including:
  - Reducing the building height from 100 feet to 90 feet at the northern portion of the building that faces the Capitol Square planned unit development;
  - Proposing various short-term improvements to the 9<sup>th</sup> Street right-of-way to mitigate traffic concerns and enhance the surrounding transportation network (defined above as the “9<sup>th</sup> Street Improvements”); and
  - Demonstrating how the proposed circulation and traffic resulting from the Project would not adversely impact the operations of the adjacent Jefferson Middle School Academy and the overall transportation network; and
  - Additional information regarding the proposed private driveway and the PSC’s concept approval for the new Maine Avenue curb cut and the shifted G Street curb cut.

(Ex. 14 – 15G.)

41. On August 29, 2022, pursuant to Subtitle Z § 401.8, the Applicant submitted a comprehensive transportation review (“CTR”) report prepared by Gorove-Slade regarding the Project (the “CTR Report”). (Ex. 25-25A.) A professional resume for Robert Schiesel, P.E., the traffic consultant responsible for preparing the CTR Report, had previously been submitted with the Applicant’s Prehearing Submission. (Ex. 25 – 25A.)
42. On September 7, 2022, the Applicant submitted a letter regarding the party status request in opposition filed by the Capitol Square HOA, and claimed that proper documentation had not been filed in accordance with Subtitle Z § 404.1(f). (Ex. 29.)
43. On September 16, 2022, the Applicant submitted a supplemental prehearing statement and accompanying exhibits (the “Supplemental Prehearing Submission”), which included the following:
  - A supplemental statement in support of the Application that conveyed:
    - Additional background on the Applicant and its recent efforts to contribute to the District’s affordable housing supply;

- A summary of the major changes made to the Project since the Applicant's original submission;
- Further discussion regarding transportation considerations and a summary of the CTR Report that had been previously submitted;
- A second amended and restated list of public benefits and amenities;
- Updated requests for design flexibility;
- Updates regarding the Applicant's community outreach and a full meeting history with the affected ANC, the ANC 6D PUD Subcommittee, the Capitol Square HOA, the Town Square Towers Homeowners Association, and the Jefferson Middle School Academy Parent-Teacher Organization;
- Details pertaining to the Applicant's coordination with the Jefferson Middle School Academy Parent-Teacher Organization;
- Additional detail regarding the measures and efforts taken by the Applicant to modify and enhance the Project to address feedback and issues and concerns raised by the community, including:
  - Relocating the G Street curb cut approximately 19 feet to the west of its existing location to increase the offset from the confronting curb cut to the north used by the Capitol Square community, as an effort to minimize opportunities for cut-through traffic;
  - Reducing the building height at the northern portion of the building fronting G Street from 100 feet to 90 feet to achieve greater compatibility with the Capitol Square community to the north and lessen shadow impacts on the Jefferson Middle School Academy's recreational field to the east;
  - Configuring points of ingress and egress and the private driveway to minimize adverse impacts to the surrounding traffic network;
  - Installing the 9<sup>th</sup> Street Improvements to improve the vehicular, bicycle, and pedestrian experience on 9<sup>th</sup> Street; and
  - Refining its proffer related to the installation of public art to include a monetary contribution of \$75,000 and to receive input from ANC 6D and other neighborhood stakeholders; and
- A complete set of updated architectural drawings and elevations;
- A set of drawings showing the Applicant's proposed signage and storefront package; and
- A complete evaluation of the Project's consistency with the SW Plan and the design principles outlined in the SW Plan's "Modernist Gem" core concept.

(Ex. 37 – 38I.)

44. On September 30, 2022, the Applicant submitted a letter responding to the filings in opposition to the Application, which addressed the following issues:
- Size and density;
  - Consistency with the SW Plan;
  - Traffic impacts;
  - Impacts to light and air;
  - Affordable housing;

- Construction activity;
  - Economic and social impacts.
- (Ex. 51.)

45. On October 5, 2022, the Applicant submitted a PowerPoint presentation to accompany the Applicant’s oral testimony at the public hearing (the “PowerPoint”). (Ex. 99A1 – 99A2.)

**Testimony**

46. At the public hearing on the Application held on October 6, 2022 (the “Public Hearing”), the Applicant presented the Application, including the testimony of four (4) witness:

- Malcolm Haith, Applicant’s Representative, Jair Lynch Real Estate Partners;
- Brett Swiatocha, Project Architect, Perkins Eastman DC;
- Robert Schiesel, Traffic Engineer, Gorove-Slade Associates, Inc.; and
- Shane Dettman, Land Use and Urban Planning Expert; Goulston & Storrs.

(Transcript of October 6, 2022, Public Hearing (“Hrg. Tr.”))

47. At the Public Hearing, the Applicant’s representatives testified as to the following on direct:

- The proposed development program;
- The Applicant’s outreach to the community and the Applicant’s efforts to address the issues and concerns that had been raised;
- The architectural design of the Project and how it is intended to:
  - Achieve compatibility with the surrounding context; and
  - Advance the design guidelines of the SW Plan;
- Transportation considerations including:
  - Advantages of the proposed circulation plan;
  - Configuration of the private driveway;
  - Shifting of the G Street curb cut to the west in order to mitigate traffic cutting through the Capitol Square townhome community;
  - 9<sup>th</sup> Street Improvements; and
  - Mitigation measures outlined in the Applicant’s TDM plan;
- Justifications as to why the Application is not inconsistent with the CP, particularly when evaluated through a racial equity lens; and
- Justifications as to why the Applicant satisfies the PUD balancing test and the PUD evaluation criteria of Subtitle X §§ 304.3 and 304.4.

(Hrg. Tr. at pp. 19-55.)

48. At the Public Hearing, the Applicant’s representatives testified as to the following on rebuttal:

- The changes made to the Project in response to community feedback;
- The zoning and FLUM history of the Property and the surrounding area;
- The character of Maine Avenue that is envisioned by the SW Plan; and
- The Project’s consistency with the Property’s Medium Density Commercial FLUM designation.

(Hrg. Tr. at pp. 239-47.)

### **Post-Hearing Submissions**

49. On November 21, 2022, the Applicant submitted a post-hearing statement and accompanying exhibits (Ex. 112 – 112I, the “Post-Hearing Submission”) that included the following to address the Commission’s requests and issues raised by the opposition during Public Hearing:

- Details regarding green roof maintenance access and adequacy of trash space;
- Supplemental justifications regarding the Application’s consistency with the Property’s Medium Density Commercial FLUM designation;
- A summary of meetings with the ANC and the HOA since the Public Hearing;
- Further responses to the issues and concerns raised by the community, including:
  - The proposed height and density;
  - Traffic issues, including:
    - A Signal Warrant Study for the intersection of 9<sup>th</sup> and G Streets;
    - Relocation of the Project’s G Street curb cut confronting the Capitol Square townhome community;
    - A proposed monetary contribution to the HOA to help mitigate existing cut-through traffic issues;
- How the Project advances policies under the CP’s Land Use Element and Transportation Element that encourage transit-oriented development; and
- Updates to the Applicant’s public benefits and amenities package, relating to the following categories:
  - Affordable housing (Subtitle X § 305.5(g)); specifically:
    - The Applicant adjusted its proffer to reserve the eight (8) three-bedroom units proposed with the Project for households at the 50% MFI level, whereas these units were previously reserved for households at the 60% MFI level;
  - Commemorative works or public art (Subtitle X § 305.5(d));
  - Uses of special value to the neighborhood or the District of Columbia as a whole (Subtitle X § 305.5(q)); and
  - Other public benefits and project amenities (Subtitle X § 305.5(r));
- Information regarding the Applicant’s negotiation of a construction management plan;
- The Applicant’s commitment to involving students from Jefferson Middle School Academy in the mural art cultivation process.

(Ex. 112 – 112I.)

50. On November 28, 2022, the Applicant submitted a supplemental post-hearing statement and accompanying exhibits (Ex. [REDACTED], the “Supplemental Post-Hearing Submission”) in response to the post-hearing submissions filed by the HOA and the Equitable Land Use Section of the Office of the Attorney General (“OAG”), which provided the following:

- Further responses to the community’s traffic concerns;
- A summary of the Applicant’s CTR process, methodology, and applicable standards, that was shared with the community at prior meetings;

- An updated and restated list of public benefits and amenities; and
- Arguments countering OAG’s assertion that the Application is inconsistent with the CP and that Applicant’s affordable housing proffer is inadequate.

**Applicant’s Justifications for Relief**

**Consistency with the CP and Public Policies (Subtitle X § 304.4(a))**

51. The Applicant asserted that the Application complies with Subtitle X § 304.4(a) because the Project is not inconsistent with the CP as a whole, including its maps and policies, and other adopted public policies and active programs related to the Property, as set forth in Findings of Fact “FF” No. 52-72 below.

***Framework Element – GPM***

52. The Project is not inconsistent with the Property’s Neighborhood Conservation Area designation on the GPM because the Project is:

- Compatible with the diversity of land uses and building types found in the immediate area, as well as with the scale and character of the Southwest Waterfront, both existing and as envisioned in the SW Plan;
- Consistent with the guiding philosophy in Neighborhood Conservation Areas, in that the Project will contribute significantly to addressing citywide housing needs on a site that is in close proximity to Metrorail and numerous neighborhood services and amenities; and
- Intended as a medium density, mixed use development that is not inconsistent with the FLUM and the AWNS Area Element policies, advances the recommendations in the SW Plan, and is responsive to the scale, pattern, and character of the surrounding context.

(Ex. 3H.)

53. The massing and height of the Project is varied in response to the immediate surrounding context. Specifically, the Applicant positioned the primary massing of the Project to the south along Maine Avenue in order to:

- Help balance and strengthen the streetwall established by the Wharf;
- Strengthen Maine Avenue as a gateway and urban boulevard as envisioned by the SW Plan; and
- Enable a height transition down to 90 feet at the northern section of the building, across from the Capitol Square townhomes on the north side of G Street.

(Ex. 3H, 38A1 – 38A5.)

54. The Project further relates to its context through variety in building facades that comprise high quality materials found throughout the Southwest neighborhood, and integrates active, pedestrian-oriented street frontages. The articulation and varied material palette break down the overall massing of the Project in relation to nearby development. (Ex. 3H.)

55. The building will incorporate certain strategies and the site will be designed in such a way as to enhance the Project’s climate readiness. (Ex. 38A5, 45.)

**Framework Element – FLUM**

56. The Project is not inconsistent with the FLUM’s Medium Density Commercial designation because:

- The zone districts specifically identified in the Framework Element as being consistent with the Medium Density Commercial category include MU-8 and MU-10, although other zones may apply;
- Although the MU-9A zone is described in the Framework Element as being generally compatible with the High Density Commercial FLUM category, it is well established that the Commission is not bound to only the zones expressly listed under a particular FLUM description when reviewing a proposed map amendment;
- The Applicant proposes to rezone the Property to MU-9A for the flexibility to shift building height away from the lower-scale development to the north, which aligns with language of the Framework Element that states: “[t]he goal of a PUD is to permit development flexibility greater than specified by matter-of-right zoning, such as increase building height or density, provided that the project offers a commendable number or quality of public benefits, and protects and advances the public health, safety, welfare, and convenience.” (§ 224.7);
- The proposed density of the Project falls within the permitted density range for a PUD in a Medium Density Commercial area because:
  - Under a PUD, the MU-8 and MU-10 zones permit a maximum density of 7.2 FAR and 8.64 FAR, respectively; and
  - The Project will have a density of approximately 7.99 FAR;
- With respect to height, the Project is not inconsistent with the FLUM because:
  - Under a PUD, the MU-8 and MU-10 zones permit building heights of 90 feet and 110 feet (not including the penthouse), respectively;
  - The 90 foot height of the northern portion of the Project is consistent with these permitted heights; and
  - Although the heights at the southern portion of the Project exceed the PUD height range for the Medium Density Commercial category, the MU-9A zone’s greater permitted height allows the Applicant to reduce the height of the northern portion of the Project in response to the 50-foot townhomes to the north across G Street and still provide a substantial amount of housing and affordable housing within taller portions of the building that can accommodate greater residential density.

(Ex. 3H, 99A2, 112.)

57. Thus the Application is not inconsistent with the FLUM designation applicable to the Property, and any potential inconsistencies are offset and outweighed by the Project’s satisfaction of multiple other CP policies as set forth below.

**AWNS Area Element**

58. The Application is not inconsistent with the CP’s AWNS Area Element because the Project will redevelop an underutilized site in close proximity to transit, the waterfront, and numerous other neighborhood amenities (parks, museums, retail, etc.) with a new mixed-use development containing approximately 498 new (market rate and affordable) dwelling

units and approximately 24,169 GFA of neighborhood-serving retail. The Project will advance the objectives of the AWNS Area Element because it will:

- Bring greater residential and retail development to the Maine Avenue Corridor (AW-1.1.7, AW-2.5.2);
  - Devote 15% of the Project's residential GFA to affordable housing, plus 15% of the Project's penthouse floor area to affordable housing, which will far exceed the amount of affordable housing that would be required under the Property's existing zoning (AW-2.5.2, AW-2.5.11); and
  - Comprise a range of unit types that includes larger family-size units, particularly eight (8) three-bedroom affordable rental units that will be set aside at 50% MFI (AW-2.5.4, AW-2.5.11).
- (Ex. 3H, 99A2.)

### *Citywide Elements*

59. The Application is not inconsistent with the CP's Land Use Element because the Project:

- Will promote the continued growth of the urban, mixed-use neighborhood that is developing along the Maine Avenue corridor (LU-1.2.4);
- Has a mix of uses – i.e., residential and neighborhood serving retail – that are appropriate for the PUD Site's location within the Central Employment Area ("CEA") and proximity to transit (LU-1.2.6, LU-1.4.4, LU-1.4.6);
- Proposes a rezoning to MU-9A for the purpose of facilitating the construction of new, multi-family housing, including substantial affordable housing, in a burgeoning, transit- and amenity-rich area of the city (LU-1.4.C);
- Will advance the District's environmental and energy policies by achieving LEED Platinum design (LU-2.1.3);
- Will incorporate public art along Maine Avenue that will be developed with neighborhood input (LU-3.1.12); and
- Is designed with a mix of building heights to respond to community feedback and achieve an appropriate transition to the moderate-density planned unit development to the north (LU-1.2.6, LU-2.1.3).

(Ex. 3H, 99A2.)

60. The Application is not inconsistent with the CP's Transportation Element because the Project:

- Will establish new transit-oriented development within close proximity to Metrorail (e.g., within 0.25 miles of the L'Enfant Plaza Metro station, and within 0.5 miles of the Waterfront Metro station) and in proximity to other forms of public transportation and bicycle infrastructure (T-1.1.4, T-1-1-7);
- Includes various transit-oriented development-related improvements to promote use of public transit, walking, and bicycle use, including the construction of new mixed-uses in close proximity to the Maine Avenue corridor, bicycle storage areas, and public space improvements such as new paving, lighting, landscaping, and bicycle racks (T-2.4.1, T-2.4.2);



- Incorporates place-making strategies through seating and landscaping along Maine Avenue and through the use of public art (T-1.4.1); and
- Includes a strong TDM program that reduces automobile impacts and increases the efficiency of the surrounding transportation network (T-1.1.2, T-3.1.1); and
- Provides a number of transportation mitigation measures and improvements that will help address existing transportation issues in the area, and improve transportation safety and access (T-1.1.B).

(Ex. 3H, 99A2.)

61. The Application is not inconsistent with the CP's Housing Element because the Project:
- Will generate approximately 498 new residential units within close proximity to transit, including approximately 67 IZ rental units reserved for households at the 60% MFI level and eight (8) three-bedroom IZ units reserved for households at the 50% MFI level (H-2.1.6), for a total of approximately 75 IZ rental units;
  - Serves as a substantial contribution to the District's housing and affordable housing goals set forth in the Housing Equity Report (H-1.1.1, H-1.1.3, H-1.2.1, H-1.2.7, H-1.2.11);
  - Will address citywide housing needs by promoting medium density, mixed-use development on an underutilized property, which is located along an evolving mixed-use corridor (e.g., Maine Avenue) near public transit (H-1.1.4);
  - Includes affordable housing that will be designed and constructed to similar high-quality architectural design standards used for market-rate housing (H-1.1.5); and
  - Contains housing for large households, including eight IZ three-bedroom units (H-1.1.9, H-1.3.1).
- (Ex. 3H, 99A2.)
62. The Application is not inconsistent with the CP's Environmental Element because the Project:
- Will achieve LEED Platinum certification and will integrate design features to maximize energy efficiency (E-3.2.3, E-3.2.7, E-4.2.1);
  - Involves a reconstruction of the abutting streetscape that will include new trees to add tree canopy, provide shade, improve air quality, provide urban habitat, and add aesthetic value (E-1.1.2, E-2.1.2); and
  - Will incorporate sustainable landscaping practices, such as the installation of green roofs, that will improve stormwater management and climate resilience (E-2.1.3, E-4.1.2, E-4.1.3).
- (Ex. 3H, 99A2.)
63. The Application is not inconsistent with the CP's Economic Development Element because the Project will replace an underutilized commercial site within close proximity to Metrorail, the waterfront, and several amenities with a new, mixed-use development that contains approximately 24,169 square feet of neighborhood-serving retail and service uses. (ED-2.2.3, ED-2.2.5.)
- (Ex. 3H, 99A2.)

64. The Application is not inconsistent with the CP's Urban Design Element because the Project:
- Implements thoughtful massing and quality materials that respond to the surrounding context (UD-2.2.1, UD-2.2.2, UD-2.2.4);
  - Appropriately transitions height from the southern portion of the building along Maine Avenue (130 feet) to the northern portion of the building along G Street (90 feet) that confronts the lower-scale Capitol Square townhomes (UD-2.2.5, UD-2.2.4);
  - Utilizes open courtyards and varied articulation to reduce the building's massing and distinguish the separate sections of the building, further enhancing compatibility with the surrounding area (UD-4.2.1, UD-4.2.4); and
  - Includes streetscape improvements and a ground floor design to engage passersby and elevate the pedestrian experience around the Property, particularly near the retail storefronts (UD-2.1.1, UD-4.2.2).
65. Consistent with the guidance provided in the Implementation Element and by the District of Columbia Court of Appeals, the Applicant conducted a careful evaluation to identify any instances where the Application may be viewed as being inconsistent with the policies and goals of the CP, including the FLUM and the GPM. To the extent the Project is inconsistent with any CP policies, these potential inconsistencies are outweighed by the proposal's consistency with the FLUM and numerous other competing CP policies relating to land use, housing, transit-oriented development, and environmental sustainability. The Applicant specifically identified ED-2.1.4 (Diversified Office Options), ED-2.1.5 (Infill and Renovation), and ED-2.1.B (Support Low-Cost Office Space), which generally relate to the potential reuse of the existing building on the Property, and potential impacts to views along Maine Avenue and from nearby Banneker Overlook. The Applicant noted that the existing building on the Property was constructed in the 1980s and until recently was used for office purposes. While the Applicant potentially could continue to use the building for office purposes, the building would need to be fully renovated even to be competitive in a lower-tier office market. The Applicant asserted that given the Property's designation of Medium Density Commercial on the CP FLUM, location, and the critical need for more housing in the District, the continued use of the building is no longer the best use for the site. The Project is a better utilization of the Property because it substantially addresses citywide housing and sustainability goals, and thus far outweighs the continued use of the site for office purposes. (Ex. 3H, 99A2.)

### ***SW Plan***

66. The Application is not inconsistent with the SW Plan because the Project:
- Advances recommendations under the "Model Community" core concept by:
    - Providing affordable housing that exceeds the IZ threshold for a matter-of-right development (MC.4);
    - Including family-sized units (MC.6); and
    - Providing significant new landscaping and seating along the perimeter of the site (MC.11);
  - Advances recommendations under the "Modernist Gem" core concept by:

- Applying the Design Guidelines applicable to all new development achieved through the PUD process (MG.7), as follows:
  - Introduces a mix of building heights at a transitional site, which is intended to achieve maximum compatibility with (i) the mixed-use, high-rise scale of The Wharf planned unit development along Maine Avenue; and (ii) the residential, moderate-rise scale of the Capitol Square planned unit development along G Street;
  - Uses durable materials that are distinctive in both color and detail and contributes to the aesthetic value of the building at a gateway location;
  - Implements a design that creates variation in massing, scale, and façade articulation along each of the building’s frontages;
  - Supports and enhances the vibrant green character of the Southwest neighborhood with landscaped amenity spaces and landscaping improvements along the building perimeter;
  - Integrates a variety of sustainable measures to create a resilient design and foster a healthy living environment;
  - Strategically locates underground parking on the east edge of the site to avoid the interruption of street-facing building fronts;
  - Maximizes transparency and viability of retail frontage at the base of the building with transparent storefronts and pedestrian-oriented improvements; and
  - Enhances connectivity for pedestrians and bicyclists, and optimizes vehicular circulation with the configuration of the private driveway.
- Advances the objectives of the “Green Oasis” core concept by:
  - Providing approximately 16 electric vehicle charging stations in the below-grade parking garage (GO.14);
- Advances the objectives of the “Arts and Cultural Destination” core concept by:
  - Contributing toward the design and installation of public art that will be part of the substantial public realm improvements proposed along Maine Avenue; and
  - Incorporating a significant art installation along the east façade of the building to celebrate the character of the Southwest neighborhood and add visual interest to the building;
- Advances recommendations of the “Vibrant Connections” core concept by:
  - Providing the 9<sup>th</sup> Street Improvements that will reduce inefficient traffic patterns and simplify pedestrian crossings (VC.2);
  - As part of the 9<sup>th</sup> Street improvements, installing a new bike lane that will improve circulation between the 10<sup>th</sup> Street promenade / Banneker Overlook and the cycle track along Maine Avenue next to The Wharf (VC.4); and
  - In addition to contributing to new public art, installing new sidewalks, planter beds, tree boxes, bike racks, benches, and space for café seating, all of which will improve the pedestrian experience along Maine Avenue (VC.8); and
- Therefore, on balance, the Project is consistent with applicable recommendations of the SW Plan, and in particular those relating to building height and design.  
(Ex. 3H, 38H, 99A2.)

### ***Other Adopted Public Policies and Active Programs***

67. The Project advances the Mayor's Order 2019-036 on affordable housing, which sets a goal of creating 36,000 new housing units by 2025, including 12,000 affordable housing units. Specifically, the Project creates approximately 498 new residential units, which represents approximately 6.3% of the overall housing goal for the Lower Anacostia Waterfront / Near Southwest Planning Area (7,960 units), as established by the 2019 Housing Equity Report (the "Housing Report"). Further, the Housing Report sets an affordable housing goal of 850 units for the Planning Area. The Project will generate approximately 75 affordable housing units, which represents approximately 8.8% of this goal and will contribute to the overall supply of affordable housing within the District. In addition, the Applicant will set aside 15% of the residential GFA of the project, or approximately 65,171 square feet of GFA, plus 15% of any penthouse habitable space devoted to dwelling units for inclusionary units. Sixty-seven (67) of the affordable units will be reserved for households with incomes not exceeding 60% MFI; and eight (8) three-bedroom units will be reserved for households earning no more than 50% MFI. Thus, the Project will provide family-sized units at deeper affordability levels than what is required under the regulations. (Ex. 3, 3H, 12, 15, 38, 112G, [REDACTED].)
68. The Project advances many of the recommendations and design guidelines of *Climate Ready DC: The District of Columbia's Plan to Adapt to a Changing Climate* (the "Climate Plan"). The proposed building integrates a variety of sustainable and environmentally-friendly measures, such as spaces devoted to charging electric vehicles. As indicated by the scorecard included at Sheet 85 of the updated plans submitted with the Supplemental Prehearing Submission, the PUD will be designed to a LEED Platinum standard. Thus, the Project promotes sustainable living practices and cultivates a healthy environment for all residents and visitors of the Project. (Ex. 12, 15, 38A5, [REDACTED].)

### ***Racial Equity***

69. Equity is conveyed throughout the CP where priorities of affordable housing, displacement, and access to opportunity are distinguished. In light of the guidance provided by relevant CP policies, the Applicant asserted that the Project and related map amendment to the MU-9A zone would not be inconsistent with the CP when evaluated through a racial equity lens. In support of its assertion, the Applicant evaluated the Project's consistency with the CP through a racial equity lens by applying the Commission's Racial Equity Analysis Tool. (Ex. 3H, 99A2.)
70. The expected goals of the proposed zoning action are as follows:
- Approve a consolidated PUD and related amendment to the Zoning Map that would facilitate new housing, including affordable housing, and neighborhood-serving retail and service uses at an underutilized, transit-oriented site that could not be constructed as a matter of right;
  - Permit the following development program:
    - Approximately 498 new housing units;
    - A minimum set aside of 15% of the total residential GFA, plus 15% of any penthouse habitable space, for affordable housing;

- Eight three-bedroom IZ rental units (50% MFI); and
- Approximately 24,169 square feet for neighborhood-serving retail and service uses, intended to further enhance the viability of the Maine Avenue commercial corridor.
- Deliver a comprehensive public benefits and amenities package, including the 9<sup>th</sup> Street Improvements, construction of a safer, pedestrian-friendly streetscape, implementation of various sustainability measures, and funding for a public art installation along Maine Avenue, and neighborhood-serving retail.

(Ex. 3H, 99A2.)

71. The proposed zoning action would:

- Not result in negative outcomes with respect to displacement because the Project:
  - Does not involve physical displacement of residents;
  - Mitigates any potential for economic displacement because:
    - It will replace an underutilized property will approximately 498 new housing units;
    - 15% of the base building and penthouse residential GFA will be set aside for new IZ units for households earning no more than 50% and 60% MFI, thus increasing the amount and expanding the geographic distribution of adequate, long-term, affordable housing available to current and future residents;
    - 67 affordable units will be reserved for households with incomes not exceeding 60% MFI (low income), and eight (8) three bedroom units will be reserved for households earning no more than 50% MFI (very low income);
  - Does not contribute to cultural displacement or loss of belonging or shared neighborhood identity because:
    - The new public art installation along Maine Avenue will be selected with input from a committee of different community stakeholders;
    - New landscaping and streetscape improvements will foster opportunities for community interaction and engagement;
    - The market/grocer proffer will function as community-serving retail; and
    - The building mural will be cultivated with input from students of the adjacent Jefferson Middle School Academy;
- Result in positive outcomes for all District residents, regardless of socioeconomic status, with respect to housing because the Project will:
  - Generate approximately 498 dwelling units (market rate and affordable), which represents approximately 6.3% of the housing production goal for the Planning Area, per the Housing Report;
  - Dedicate new IZ units for low and very low income households;
  - Provide eight three-bedroom units devoted to affordable rental housing at 50% MFI, which will accommodate larger households;
- Result in positive outcomes for all District residents, regardless of socioeconomic status, with respect to transportation and pedestrian safety, including public space, streetscape, and infrastructure, because the Project will:

- Improve access to public transit, as the Property is located in close proximity to two Metro stations and is approximately 0.15 miles from the DC Circulator and priority bus corridors;
- Involves the reconstruction of the adjacent streetscape;
- Will provide the 9<sup>th</sup> Street Improvements; and
- Will install new public seating along the perimeter of the Property;
- Result in positive outcomes for all District residents, regardless of socioeconomic status, with respect to employment because the Project will:
  - Create new construction, retail, and building maintenance and property management job opportunities; and
  - Increase access to job opportunities because of the Property's proximity to multiple modes of public transit and to numerous retail, service, and neighborhood-serving establishments;
- Will result in positive changes for all District residents, regardless of socioeconomic status, with respect to the environment because the Project will:
  - Be constructed to achieve LEED Platinum certification; and
  - Include the installation of green roofs, stormwater management improvements, and climate resilient design strategies;
- Will improve access to community facilities and wellness and education opportunities for all District residents, regardless of socioeconomic status, because:
  - The Property is in close proximity to the Southwest Waterfront and other open space areas, such as Benjamin Banneker Park, educational facilities, the Southwest Library, and the future Southwest Community Center;
  - The Project includes a grocery/market component as neighborhood-serving retail; and
  - The Applicant will provide a \$150,000 contribution to the Jefferson Middle School Academy PTO to help fund field experiences and curricula for students for over a three (3) year period;
- Will improve access to amenities and recreational opportunities for all District residents, regardless of socioeconomic status, because:
  - The Project includes high-quality resident amenities, including courtyards and penthouse recreation spaces;
  - The Project will provide neighborhood-serving retail and service uses;
  - The Property is located near numerous retail, service, and eating and drinking establishment uses, including those at The Wharf; and
  - The Project is located near numerous cultural attractions, including performing arts, art galleries, and museums, and the landmarks of the National Mall.

(Ex. 3H, 99A2.)

72. Based on the themes of the Commission's Racial Equity Analysis Tool addressed above in Finding of Fact No. 71, and as reflected in the Applicant's submissions and testimony during the Public Hearing, the proposed zoning action would result in positive outcomes for all residents and future residents of the District, and therefore, the Application is not inconsistent with the CP when evaluated through a racial equity lens (Hrg. Tr. at pp. 45-48).

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

73. The Application complied with Subtitle X § 304.4(b), which requires that a PUD not create any potential adverse impacts that could not be mitigated or balanced out by public benefits because the Project:

- Would have a favorable land use impact by:
  - Resulting in a more efficient and economical use of land with a mix of uses that better align with relevant CP policies and objectives;
  - Redeveloping a transit-oriented site currently improved with a government office building, which has less relevance as the long-term effects of the COVID-19 pandemic begin to settle; and
  - Providing new housing (market-rate and affordable) that is more appropriate for the Property given the character of the surrounding area and the District's planning goals;
- Would have transportation impacts that are capable of being mitigated or acceptable given the quality of public benefits in the Project because:
  - The proposed circulation plan for the Project reflects an appropriate balance between the needs of the development program, DDOT's standards and guidelines, and the concerns and issues raised by the community;
  - The Maine Avenue curb cut would be restricted to large delivery vehicles (e.g., large trucks) entering the site to serve the proposed grocer, market, or bodega use in the PUD;
  - The shifting of the G Street curb cut approximately 36 feet to the west from its current location will deter cut-through traffic through the Capitol Square townhome development to the north of the Property across G Street;
  - Per the Applicant's CTR Report, the potential impacts of the project are mitigated through the implementation of a proposed Transportation Demand Management (TDM) plan and a Loading Management Plan (LMP)
- Would have a favorable housing impact by:
  - Generating approximately 498 new residential units where no housing is currently provided;
  - Setting aside a minimum of 15% of the overall residential GFA, plus 15% of the penthouse habitable space for affordable housing; specifically,
  - 67 of the affordable units will be reserved for households with incomes not exceeding 60% MFI, and eight (8) three-bedroom units will be reserved for households earning no more than 50% MFI; and
  - Not involving the demolition of existing housing or displacement of existing residents;
- Would have a favorable environmental impact by:
  - Achieving a LEED Platinum Design under the LEED v4 for Homes: Multifamily Mid-Rise standard;
  - Implementing various sustainability measures, including green roofs, charging stations for electric vehicles, and other components designed to maximize energy efficiency;
  - Improving stormwater infrastructure within the Property; and

- Transforming an underutilized site with a sustainable and resilient mixed-use development;
- Would have a favorable impact on economic development by:
  - Redeveloping an underutilized, transit-oriented site that is currently improved with a dated government office building with a viable mixed-use development; and
  - Accommodating an influx of residents who can support the diverse range of existing commercial and retail uses of The Wharf development and further establish the Southwest Waterfront as a preeminent community in the city;
  - Including retail that will generate new employment opportunities and additional tax revenues for the District;
- Would have acceptable impacts to parks, recreation, and open space because:
  - The Property has no parks, recreation, or open space elements; and
  - The Property's adjacency to Jefferson Field and proximity to Benjamin Banneker Park gives residents opportunities for outdoor engagement and recreation.
- Would have impacts to urban design that are favorable or acceptable given the quality of public benefits because:
  - The density and massing of the Project is focused toward the high-scale, mixed-use Wharf development to the south;
  - The use of stepdown techniques creates a compatible transition from The Wharf to the lower-density residential uses to the north across G Street;
  - The northern edge of the building is approximately 110 feet away from the 50-foot townhomes to the north across G Street;
  - The use of diverse materials and varied articulation add visual interest to the building and leverage the Property's position at a gateway location;
  - The shadows resulting from the northern portion of the building are minimized, to the extent feasible, by the height reduction to 90 feet at the northern portion of the building; and
  - Any additional shading on the adjacent tennis courts and a portion of the open field areas of Jefferson Field is generally limited to times of the day when school is not in session and during the winter months when the open field areas are less heavily used;
- Would not have any impacts on historic preservation;
- Would have impacts to community services and facilities that are favorable or acceptable given the quality of public benefits and amenities because:
  - Residents and visitors of the Project are able to utilize the tennis courts and/or the baseball field located on Jefferson Field, thus providing opportunities for community engagement and interactions;
- Would have impacts on educational facilities that would be favorable or acceptable given the quality of public benefits and amenities because:
  - A potential influx of residents will not adversely impact capacity at nearby educational facilities based on recent utilization rate data for District of Columbia Public Schools because according to DCPS SY2020-21 enrollment data:
    - Amidon-Bowen Elementary School has a utilization rate of 79%;
    - Jefferson Middle School Academy has a utilization rate of 65%; and
    - Eastern High School has a utilization rate of 67%;



- The Project, and particularly the private driveway, is designed to minimize any adverse impacts to the operations of Jefferson Middle School Academy;
  - The Applicant will make a monetary contribution to the Jefferson Middle School Academy PTO to help fund field experiences and curricula for students; and
  - The Applicant has agreed to enter into a construction management plan with the Jefferson Middle School Academy PTO;
  - Would have impacts to infrastructure that are favorable or acceptable given the quality of public benefits and amenities because:
    - The 9<sup>th</sup> Street Improvements will foster a safer and more efficient experience for motorists, pedestrians, and cyclists; and
    - The Project involves the construction of new sidewalks along 9<sup>th</sup> Street and Maine Avenue; and
    - The Project involves the replacement and relocation of an aging storm sewer along 9th Street.
- (Ex. 3, 25A, 38A5, 38C, 38F, 99A2, 112C, 112D, 112F.)

**Requested Zoning Flexibility (To Be Balanced Against Public Benefits (Subtitle X §§ 304.3 and 304.4(c))**

74. The Application complies with Subtitle X §§ 304.3 and 304.4(c), which, when read in conjunction, requires the Commission to judge, balance, and reconcile the relative value of the public benefits and project amenities offered with the degree of development incentives requested.

***Map Amendment***

75. The rezoning of the Property from the MU-12 to the MU-9A zone will bring the Property into greater compliance with the CP; will be compatible with the surrounding context; and is necessary for the Property to be developed under a zone district that will allow for the provision of substantial housing, including affordable housing. (Ex. 3, 3H.)

***Technical Flexibility***

76. The Applicant’s requested technical flexibility (*see* Finding of Fact No. 35) is necessary for the following reasons:

- Based on the maximum proposed building height of 130 feet, a side yard of approximately 21’-8” is required, however, portions of the eastern side yard will not comply;
- The site’s development area is limited by the irregular shape of the Property, which limits the width and depth of any proposed development;
- The northern edge of the building also is positioned further to the east to provide additional room for truck maneuvers onto G Street; and
- The space in this area of the private driveway is further constrained due to the Applicant’s shifting of the G Street curb cut – as far west as possible (approximately 36 feet from its current location) – in response to concerns raised by the Capitol Square HOA.

***Public Benefits and Amenities***

77. The Project offers the following categories of public benefits and amenities, as defined by Subtitle X § 305.5:

- **Superior Urban Design and Architecture (Subtitle X § 305.5(a));**
  - The Project is designed to be compatible with the overall neighborhood, with the maximum height and the bulk of the density focused toward The Wharf. As depicted in the Applicant’s plans and shadow studies, the massing of the building is configured such that impacts to light and air are minimized, primarily through the use of stepdown techniques.
  - The proposed heights remain sensitive to the surrounding neighborhood. Specifically, the southern portion of the Project, which will have a building height of 130 feet, is intended to complement the height of the buildings at The Wharf along this section of Maine Avenue. The northern portion of the Project is limited to a height of 90 feet to establish a complementary relationship to the Capitol Square Place community to the north across G Street, which consists of townhomes that are the in height.
  - The integration of courtyards, a diverse material palette, and varied articulation reduces the building’s massing and distinguishes the separate sections of the building, further enhancing compatibility with the surrounding area.
- **Site Planning and Efficient and Economical Land Utilization (Subtitle X § 305.5(c));**
  - The Project will replace underutilized land with a mixed-use development providing residential and ground floor neighborhood-serving retail and service uses. The replacement of an underutilized site constitutes a significant benefit because enhances safety, results in aesthetic improvements to the community, and replaces a use that is not compatible with the surrounding residential neighborhood.
  - The Property’s current MU-12 zoning is inconsistent with the Property’s FLUM designation as Medium Density Commercial. Therefore, the Project will improve the utilization of the Property because the proposed mix of uses is more consistent with the District’s planning objectives.
- **Commemorative Works or Public Art (Subtitle X § 305.5(d));**
  - The Applicant will contribute \$75,000 to MYLY Design, a minority-owned, woman-owned, certified business entity based in Washington, DC, to design, fabricate, and install public art along Maine Avenue in the area identified as the “Art and Landscape Zone” on Sheet 72 of the updated plans (titled the “Art and Landscape Zone”) submitted with the Applicant’s Supplemental Prehearing Submission.
  - The public art will be designed to transform the public space into a creative, inspiring, and livable environment, consistent with the goals and objectives of the SW Plan.
  - A committee will review the final options for the artwork to be installed. The committee will include at minimum, the Applicant, a representative from ANC 6D, a resident within the boundaries of ANC 6D, and a representative from a business within the boundaries of the ANC 6D. MYLY Design will coordinate and facilitate the process for selecting the committee and the artwork.
- **Housing and Affordable Housing (Subtitle X §§ 305.5(f) § 305.5(g));**

- The Project results in the creation of new housing and affordable housing consistent with the goals of the Zoning Regulations, the CP, the FLUM, and other District policies and active programs applicable to the Property. The Project will generate approximately 498 new units in close proximity to numerous neighborhood-serving amenities, public services, and public transit. This amount of housing far exceeds the amount that could be provided if the Property were redeveloped as a matter-of-right under the existing MU-12 zoning, which permits a maximum FAR of 2.5, and 3.0 FAR for IZ projects.
- The Applicant’s affordable housing proffer is significant for the following reasons:
  - The Applicant will set aside 15% of the residential GFA of the Project, or approximately 65,171 square feet of GFA, plus 15% of any penthouse habitable space for affordable housing.
  - Specifically 67 of the units will be reserved for households with incomes not exceeding 60% MFI (low income) and eight (8) three bedroom units will be reserved for households earning no more than 50% MFI (very low income).
  - Matter-of-right development of the Property under existing MU-12 zoning would generated approximately 21,500 square feet of GFA of affordable housing. Thus, the Project will provide over three times more affordable housing than under existing zoning.
  - Although greater affordable housing could be realized on the Property by having the Applicant forego the PUD and instead pursue a map amendment that would be subject to the “IZ Plus” regulations – which are not applicable to PUDs – the ANC expressed to the Applicant that it would not be supportive of such a map amendment for the Property and desired the Applicant to pursue redevelopment through the PUD process.
- **Environmental and Sustainable Benefits (Subtitle X § 305.5(k)):**
  - The Project will be designed to the LEED Platinum v4 for H-Multifamily Midrise standard, which exceeds the LEED Gold threshold that qualifies as a PUD benefit under the Zoning Regulations; and
  - The Project will integrate a variety of sustainable and environmentally-friendly measures, including:
    - Approximately 10,411 square feet of extensive green roof systems to collect, filter, and detain stormwater runoff;
    - Approximately 16 elective vehicle (“EV”) charging stations in the underground parking garage for the residential portion of the Project;
    - A minimum of 17 spaces within the bike parking rooms will be designed with electrical outlets for the charging of electric bikes and scooters; and
    - Advanced utility tracking to ensure maximum energy performance.
- **Streetscape Plans (11-X DCMR § 305.5(l)):**
  - The streetscape design for the Project fosters a pedestrian-friendly environment where one is currently lacking, particularly along the east side of 9<sup>th</sup> Street and the north side of Maine Avenue. The Applicant’s streetscape plans show various improvements that will facilitate an engaging pedestrian experience, including new paving for sidewalks, street lighting fixtures, and new shade trees, and seating

nodes. In addition, the public art installation in the Art and Landscape Zone along Maine Avenue will activate the Project's ground-floor retail space(s).

- **Transportation Infrastructure (Subtitle X § 305.5(o));** and
  - The Applicant proposes various improvements to reconfigure and redesign 9th Street that will significantly enhance vehicular traffic flow and pedestrian and bicycle safety along and around the PUD Site, defined and described in FF 32 as the “9th Street Improvements,” which:
    - Exceed the mitigation measures required to minimize the Project's impacts to the surrounding traffic network;
    - Are intended to directly address issues and concerns related to vehicle and pedestrian safety that are paramount to the community; and
    - Enable additional multi-modal transportation improvements in the long-term, such as the installation of a traffic signal at the intersection of 9<sup>th</sup> and G Street, subject to DDOT and Federal Highway Administration (FHWA) approval;
  - The Applicant has thoroughly studied five measures to assist the Capitol Square HOA's efforts to address existing cut-through traffic. The benefits and drawbacks for each are outlined in the memorandum prepared by the Applicant's traffic consultant at Exhibit 112F of the case record. Accordingly, the Applicant agrees to contribute \$100,000 to the HOA to help implement any of the recommended measures; and
  - The Applicant agrees to fund a Signal Warrant Study for the intersection of 9<sup>th</sup> and G Streets, which is estimated to cost up to \$30,000 at this time. The purpose of this study will be to provide information to the District Department of Transportation (“DDOT”) needed to determine whether a traffic signal is warranted at this intersection.
- **Uses of Special Value to the Neighborhood or the District of Columbia as a Whole (Subtitle X § 305.5(q))**
  - The Applicant has committed to providing certain uses in response to community feedback, both of which will be of special value to the Southwest-Waterfront neighborhood:
    - The Applicant is committed to allocating a minimum of 3,000 square feet of ground-floor GFA for a neighborhood-serving grocer, market, bodega, corner store, or prepared food shop; and
    - The Applicant is committed to leasing a portion of the ground-floor retail/commercial space of the Project to a bank branch.
- **Other Public Benefits and Project Amenities (Subtitle X § 305.5(r))**
  - In order to address concerns about bikes and scooters being abandoned in the Capitol Square Place townhouse community, the Applicant agrees to seek Public Space Committee approval for the bike and scooter corrals and agrees to fund the installation of the corrals.

(Ex. 12, 38, 99A2, \_\_\_.)

### III. RESPONSES TO THE APPLICATION

#### District Agencies

*OP*

78. OP submitted a report dated April 18, 2022 (Ex. 13, the “OP Setdown Report”) recommending that the Commission setdown the Application for public hearing based on OP’s conclusion that the Project, on balance, would not be inconsistent with the CP Elements, FLUM, and GPM, and the SW Plan. The OP Setdown Report further conveyed the following:
- The Applicant’s Supplemental Submission reflected OP’s discussions with the Applicant prior to the submission of the original Application;
  - OP would continue to work with the Applicant on resolution of items of requested flexibility, including exterior details and materials and streetscape design; and
  - The proposed benefits were sufficient for submission prior to a public hearing; and that the Applicant was continuing to work closely with the ANC and the Jefferson Middle School PTO to develop additional proffers.
- (Ex. 13, pp. 16 and 17-19.)
79. The OP Setdown Report concluded that the Project is not inconsistent with the CP because:
- The proposed map amendment to MU-9A is more appropriate to the density anticipated under the FLUM and is consistent with development along Maine Avenue;
  - The Project is not inconsistent with the Property’s GPM designation because a Neighborhood Conservation Area does not preclude development, and the additional density would support a range of uses, including multifamily residential for a diversity of residents within a high opportunity area;
  - While there may be inconsistencies with the CP, such as the policy to retain and remodel existing development rather than demolition (LU-1.2.F), in this instance this would not be a preferred alternative since the current structure does not provide the height and density that would be preferred for the Property under the guidance of the FLUM and as supported by the Area Element and the SW Plan;
  - When evaluated through a racial equity lens:
    - Would not displace residents;
    - Would redevelop an underutilized office building at the Property to provide increased access to affordable housing, economic, and environmental benefits for lower-income residents that typically have not had access to such opportunities;
- (Ex. 13 at pp. 7-14.)
80. OP submitted a report dated September 26, 2022 (Ex. 45, the “OP Hearing Report” and, together with the OP Setdown Report, the “OP Reports”) recommending that the Commission approve the Application. The OP Hearing Report further conveyed the following:
- OP reiterated its conclusion that the proposal, including the proposed map amendment to the MU-9A zone is not inconsistent with the CP, and supplemented the CP analysis provided in the OP Setdown Report;
  - When evaluated through a racial equity lens, the Project would:
    - Provide to three times more affordable housing than required under the existing MU-12 zone;
    - Allow residents to have access to employment and other services;

- Improve connectivity and pedestrian experiences at The Wharf and other waterfront development for all residents;
- Provide positive health impacts as a LEED Platinum project and convenient access to a number of open spaces and parks, which is not always available to lower income residents;
- OP continued to support the Project as being consistent with the SW Plan, including its design guidelines, and acknowledged the Applicant’s “thorough analysis of the proposal’s consistency with the SW Plan”;
- OP supported the Applicant’s proposed design attempts to adhere to the SW Plan’s design guidelines, and noted in particular:
  - The varied height and massing on the Property;
  - The use of materials as being consistent with newer development patterns at The Wharf; and
  - The proposal for landscaped and art-infused courtyards for residents and neighborhoods, which would enhance the pedestrian experience;
- The Applicant had provided sufficient information with respect to the following:
  - More explanation regarding the massing and perspectives from the townhomes; and
  - A breakdown of unit sizes including market rate and affordable;
- OP stated that the benefits, amenities, and proffers appeared to be commensurate with the related map amendment and other requested flexibility through the PUD;
- OP found the proposed infrastructure improvements to be valuable to the neighborhood and that the proposed development would not contribute undue traffic to the neighborhood because future residents would be within walking distance of many amenities;
- OP supported the requested flexibility for a map amendment to rezone the Property from the MU-12 to the MU-9A zone;
- OP did not object to the request for side yard flexibility, citing that the building was positioned further into the eastern side yard to accommodate a lower building height fronting G Street in response to the confronting townhome residents;
- OP stated that it had no concerns with the Applicant’s requests for design flexibility; and
- OP acknowledged primary opposition by the community generally raised issues or concerns regarding the following:
  - Increased traffic;
  - Programmable public spaces;
  - Construction impact;
  - Affordable housing; and
  - Building heights and increased shadows.

(Ex. 45.)

81. At the Public Hearing, OP testified in support of the Application and summarized the findings in the OP Reports. OP also restated its conclusion that, on balance, the proposed mixed use development would not be inconsistent with the CP. (Hrg. Tr. at pp. 104-09.)

***DOEE***

82. DOEE provided comments as an attachment to the OP Hearing Report (the “DOEE Comments”), in which DOEE recognized and applauded the Applicant’s commitment to certify the Project at the LEED Platinum level using the LEED for Homes: Multifamily Midrise rating system. DOEE noted that doing so is best suited for the Project, as it would offer the greatest benefits for future residential tenants. The DOEE Comments also encouraged the Applicant to pursue additional sustainable and resilient design strategies, including those relating to energy efficiency, climate resilience, green area ratio and stormwater management, and carbon reduction. (Ex. 45, pp. 21-25.)

***DDOT***

83. DDOT filed a report dated September 26, 2022 (Ex. 44, the “DDOT Report”) that assessed the potential safety and capacity impacts of the proposed Project on the District’s transportation network. The DDOT Report concluded that DDOT had no objection to the approval of the Application, provided that this Order includes the following conditions:

- Increase the long-term bicycle parking spaces to 167 spaces to comply with DCMR 18 Chapter 1214, which requires that one (1) space is provided for every three (3) residential units, and ensure that access to and exit from the building is appropriately designed for safe and convenient access by bicyclists;
- Implement the TDM plan as proposed in the Applicant’s CTR (Ex. 25A), for the life of the project, unless otherwise noted with the revisions requested in the TDM Section of the DDOT report; and
- Implement the Loading Management Plan (“LMP”) proposed in the Applicant’s August 19, 2022 CTR (Ex. 25A), for the life of the project, unless otherwise noted, with an additional strategy to limit the use of the driveway and curb cut to Maine Avenue, SW.

84. The DDOT Report conveyed the following findings, among others:

- To offset the traffic impacts identified in the Applicant’s CTR Report, the Applicant has proposed a robust TDM program that DDOT finds to be acceptable to encourage non-auto travel; and
- DDOT supports the proposal to reconfigure the curb line on 9<sup>th</sup> Street, realign the intersection of 9<sup>th</sup> Street and G Street, and install bike lanes on 9<sup>th</sup> Street as a proffered benefit because these actions will improve safety for bicyclists and pedestrians and improve the quality of the streetscape.

(Ex. 44.)

85. At the Public Hearing, DDOT testified in support of the Application and confirmed that the Applicant had agreed to DDOT’s requested conditions, including DDOT’s proposed revisions to the TDM plan. (Hrg. Tr. at pp. 109-10.)

***Office of the Attorney General***

86. The Equitable Land Use Section of the Office of the Attorney General (“OAG”) filed a PowerPoint presentation that presented arguments for a minimum affordable housing proffer (Ex. 93 – 93A, the “OAG Filing”).
87. At the Public Hearing, OAG testified in opposition to the Application on the grounds that the Applicant’s affordable housing proffer was inconsistent with the CP and did not satisfy the PUD balancing test under Subtitle Z § 304.3. (Hrg. Tr. at pp. 220-26.)
88. On November 21, 2022, OAG filed a post-hearing statement that:
- Supplemented OAG’s testimony provided at the Public Hearing; and
  - Provided the following responses to arguments raised at the Public Hearing:
    - OAG’s application of the IZ plus formula is properly based on the MU-9A zone; and
    - Additional benefits are needed to balance the proposed MU-9A zone’s inconsistency with the Property’s FLUM designation.
- (Ex. 111 – 111A.)

### **ANC**

89. ANC 6D submitted a report dated September 21, 2022 (Ex. 84, the “ANC Report”), stating that at its duly noticed public meeting on September 21, 2022, with a quorum present, the ANC voted to submit a resolution opposing the Application. The resolution expressed the following issues and concerns with the Application:
- The PUD violates the spirit and intent of the SW Plan, as articulated by community residents;
  - The PUD violates the vision of Maine Avenue that is incorporated within the SW Plan;
  - The PUD would adversely impact the social and economic diversity of the community when considering the District’s racial equity objectives;
  - The PUD would create unsafe traffic conditions detrimental to the community and provides inadequate measures to mitigate such impacts;
  - The PUD offers no significant community benefits.
90. Commissioner Fredrica Kramer, the vice chair of ANC 6D and authorized to represent the ANC, testified at the Public Hearing that:
- The ANC opposed the Application, and summarized the issues and concerns raised in the ANC Report, and specifically that:
    - The Project is inconsistent with the SW Plan;
    - The Project would generate adverse traffic impacts that are not capable of being mitigated; and
    - The Applicant’s affordable housing proffer is inadequate.
  - The ANC hoped to continue to meet with the Applicant to uncover solutions.
- (Hrg. Tr. at 128-43.)

### **Persons in Support**



91. Of the 38 letters in support of the Application that were submitted to the record, the following were submitted from persons residing, working, and/or conducting business within an approximate 1-mile radius of the Property:
- Shawn Seaman, President, Hoffman & Associates, Inc. (Ex. 46);
  - William Rich, citing address of 1251 Carrollsburg Place, SW (Ex. 48);
  - Renee Ross, citing address of 1331 Maryland Ave, SW, Apt. 146 (Ex. 64);
  - Blake Yospa, citing address of 1263 1<sup>st</sup> Street, SE, Apt. 1108 (Ex. 66);
  - Clayton Cobb, citing address of 1000 New Jersey Ave, SE (Ex. 67);
  - Dean Clark, citing address of 350 G Street, SW, Apt. #N305 (Ex. 68);
  - Janet Namkung, citing address of 301 M Street, SW Apt. 819 (Ex. 69);
  - Bryan Leigh, citing address of 601 H Street, SW (Ex. 73);
  - Jessica Leigh, citing address of 601 H Street, SW (Ex. 74);
  - Andy Peers, citing address of 608 H Street, SW (Ex. 75);
  - Robert Herrera, citing address of 604 H Street, SW (Ex. 76);
  - Allana Ortega, citing address of 1150 4<sup>th</sup> Street, SW, Apt. 902 (Ex. 77);
  - Ryan Quinn, citing address of 800 4<sup>th</sup> Street, SW (Ex. 82);
  - Beep Boop, citing address of 800 9<sup>th</sup> Street, SW (Ex. 83);
  - The Jefferson Middle School Academy PTO (Ex. 85);
  - Amanda Bacon, citing address of 1000 Maine Avenue, SW (Ex. 94);
  - Hilda Eribo, citing address of 1000 Maine Avenue SW, Suite 301 (Ex. 95);
  - Mark Myers, citing address of 800 Maine Avenue, SW, Suite 900 (Ex. 96);
  - Suzanne Battista, citing address of 800 Maine Avenue, SW, 7<sup>th</sup> Floor (Ex. 105);
  - Brian Hamilton, citing address of 1218 Carrollsburg Place, SW (Ex. 106); and
  - Kristina Dimirievski, citing address of 800 Maine Avenue, SW, Suite 200 (Ex. 107). (Ex. 108.)
92. At the Public Hearing, Ivan Fishburg, secretary of the Jefferson Middle School Academy PTO, testified in support of the Application regarding:
- The PTO's interest in mitigating any adverse impacts;
  - Ongoing negotiations with the Applicant to finalize a construction management plan;
  - The Applicant's agreement to contribute \$150,000 to the PTO to help fund field experiences and curricula support for Jefferson Middle School Academy students. (Hrg. Tr. at pp. 158-63.)

**Party in Opposition**  
***Capitol Square HOA***

93. The Commission received three requests for party status in opposition to the Application, but only granted the request of the Capitol Square HOA. (*See* FF 4-5). On August 16, 2022, the Capitol Square HOA submitted its party status application to the record, claiming that it would be uniquely affective due to its proximity to the north of the Property across G Street. The Capitol Square HOA also raised the following issues and concerns in support of the party status criteria of Subtitle Z § 404.1(h):
- The size and density of the Project would undermine the stability of the neighborhood;

- The Project’s private driveway and proposed points of ingress and egress would cause adverse traffic impacts;
- The Project would cause the removal of street parking;
- The building design would result in adverse shadow impacts;
- Adverse impacts resulting from construction activity; and
- Lack of pedestrian access.

(Ex. 22 – 22A.)

94. At the Public Hearing, the following persons testified on behalf of the Capitol Square HOA:

- Erin Berg, president, testified that:
  - The Capitol Square HOA was unusually affected due to its location;
  - The Applicant’s proposal violates the spirit of the community; and
  - The Capitol Square HOA remained open to working with the Applicant;
- Corinne Carroll, resident-member, testified that:
  - The HOA is not opposed to development or redevelopment in the Southwest neighborhood, so long as it remains compatible with the character of the community;
- Gustavo Pinto, resident-member, testified that:
  - The Project would further contribute to the existing traffic issues within the surrounding area;
- Patricia Giorno Ramos, resident-member and whom was granted expert status in architecture, testified that:
  - Despite the step downs in building height, the Applicant’s proposal would have adverse impacts with respect to light and air.

(Hrg. Tr. at pp. 166-93.)

95. On November 21, 2022, the Capitol Square HOA filed a post-hearing statement that:

- Summarized the status of current negotiations and attempts to resolve issues and concerns raised with the Applicant;
- Detailed the Capitol Square HOA’s position on specific issues relating to:
  - Excessive building height and density;
  - Traffic impacts and the inadequacy of the proposed circulation plan;
  - Cut-through traffic through the Capitol Square townhome community; and
  - The Applicant’s proposed construction management plan; and
- Detailed correspondence between the Applicant and the Capitol Square HOA since the Public Hearing.

(Ex. 113.)

96. On November 21, 2022, the Capitol Square HOA’s qualified architectural expert, Patricia Giorno Ramos, submitted a shadow study final report for the Commission’s consideration.

(Ex. 114.)

**Persons in Opposition**

97. Letters or testimony in opposition to the Application were submitted to the record from the following:

- Alexa Levy (Ex. 23 and 36);
  - Robert Marino (Ex. 26);
  - Joyce Brown (Ex. 27);
  - Ronny B. Lancaster, citing address of 822 Capitol Square Place, SW (Ex. 28);
  - Dusan Vujosveic, citing address of 804 Capitol Square Place, SW (Ex. 30);
  - Marie-Christine Fogt, homeowner of 806 Capitol Square Place, SW (Ex. 31);
  - Helena and Vincent Sagart (Ex. 32);
  - Kristin Graybill, homeowner of 808 Capitol Square Place, SW (Ex. 34);
  - Eric Wawrousek, homeowner of 719 G Street, SW (Ex. 40);
  - Jamie Walters, homeowner of 650 9<sup>th</sup> Street, SW (Ex. 41);
  - Deanna Darlington, homeowner of 640 9<sup>th</sup> Street, SW (Ex. 43);
  - Jack Talmud (Ex. 49 and 110);
  - Yassar Killawi and Ghada Alkiek, homeowners of 813 Capitol Square Place, SW (Ex. 50);
  - Emily Mooney, homeowner of 812 Capitol Square Place, SW (Ex. 53);
  - Savin Ven Johnson (Ex. 55);
  - Michael and Bonnie Dziejic, homeowners of 805 Capitol Square Place (Ex. 56);
  - Herman and Anita Anschuetz, homeowners of 722 Capitol Square Place (Ex. 57);
  - Robert D’Onofrio, homeowner in Capitol Square townhome development (Ex. 58);
  - Lauren D’Onofrio, homeowner in Capitol Square townhome development (Ex. 59);
  - James C and Carol R. Tsang, homeowners of 610 9<sup>th</sup> Street, SW (Ex. 60);
  - Chris Jamieson, homeowner of 819 Capitol Square Place, SW (Ex. 61);
  - Gail Fast, President of the Council of Co-Owners of Town Square Towers (“TST”) (Ex. 62);
  - Pamela McKinney, resident of Southwest (Ex. 88 – 88A);
  - Kelley Gallagher, resident of 1301 Delaware Avenue, SW (Ex. 89); and
  - Leysha Caraballo (Ex. 97).
98. A petition in opposition to the Application that indicated endorsement by 220 community members was submitted to the record at Ex. 90.
99. At the Public Hearing, Gail Fast, President of the Council of Co-Owners of TST, testified in opposition to the Application that:
- The Applicant’s affordable housing proffer needed to provide deeper levels of affordability;
  - The anticipated traffic impacts, particularly with respect to added congestion on G Street, could not be mitigated;
  - The grocery store proffer needed to be modified to accommodate a smaller use.
- (Hrg. Tr. at 215-18).

**Undeclared Persons**

100. Coy McKinney submitted written testimony that focused on the Project’s affordable housing component (Ex. 87 – 87C).

**National Capital Planning Commission (“NCPC”)**

101. The Commission referred the Application to NCPC on December \_\_, 2022 (Ex. \_\_). NCPC filed a report dated \_\_\_\_\_ stating that the proposed Project [insert].

**CONCLUSIONS OF LAW**

**AUTHORITY**

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a Consolidated PUD consistent with the requirements of Subtitle X, Chapter 3 and Subtitle Z § 300, and a PUD-related map amendment pursuant to Subtitle X, § 303.12.

**PUD AND PUD-RELATED MAP AMENDMENT APPROVAL**

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:

- *Results in a project superior to what would result from the matter-of-right standards;*
- *Offers a commendable number or quality of meaningful public benefits; and*
- *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*

3. Pursuant to Subtitle X § 300.11:

*"The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission."*

4. Pursuant to Subtitle X § 300.12:

*"A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weight the benefits of the PUD."*

5. 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.*

6. 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 (1) or a few of the categories in this section, but must be acceptable in all proffered categories and superior in many."*
7. 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:
- *to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
  - *to guide executive and legislative decisions on matters affecting the District and its citizens;*
  - *to promote economic growth and jobs for District residents;*
  - *to guide private and public development in order to achieve District and community goals;*
  - *to maintain and enhance the natural and architectural assets of the District; and*
  - *to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*
8. 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 Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm'n*, 73 A.3d 107, 126 (D.C. 2013).) '[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.'" (*Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016).)

9. Small Area Plans supplement the CP by providing detailed direction for areas ranging in size from a few city blocks to entire neighborhoods or corridors. 10A DCMR § 104.8. Small Area Plans are prepared with community input to provide more detailed planning guidance and typically are approved by resolution of the Council. Unless a Small Area Plan has been made binding on the Zoning Commission through its enactment as part of a Comprehensive Plan amendment, a Small Area Plan provides only supplemental guidance to the Zoning Commission and it does so only to the extent it does not conflict with the Comprehensive Plan. 10A DCMR § 224.5.

**Consistency with the PUD Eligibility Standards (Subtitle X §301.1)**

10. The Commission concludes that the Application meets the minimum land area requirement of Subtitle X § 301.1 because the Property consists of 53,363 square feet (± 1.23 acres). (FF \_\_.)

**Consistency with the CP and Public Policies (Subtitle X § 304.4(a))**

11. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and related Zoning Map amendment, is not inconsistent with the CP and with other public policies and active programs related to the Property, when the CP is considered in its entirety. (FF \_\_.)
12. The Commission concludes that the Project is not inconsistent with the Property's "Neighborhood Conservation Area" designation on the CP's GPM because the Project is a mixed-use infill development that transforms and revitalizes an underutilized site, will address city-wide housing needs, and is compatible with the diversity of existing land uses and building types found in the surrounding area. (FF \_\_.)
13. The Commission concludes that the Project is not inconsistent with the Property's "Medium Density Commercial" designation on the CP's FLUM because the Project's density falls within the permitted density range for a PUD in a Medium Density Commercial area and the proposed map amendment to the MU-9A zone is being sought to shift the massing and height of the building away from the lower-scale residential uses to the north across G Street. In support of this conclusion, the Commission agrees with the Applicant that the Property's existing MU-12 zoning is inconsistent with the CP and inhibits future development of the Property and the mix of uses that are envisioned by the Property's FLUM designation of Medium Density Commercial. For these reasons, although the MU-9A zone is intended to permit "high-density mixed-use development" (Subtitle G § 400.8(a)), the Commission is persuaded by the justifications in the record that demonstrate the Project is not inconsistent with the CP's FLUM. (FF \_\_.)
14. The Commission concludes that the Project is not inconsistent with the Lower Anacostia Waterfront and Near Southwest Area Element, which applies to the Property, because the Project is precisely the type of redevelopment that this Area Element promotes. In support of this conclusion, the Commission notes that the Project will bring significant residential and retail opportunities to the Maine Avenue Corridor. The Project will generate approximately 498 units, of which approximately 75 units will be devoted to affordable

housing. Moreover, the Project's affordable housing component includes eight (8) three bedroom rental units, set aside at 50% of the MFI, to accommodate larger households. (FF \_\_\_\_.)

15. The Commission concludes that the Project furthers the CP's Land Use, Transportation, Housing, Environmental Protection, and Urban Design Elements. In support of its conclusion, the Commission acknowledges several aspects of the Project that advance applicable policies in the Citywide Elements, including, but not limited to, the provision of transit-oriented housing, including affordable housing, new streetscape and landscaping features intended to foster a pedestrian-oriented environment, the integration of various sustainable measures and commitment to achieving LEED Platinum design, and the use of step downs and varied articulation to achieve maximum compatibility with the surrounding context and leverage the opportunities afforded by the Property's unique location. Overall, the Project will transform an underutilized site with a new mixed use, mixed income building that will further many CP policies and objectives. (FF \_\_\_\_.)
16. The Commission concludes that to the extent the Project is inconsistent with any CP policies, such inconsistencies are far outweighed by the Project's advancement of numerous CP policies under the Lower Anacostia Waterfront and Near Southwest Area Element and the Citywide elements, and other competing considerations that strongly weigh in favor of redeveloping the Property with new housing and affordable housing and neighborhood-serving retail and service uses. (FF \_\_\_\_.)
17. The Commission concludes that the Project is not inconsistent with the Southwest Neighborhood [Small Area] Plan (the "SAP"). The Commission acknowledges the Project's inconsistency with the SAP was a primary argument advanced by the opposition in this case. However, the Commission is persuaded by the evidence in the record that the Project advances the seven core concepts of the SAP, and particularly the design guidelines of the "Modernist Gem" core concept. The Project furthers many of the SAP's goals, such as those related to affordable housing, building height diversity, sustainable living, and pedestrian connections. Overall, the Project is an appropriate development for the Property in light of the SAP recommendations and will be a compatible contribution to the Southwest neighborhood. (FF \_\_\_\_.)
18. The Commission concludes that the Project will further the housing goals of Mayor's Order 2019-036 by introducing approximately 498 residential rental units, of which approximately 75 are affordable at 60% MFI (low income) and 50% MFI (very low income). The Commission acknowledges that the Project will provide eight three-bedroom units at the 50% MFI level. (FF \_\_\_\_.)
19. The Commission concludes that the Project will further the recommendations and design guidelines of the Climate Plan. In support of its conclusion, the Commission acknowledges that the proposed building will be designed to a LEED Platinum standard and incorporates several measures to promote healthy living and achieve long-term resilience. (FF \_\_\_\_.)

*Racial Equity*

20. Pursuant to the Commission's Racial Equity Analysis Tool assessment, the Commission is tasked with evaluating the expected goals of the proposed zoning action and the anticipated impacts.
21. The Commission concludes that the Project is not inconsistent with the CP when evaluated through a racial equity lens. The anticipated goals of the consolidated PUD and related map amendment are to provide new housing and affordable housing (beyond what could be constructed as a matter of right), offer neighborhood-serving retail and service uses at an appropriate and viable location, uses that are desired by the general community and then further refined pursuant to community feedback, and deliver a public benefits and amenities package that would, among other things, improve the surrounding traffic network, create an engaging streetscape with new, pedestrian-focused improvements and a public art component. In light of these goals, the Commission anticipates that the zoning action would generally bring positive outcomes that have the potential to advance racial equity. The Project does not result in the physical displacement of residents and will mitigate any potential for economic and cultural displacement via the Application's [IZ] affordable housing proffer, which provides opportunities for low and very low-income households, as well as the public art installation along Maine Avenue which will serve to strengthen the Southwest neighborhood character and identity. Furthermore, the Project is likely to generate favorable outcomes when considering other equitable development indicators and measures related to housing, transportation, employment, and environmental, education, health and wellness, and access to amenities. The Project will generally expand opportunities for current and future residents of the District, regardless of socioeconomic status. In light of the foregoing, the Commission generally concurs with the analysis of the Applicant and of OP and finds that the Project advances the racial equity objectives underlying the CP. (FF \_\_.)
22. Based on the evidence provided in the case record, the Commission agrees that the Project is not inconsistent with the CP as a whole or other adopted and applicable public policies.

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

23. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts that are not capable of being mitigated or are outweighed by the Project's proffered public benefits, and therefore protects and advances the public health, safety, welfare and convenience as detailed below. (FF \_\_.)
24. The Commission concludes that the Project will result in favorable land use impacts because the Project will transform an underutilized site, currently improved with an outdated office building, into a high-quality, transit-oriented mixed-use development that will address citywide housing needs and provide opportunities for neighborhood-serving retail and services. (FF \_\_.)



25. The Commission concludes that the Project will not create any unacceptable zoning impacts because, as compared existing matter of right zoning, the height and density gains that are sought are intended to achieve a compatible building design and advance several of the CP's policies and objectives, especially those that are related to affordable housing. The proposed zone change from MU-12 to MU-9A results in a height gain of 80 feet at the southern portion of the building along Maine Avenue, but only a 30 foot gain at the northern portion of the building along G Street where the Property confronts the Capitol Square townhome development. With respect to density, the proposed zone change from MU-12 to MU-9A would permit a density of 9.36 FAR under a PUD, however the proposed density for the Project is approximately 7.99 FAR. Thus, the Project is only gaining approximately 4.99 FAR above existing zoning – i.e., the Applicant is utilizing only 80% of the potential gain. For these reasons, the impact of the height and bulk of the Project is favorable or acceptable given the quality of public benefits of the Project, namely the additional housing, the affordable housing, and superior urban design. (FF \_\_.)
26. The Commission concludes that the Project will have transportation impacts that are capable of being mitigated or acceptable given the quality of public benefits. DDOT has determined that, subject to its proposed revisions, the Applicant's TDM plan will mitigate any potential adverse impacts on the traffic network resulting from the Project. The Project is also located in close proximity to multiple forms of public transit, and neighborhood-serving retail, services, and other amenities are within walking distance of the Property. Furthermore, the 9<sup>th</sup> Street Improvements, subject to approval by DDOT, will have favorable impacts on pedestrian, bicycle, and vehicular safety in the area. (FF \_\_.)
27. The Commission concludes that the Project will result in favorable impacts to the environment because the Project will be built to LEED Platinum standards and will include a variety of measures to promote sustainability and achieve long-term resiliency. (FF \_\_.)
28. The Commission concludes that the Project will have favorable impacts to housing because the mixed use development will generate approximately 498 new residential units, of which approximately 75 rental units will be set aside as affordable for households at the 60% and 50% MFI levels. The Project specifically includes eight three-bedroom rental units that will be made restrict to households not exceeding the 50% MFI level. (FF \_\_.)
29. The Commission concludes that the Project will result in favorable impacts to economic development because the mixed use development will accommodate an influx of residents who can support commercial uses in the surrounding area. (FF \_\_.)
30. The Commission concludes that the Project will not have any unacceptable impacts with respect to parks, recreation, and open space. (FF \_\_.)
31. The Commission concludes that the impacts to urban design are favorable or are acceptable given the quality of public benefits. The design is informed by the surrounding neighborhood dynamics, and building height transitions are being utilized to achieve a complementary relationship with The Wharf planned unit development to the south, across

Maine Avenue, and the Capitol Square planned unit development to the north of the Property, across G Street. Overall, the Project concentrates height and density where appropriate. Furthermore, the step downs in height help to minimize impacts to light and air. The Commission has evaluated all of the shadow studies submitted to the record, both by the Applicant and the opposition, and finds that the additional shading resulting from the proposed Project is acceptable given current conditions. (FF \_\_.)

32. The Commission finds that the Project will not have any impacts on the District's historic preservation efforts. (FF \_\_.)
33. The Commission concludes that impacts to community services and facilities are favorable or acceptable given the quality of public benefits because of the Property's proximity to various community resources. (FF \_\_.)
34. The Commission concludes that the Project's impacts to educational facilities will be favorable or acceptable given the quality of public benefits and amenities because:
  - The Property falls within the DCPS boundaries of Amidon-Bowen Elementary School, Jefferson Middle School Academy, and Eastern High School, which, according to SY2020-21 enrollment data, have utilization rates of 79%, 65%, and 67%, respectively.
  - The configuration of the private driveway and the circulation plan will not have an adverse impact on the operations of the adjacent school; and
  - The Applicant has also agreed to enter into a construction management plan with the adjacent school to minimize impacts to students and staff during redevelopment of the site. (FF \_\_.)
35. The Commission concludes that the Project will result in favorable impacts to infrastructure, or such impacts are acceptable in light of the public benefits, given the realignment and redesign of 9<sup>th</sup> Street that will, among other improvements, will create a safer experience for motorists, pedestrians, and cyclists. (FF \_\_.)

**PUD Flexibility Balanced Against Public Benefits (Subtitle X §§ 304.3 and 304.4(c))**

36. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the balancing test under Subtitle X § 304.3 because the Project includes specific public benefits and project amenities that are not inconsistent with the CP or other public policies and active programs related to the Property. Furthermore, the public benefits outweigh the requested zoning flexibility as well as any potential adverse impacts that are not capable of being mitigated, as discussed below.
37. The Commission concludes that the Applicant's proffered public benefits and amenities resulting from the Project, including superior urban design and architecture, site planning and efficient and economical land utilization, housing and affordable housing, environmental and sustainable benefits, streetscape plans, transportation infrastructure, and uses of special value to the neighborhood or the District of Columbia as a whole, are commendable. (FF \_\_.)

38. The Commission concludes that the Applicant’s proposed amendment of the Zoning Map to rezone the Property from the current MU-12 zone to the MU-9A zone is appropriate because:
- The Property’s current MU-12 zoning is inconsistent with the Medium Density Commercial FLUM designation;
  - The Map Amendment is not inconsistent with the CP when taken as a whole; and
  - The Property is currently underutilized given it is improved with an older office building;
  - The Property can be better utilized given its close proximity to transit and neighborhood-serving retail, services, and recreational opportunities; and
  - The Map Amendment will allow the Property to be developed as a mixed-use Project at a density and height that can produce substantial new housing, including affordable housing, and neighborhood-serving retail and service uses that are more compatible with the surrounding area and appropriate for this location. (FF \_\_.)
39. The Commission concludes that the Applicant’s proposed technical relief to permit the proposed side yard is outweighed by the proffered benefits and amenities resulting from the Project. (FF \_\_.)
40. The Commission concludes that the requested design flexibility is appropriate for the Project and is balanced by the proffered benefits and amenities resulting from the Project (FF \_\_.)

**GREAT WEIGHT TO RECOMMENDATIONS OF OP**

41. The Commission is required to 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).)
42. The Commission finds OP’s analysis of the Application, its conclusion that the Application satisfies the PUD evaluation requirements, and its recommendation to approve the Application persuasive and concurs with this judgement. (FF \_\_.)

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

43. 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).)

44. The Commission acknowledges the ANC’s issues and concerns with the Project, but does not find the ANC’s advice persuasive under the circumstances because:
- The Commission agrees with the Applicant’s justifications and concurs with the judgment of OP that the Application furthers the goals and recommendations of the SAP;
  - The Commission does not agree with the ANC that the Project violates the vision of Maine Avenue, and specifically credits the Applicant’s testimony on rebuttal;
  - The Commission agrees with the Applicant’s justifications and concurs with the judgment of OP that the Application is not inconsistent with the CP, on balance, when the Project is evaluated through a racial equity lens;
  - The Commission finds the Applicant’s proposed TDM plan will effectively mitigate any adverse traffic impacts resulting from the Project, and concurs with DDOT’s judgment that the TDM plan is acceptable to encourage to non-auto travel;
  - The Commission credits DDOT’s support of the 9<sup>th</sup> Street Improvements, which will improve safety for motorists, bicyclists, and pedestrians, and improve the quality of the streetscape; and
  - The Commission finds the public benefits and amenities proffered in connection with the PUD outweigh the development incentives and flexibility requested by the Applicant.

## 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, subject to the following guidelines, conditions and standards, for:

- A Consolidated PUD; and
- An amendment of the Zoning Map to rezone the Property to the MU-9A zone.

### A. PROJECT DEVELOPMENT

1. The Project shall be developed and constructed substantially in accordance with the plans titled “899 Maine Avenue”, prepared by Perkins Eastman DC, LLC, submitted by the Applicant on November 28, 2022, and included in the case record as Ex. [REDACTED] – [REDACTED], and the signage and storefront package included in the case record as Ex. 38B, as modified by the guidelines, conditions, and standards herein (collectively, the “Approved Plans”).
2. In accordance with the Approved Plans, as modified by the guidelines, conditions, standards, and flexibility herein, the Approved PUD shall have:

- A maximum building height of approximately 130 feet at the southern portion of the building along Maine Avenue, SW, and a maximum building height of approximately 90 feet at the northern portion of the building along G Street, SW;
- Approximately 458,644 square feet of total GFA, consisting of:
  - Approximately 434,475 square feet devoted to residential use; and
  - Approximately 24,169 square feet devoted to non-residential use;
- A FAR of 7.99 for the overall PUD site; with
  - Approximately 7.57 FAR devoted to residential use; and
  - Approximately 0.42 FAR devoted to non-residential use;
- Approximately 498 residential units, of which approximately 75 units will be devoted to affordable housing, of which:
  - 67 IZ units will be reserved for households at 60% MFI (low income); and
  - Eight (8) 3-bedroom IZ units will be reserved for households at 50% MFI (very lowcome);
- Approximately 234 vehicle parking spaces; and
- Approximately 167 long term and 32 short term bicycle parking spaces.

3. The Applicant shall have PUD design flexibility in the following areas:
- a. Number of Dwelling Units. To provide a range in the approved number of residential dwelling units of plus or minus ten percent (10%).
  - b. Affordable Units. To vary the number and mix of inclusionary units if the total number of dwelling units changes within the range of flexibility requested, provided that the total square footage reserved for affordable units is no less than 15% of the residential gross floor area approved for the Project; and provided that the location and proportionate mix of the inclusionary units will substantially conform to the layout shown on the Approved Plans; and provided further that there are eight (8) three-bedroom units reserved for households with incomes not exceeding 50% MFI.
  - c. Parking Configuration. To make refinements to the approved parking configuration, including layout, number of parking spaces plus or minus ten percent (10%), and/or other elements, and to vary the allocation of residential and retail parking spaces, provided that the number of residential parking spaces shall not exceed a ratio of 0.6 spaces per unit.
  - d. 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 configuration of the building.

- e. Exterior Materials and Color. To vary the final selection of the exterior materials within the color ranges and material types as proposed on Sheet 54 of the Approved Plans (titled, "Material Palette"). In the event the Applicant desires to change the exterior materials, type or color, the Applicant shall file an application for a Modification of Consequence for the Commission's approval of the change of exterior materials.
- f. 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, railing, skylights, and window locations, and brick patterns or sizes.
- g. Balconies. To vary the number, configuration, and general design of the balconies proposed on the Maine Avenue façade to ensure compliance with the applicable requirements of the 2017 District of Columbia Construction Codes (Title 12 of the District of Columbia Municipal Regulations), so long as the design of the Maine Avenue façade remains substantially in conformance with the Approved Plans.
- h. Streetscape Design. To vary the location, attributes, and general design of the approved streetscape, including those streetscape improvements proposed within the "Art and Landscape Zone" indicated on Sheet 72 of the Approved Plans, subject to the review and approval of the Public Space Committee.
- i. Sustainable Features. To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the PUD does not decrease below the minimum required for LEED Platinum.
- j. Signage. To vary the font, message, logo, location, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the Approved Plans.
- k. Conversion of Retail Space. To convert up to 15,000 square feet of retail space to residential use or any other use permitted in the MU-9A zone, provided that for any such conversion that requires a modification of the building design, the Applicant shall 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.
- l. Retail Use Types. To vary the types of uses designated as "retail" use on the approved Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(bb)); (ii) Services, General (11-B DCMR § 200.2(cc)); (iii)

Services, Financial (11-B DCMR § 200.2(dd)); (iv) Eating and Drinking Establishments (11- B DCMR § 200.2(i)); (v) Medical Care (11-B DCMR § 200.2(u)); and (vi) Arts, Design, and Creation (11-B DCMR § 200.2(e));

- m. Retail Frontages. To vary the final design of retail frontages of the building, including the location and design of entrances, show windows, signage, and size of retail units, in accordance with the needs of the retail tenants. Retail signage shall be located within the potential retail signage zone shown on Sheet S2 of the Approved Plans.

## **B. BUILDING PERMIT REQUIREMENTS**

1. **The Applicant shall submit with its building permit application for the Project**, a checklist evidencing that the Project has been designed to LEED Platinum standards under the LEED v4 Multifamily Midrise standard.
2. **Prior to the issuance of the first building permit for the Project**, the Applicant shall prepare and submit a Signal Warrant Analysis (the “Study”) for the intersection of 9<sup>th</sup> Street and G Street to DDOT's Transportation Engineering and Safety Division (TESD) for review. The purpose of the Study will be to provide information to DDOT needed to determine whether a traffic signal is warranted at the aforementioned intersection, and will involve the following:
  - a. Coordination with DDOT on project scope;
  - b. Identification of existing traffic data, including data and analyses performed as part of the Applicant’s CTR review:
    - i. Perform supplemental data collection (e.g., 13-hour TMC) to complete warrant analyses as needed; and
    - ii. Project future volumes using similar methodologies from the CTR accounting for background growth and the future PUD;
  - c. Field work to assess any geometric or sight distance constraints and observe overall intersection operations;
  - d. Identify other safety concerns or improvements that may need to be addressed as part of the final recommendations;
  - e. Summary of five-year historical crash data from DDOT;
  - f. Full Signal Warrant Analysis per MUTCD requirements:
    - i. Based on the traffic data and anticipated operation of the signal, determine which approach(es) shall be used as the mainline and

which shall be used as the side street for the purpose of the volume-based Warrant Analyses. If necessary, perform the Warrant Analyses for alternative assumptions for mainline and side street.

- g. Documentation into a draft Study and presentation of results to DDOT;
  - h. Finalization of the Study based on DDOT comments.
3. **Prior to the issuance of the first building permit for the Project**, the Applicant shall contribute up to \$100,000 to the Capitol Square Place HOA to help facilitate the implementation of any of the cut-through mitigation measures recommended in Ex. 112F of the case record. The Applicant shall provide proof to the Zoning Administrator that the funds have been contributed and that the items or services described in this condition have been or are being provided.
  4. **Prior to the issuance of the first building permit for the Project**, the Applicant shall submit an application to the Public Space Committee seeking approval for bike and scooter corrals along the perimeter of the Property.

#### C. CONSTRUCTION REQUIREMENTS

1. **During construction of the Project**, the Applicant shall abide by the terms of a Construction Management Plan with the Jefferson Middle School PTO and the Capitol Square HOA.

#### D. CERTIFICATE OF OCCUPANCY REQUIREMENTS

1. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall provide a signed affidavit to the Zoning Administrator evidencing that the Applicant has registered the Project for LEED Platinum under the LEED v4 Multifamily Midrise standard. The signed affidavit shall also include the steps taken by the Applicant towards achieving such certification for the Project.
2. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has submitted a Curbside Management Plan ("CMP") to DDOT for the public space abutting 9<sup>th</sup> Street, SE for approval, and will implement the CMP as fully approved by DDOT. Any metered parking shall be installed at the Applicant's expense.
3. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall present evidence to the Zoning Administrator that it has reconfigured and redesigned 9<sup>th</sup> Street, SE, pursuant to the Approved Plans, subject to review and approval by DDOT.



4. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall present evidence to the Zoning Administrator that it has funded and installed the bike and scooter corrals along the perimeter of the Property, in accordance with the relevant approval granted by the Public Space Committee.
5. The Applicant shall take the following actions related to the delivery of the commemorative art or public art proffer:
  - a. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall contribute \$75,000 to MYLY Design, a minority-owned, woman-owned, certified business entity based in Washington, DC, or comparable design firm, to design, fabricate, and install public art along Maine Avenue in the area identified as the “Art and Landscape Zone” on Sheet 72 of the Approved Plans. The Applicant shall provide proof to the Zoning Administrator that the funds have been contributed and that the items or services described in this condition have been or are being provided.
  - b. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall furnish to the Zoning Administrator evidence of a memorandum of agreement that provides for the creation of a committee to select the artwork to be installed. The committee will include, at minimum, the Applicant, one representative from ANC 6D, a resident within the boundaries of ANC 6D, and a representative from a business within the boundaries of the ANC 6D. The process for selecting the artwork will be coordinated and facilitated by My Ly Design, or a comparable design firm, to serve as a consultant to the District on the arts and cultural strategy and recommendations contained within the SW Plan.

#### **E. REQUIREMENTS FOR THE LIFE OF THE PROJECT**

1. **For the life of the Project**, the Applicant shall devote approximately 434,475 square feet of GFA to residential use, subject to flexibility provided herein.
2. **For the life of the Project**, the Applicant shall devote approximately 24,168 square feet to non-residential use at the ground floor, subject to the flexibility provided herein and in accordance with the following:
  - a. **For the life of the Project**, the Applicant shall allocate at least 3,000 square feet of ground-floor retail space for a neighborhood serving grocer; market; bodega; corner store; or prepared food shop use; and
  - b. **For the life of the Project**, the Applicant shall allocate a portion of ground-floor retail/commercial space to a bank branch use.

3. The Applicant shall provide the affordable housing for the Project in accordance with the following:

- a. **For the life of the Project**, the affordable housing for the Project shall be administered by the DC Department of Housing and Community Development through the Inclusionary Zoning ("IZ") program. The affordable housing shall comply with all development standards, tenancy regulations and implementation requirements for IZ units as set forth in DCMR Chapter 10 of Title 11-C and Chapter 22 of Title 14.
- b. **For the life of the Project**, in substantial conformance with the Sheet 32 of the Approved Plans (titled, the "IZ Unit Mix"), the Applicant shall provide the affordable housing for the Project as set forth in the following chart:

| Residential Unit Type | Net Residential Square Feet / % of Total | # of Units | Reserved for households earning equal to or less than | Affordable Control Period | Affordable Unit Type |
|-----------------------|------------------------------------------|------------|-------------------------------------------------------|---------------------------|----------------------|
| Total                 | 370,774 sf (100%)                        | 498        |                                                       |                           |                      |
| Market Rate           | 378,477 (85%)                            | 423        | Market Rate                                           | Life of the Project       | Rental               |
| IZ                    | 11,203 (2.9%)                            | 24         | Up to 60% MFI                                         | Life of the Project       | Rental / Studio      |
| IZ                    | 19,885 (5.4%)                            | 27         | Up to 60% MFI                                         | Life of the Project       | Rental / 1 Bedroom   |
| IZ                    | 15,874 (4.3%)                            | 16         | Up to 60% MFI                                         | Life of the Project       | Rental / 2 Bedroom   |
| IZ                    | 9,036 (2.4%)                             | 8          | Up to 50% MFI                                         | Life of the Project       | Rental / 3 Bedroom   |
| <b>Total IZ</b>       | <b>55,998*</b>                           | <b>75</b>  |                                                       |                           |                      |

*\*Calculations based on 15% of the overall residential GFA of the Project (65,171 square feet), plus 15% of the penthouse habitable space devoted to dwelling units.*

- c. **For the life of the Project**, the Applicant shall reserve eight (8) three-bedroom units at no more than 50% MFI.
- d. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition.

## F. TRANSPORTATION DEMAND MANAGEMENT

1. **During the operation of the Project (unless otherwise noted)**, the Applicant shall provide the following TDM measures:
  - a. The Applicant will identify Transportation Coordinators for the planning, construction, and operations phases of development. There will be a Transportation Coordinator for each retail tenant and the entire site. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement; and will provide their contact information to goDCgo;
  - b. The Applicant will have the Transportation Coordinator conduct an annual commuter survey of employees onsite, and report TDM activities and data collection efforts to goDCgo once per year;
  - c. The Applicant will ensure Transportation Coordinators develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications;
  - d. The Applicant will ensure Transportation Coordinators subscribe to goDCgo's newsletters and receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;
  - e. The Applicant will provide residents or employees who wish to carpool with detailed carpooling information and will be referred to other carpooling matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or other comparable service if MWCOC does not offer this in the future;
  - f. The Applicant will provide a copy of the Loading Management Plan (LMP) to the Transportation Coordinator so they are aware of this commitment;
  - g. The Applicant will offer a SmarTrip card and one (1) complimentary Capital Bikeshare coupon good for a free ride to every new resident and employee;
  - h. **Following the issuance of a Certificate of Occupancy for the Project**, the Transportation Coordinator shall submit documentation 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;

- i. **Following the issuance of a Certificate of Occupancy for the Project,** the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final Certificate of Occupancy for the Project) summarizing continued substantial compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT. If such letter is not submitted on a timely basis, the Applicant shall have 60 days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such a letter;
  - j. The Applicant will not dedicate unused parking spaces to anyone aside from tenants of the building unless the other building(s) have no on-site parking (e.g. will not lease to other nearby office employees, single-family home residents, or sporting events);
  - k. The Applicant will provide a minimum of 167 long-term and 33 short-term bicycle parking spaces exceeding the ZR16 minimum requirement;
  - l. The Applicant will provide long-term bicycle storage rooms that will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes with a minimum of eight (8) spaces designed for longer cargo/tandem bikes (10 feet by 3 feet), a minimum of 17 spaces will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum of 84 spaces will be placed horizontally on the floor. There will be no fee to the residents or employees for usage of the bicycle storage room and strollers will be permitted to be stored in the bicycle room; and
  - m. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room.
2. **During the operation of the Project (unless otherwise noted),** the Applicant shall provide the following TDM measures specifically for the residential portion of the Project:
- a. The Applicant will unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile;
  - b. The Applicant will provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the

most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing [info@godcgo.com](mailto:info@godcgo.com);

- c. The Applicant will post all TDM commitments on the development's website, publicize availability, and allow the public to see what commitments have been promised;
  - d. The Applicant will install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
  - e. The Applicant will provide a minimum of two (2) showers and eight (8) lockers, consistent with the Approved Plans;
  - f. The Applicant will install 16 electric vehicle (EV) charging stations for the residential portion of this project, exceeding DDOT baseline minimums; and
  - g. The Applicant will provide one (1) collapsible shopping cart (utility cart) for every 50 residential units, for a total of 10, to encourage residents to walk to the grocery store and run errands.
3. **During the operation of the Project (unless otherwise noted)**, the Applicant shall provide the following TDM measures specifically for the grocery/retail portion of the Project:
- a. The Applicant will post "getting here" information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to [godcgo.com](http://godcgo.com), [CommuterConnections.com](http://CommuterConnections.com), transit agencies around the metropolitan area, and instructions for customers discouraging parking on-street in Residential Parking Permit (RPP) zones;
  - b. The Applicant will have the Transportation Coordinator demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law to participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future such as the Parking Cash-Out Law;
  - c. The Applicant will provide at least two (2) lockers for use by employees;

- d. The Applicant will install a minimum of one (1) electric vehicle (EV) charging stations for the grocery/retail portion of this project; and
- e. The Applicant will discuss with the SW BID on a way finding plan along walking routes to the property from the L'Enfant Metrorail station.

**G. LOADING MANAGEMENT PLAN**

- 1. **For the life of the Project**, the Applicant will implement the following Loading Management Plan:
  - a. A loading manager will be designated by building management who will be on duty during delivery hours. The loading manager will be responsible for coordinating with vendors and tenants to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise;
  - b. Lease provisions will require all tenants to use only the loading area for all deliveries and move-in and move-out activities;
  - c. All tenants will be required to schedule deliveries that utilize the loading area (any loading operation conducted using a truck 20 feet in length or larger);
  - d. The driveway and curb cut to Maine Avenue, SW will only be used for grocery deliveries by trucks larger than 35 feet in length. Appropriate signage along the private alley and a chain across the driveway, or similar device, will be installed, which may be temporarily removed by the designated loading manager when large trucks arrive to the site;
  - e. The loading manager will schedule deliveries using the loading berth such that the loading area's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the loading berth is full, that driver will be directed to return at a later time when the berth will be available so as to not compromise safety or impede traffic along 9th Street SW or Maine Avenue SW functionality;
  - f. The loading manager will schedule residential activities so as not to conflict with retail deliveries. All residential loading will need to be scheduled with the loading manager, and it is anticipated that residential loading will take place primarily during afternoons or evenings, when the retail loading activity is minimal;

- g. The loading manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading area do not block vehicular, bicycle, or pedestrian traffic within the service alley, except during those times when a truck is actively entering or exiting a loading berth;
- h. Service vehicle and truck traffic interfacing with Maine Avenue SW or G Street SW traffic will be monitored during peak periods, and management measures will be taken if necessary to reduce conflicts between truck and vehicular movements;
- i. The loading manager will monitor the timing of deliveries to see if any adjustments need to be made to ensure any conflicts with the grocery/retail and residential loading activities are minimized;
- j. Trucks using the loading area will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map ([godcgo.com/freight](http://godcgo.com/freight)). The loading manager will also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure and others from DDOT and goDCgo, to drivers as needed to encourage compliance with idling laws. The loading manager will also post these materials and other relevant notices in a prominent location within the loading area; and
- k. The loading manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading area as well as notifying all drivers of any access or egress restrictions (e.g., no left turn onto G Street SW; truck access only through Maine Avenue SW).

## **H. MISCELLANEOUS**

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

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

**Proposed Action**

**Vote (December 15, 2022): #-#-#**

**([insert roll call vote])**

**Final Action**

**Vote (January \_\_, 2023): #-#-#**

**([insert roll call vote])**

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 22-06 shall become final and effective upon publication in the *D.C. Register*; that is, on **[insert date]**.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

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

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**ANTHONY HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

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