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November 28, 2022

## **VIA IZIS**

Zoning Commission  
for the District of Columbia  
441 4th Street, NW, Suite 210S  
Washington, DC 20001

**Re: Z.C. Case No. 22-06 / Consolidated PUD and Related Map Amendment  
Applicant's Response to Post-Hearing Submissions filed by Capitol Square  
Place HOA and the Office of the Attorney General**

Dear Members of the Commission:

This statement is submitted on behalf of 801 Maine Ave SW PJV, LLC (the "Applicant") in response to the post-hearing submissions filed on November 21, 2022, by the Capitol Square Place Homeowners Association (the "HOA") and the Office of the Attorney General ("OAG"). In Section E of this response, the Applicant is also providing an updated list of the PUD benefits and amenities. In light of the discussion below, we respectfully request that the Zoning Commission (the "Commission") take proposed action on Case No. 22-06 on December 15, 2022.

### **A. Updated Plans**

Submitted herewith under **Tab A** is a complete set of architectural plans and renderings that reflect the most up-to-date version of the project (the "Updated Plans"). For the convenience of the Commission, the entire plan package is being resubmitted. The Updated Plans reflect the changes detailed in the Applicant's Post-Hearing Statement (Ex. [112](#)) and other refinements made to the project since the public hearing held on October 6, 2022.

### **B. Response to Traffic Concerns**

As set forth in the statement and accompany exhibits filed by the Applicant on November 21, 2022 (the "Post-Hearing Submission"), the Applicant has agreed to a number of measures that address concerns raised by the Capitol Square Place Homeowners Association (the "HOA") about existing traffic issues, including congestion and cut-through traffic within their community. Specifically, the Post-Hearing Submission details the following:

1. Funding a Signal Warrant Study for the intersection of 9th and G Streets, SW.
2. As reflected in Exhibit [112E](#), relocating the PUD's curb cut on G Street, approximately 36 feet west of its current location in order to maximize the offset with the curb cut serving Capitol Square Place, which will deter drivers cutting through Capitol Square Place to access the private drive for the PUD.
3. Contributing \$100,000 to the HOA to cover the cost of a transportation study by a consultant of their choice and to implement traffic mitigation measures recommended by the study.
4. Amending the grocery store proffer to alternatively propose a (i) neighborhood-serving grocer, (ii) market, (iii) bodega, (iv) corner store, or (v) prepared food shop.
5. Making the HOA a party to a construction management plan, in an effort to address the HOA's concerns related to traffic and parking during redevelopment of the site.

### **C. Comprehensive Transportation Review (“CTR”) Process and Guidelines**

The HOA and the ANC contend that the traffic study submitted in connection with the application is insufficient because it does not include an analysis of the existing cut-through traffic at Capitol Square Place or the volume of traffic on evenings and weekends, particularly when there are events at The Anthem or other venues at The Wharf.

The Comprehensive Transportation Review (CTR) report was prepared based on local and national guidelines for assembling transportation studies for site development review, the primary standard being the *Guidelines for Comprehensive Transportation Review* published by the District Department of Transportation (“DDOT”). See Ex. [25A](#). As part of this process, Gorove-Slade Associates met with DDOT early in the application process and prepared a CTR scoping form, which reviewed all assumptions and methodologies to be used in the CTR, including the times of data collection, periods of analysis, and study area intersections. DDOT reviewed and provided comments on the scoping document, which were then incorporated into a finalized scoping form. The final CTR was submitted and reviewed by DDOT. As indicated in its report, DDOT thoroughly reviewed the CTR including the assumptions on data collection and study area, and stated that it has no objection to approval contingent upon the Applicant's agreement to three conditions. See Ex. [44](#).

As part of the community engagement process, the Applicant and Gorove-Slade Associates met with the ANC 6D Subcommittee and the HOA on several occasions for the specific purpose of discussing the traffic concerns, how to address them, and explaining CTR processes, methodologies and standards. Gorove-Slade Associates explained why certain time periods and intersections were excluded from the study scope, and how DDOT and the consultant discussed these assumptions in detail before agreeing to the scope of the CTR. Additionally, Gorove-Slade Associates presented the CTR results to the HOA, including how DDOT and the Applicant's team worked to develop the site access plan and mitigations included in the CTR. The meetings related to these discussions are listed below.

Meeting No.	Date	Description Purpose
1	March 17, 2022	Transportation Meeting w/ ANC 6D Subcommittee
2	March 21, 2022	Transportation Meeting w/ ANC 6D Subcommittee
3	April 23, 2022	Transportation Meeting w/ ANC 6D Subcommittee
4	May 9, 2022	Transportation Meeting w/ ANC 6D Subcommittee
5	May 12, 2022	Transportation Meeting w/ HOA
6	June 30, 2022	Transportation Meeting w/ ANC 6D Subcommittee
7	August 17, 2022	Transportation Meeting w/ HOA

#### **D. Responses to OAG’s Post-Hearing Statement**

The Applicant responds to the assertions made in OAG’s Post-Hearing Statement (Ex. [111](#)) as follows:

1. *OAG Assertion: The 15% IZ proffer fails to qualify as a public benefit required to balance the PUD’s requested development incentives...because this 15% IZ proffer is not superior to the IZ set-aside required for an equivalent increase in density for a matter-of-right development, which would be 18%.*

#### **Applicant’s Response: OAG continues to misconstrue the Zoning Regulations and apply the wrong standard of review to this application seeking approval of a PUD and a related Zoning Map amendment.**

To determine whether the Applicant’s affordable housing proffer qualifies as a public benefit, OAG compares the proffer to “the IZ set-aside required for an equivalent increase in density for a matter-of-right development, which would be 18%.” OAG’s repeated reference to an 18% set-aside evidences OAG’s erroneous application of IZ+ to this case. Indeed, OAG’s position deliberately disregards the language of Subtitle X § 502.2(a), which expressly exempts PUD-related map amendment applications from IZ+ requirements. This was an intentional decision made by the Commission, in reliance upon the advice of OP and the same OAG attorneys, when it developed and ultimately approved the IZ+ regulations.<sup>1</sup>

The current standard for whether an affordable housing proffer is considered a PUD benefit is whether the proposed amount of affordable housing “exceeds what would have been required through matter-of-right development under existing zoning.” (Emphasis added.) See Subtitle X § 305.5(g)(1). As the Applicant’s land use and urban planning expert, Mr. Dettman, testified during the public hearing, the IZ set-aside requirement for a matter-of-right development under the PUD site’s existing MU-12 zoning would be approximately 21,511 GFA, plus 10% for any penthouse habitable space and cellar area devoted to dwelling units and projections devoted to residential use. As proposed, the PUD will provide 65,171 of affordable housing GFA, plus 15% of penthouse habitable space devoted to dwelling units. Thus, consistent with the Zoning Regulations, the Applicant’s affordable housing proffer clearly qualifies as a public benefit because it exceeds the

<sup>1</sup> The provision that exempts PUD-related map amendments recognizes that “affordable housing in excess of the current IZ set-aside would be negotiated as part of the benefits of the PUD” and that “PUDs provide a host of other benefits[.] See Public Record for ZC Case No. [20-02](#), OP Setdown Report, Ex. [2](#) at p. 6.

amount of affordable housing that would otherwise be required through matter of right development under existing zoning by more than 300%.

2. OAG Assertion: *The IZ baseline set-aside should be 18% of the residential GFA based on IZ+.*

**Applicant's Response: OAG continues to recommend that IZ+ should be used to establish a baseline set-aside for the proposed PUD despite knowing full well, and even acknowledging as such in their submission, that the Zoning Regulations expressly exempts IZ+ from PUD-related map amendments.**

In its attempt to justify its recommendation that IZ+ should provide a baseline set-aside for PUDs, OAG provides yet another set of set-aside calculations that not only differ from what was presented at the public hearing, but also differ from baseline set-aside calculations and methodologies recommended by OAG in two other PUDs. For this case, OAG now asserts that the IZ set-aside for matter-of-right development under existing zoning would be 15% “[d]ue to the proposed 24,169 square feet of retail space.” While this is the amount of retail space proposed with the PUD, OAG’s assumption that the same amount of retail space would be provided with a matter-of-right development is flawed. Thus, OAG’s inclusion of the proposed retail GFA is artificially elevating its matter-of-right IZ calculation.

The Commission has well-established standards for evaluating a PUD, which do not include use of IZ+ to determine a baseline affordable housing for a proposed PUD. If that were the Commission’s intent when preparing and adopting the IZ+ regulations, the Zoning Regulations would reflect such language. But as discussed above, PUD-related map amendments are not subject to IZ+ because a PUD’s affordable housing proffer is part of the package of public benefits and project amenities negotiated during the PUD process. Again, the Zoning Regulations clearly articulate the standards by which a PUD shall be evaluated, and those standards should be followed in this case.

3. OAG Assertion: *The 15% IZ proffer does not balance the PUD’s inconsistencies with the Comprehensive Plan’s Future Land Use Map (“FLUM”).*

**Applicant's Response: OAG is improperly conflating the PUD balancing test required under Subtitle X § 304.3 with the Comprehensive Plan analysis required under Subtitle X § 304.4(a). Pursuant to the PUD evaluation criteria, the relative value of the PUD benefits and amenities outweigh the requested development incentives and any potential adverse effects.**

In the PUD context, benefits and amenities are not used to balance Comprehensive Plan inconsistencies. The PUD balancing test is set forth in Subtitle X § 304.3, which states: “[i]n deciding a PUD application, the Commission shall 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.” Thus, as is clearly stated, the public benefits of a PUD are balanced against the applicant’s requested development incentives and the potential adverse impacts of a PUD, not against potential Comprehensive Plan inconsistencies.

The Commission's determination as to whether a PUD is not inconsistent with the Comprehensive Plan [when read as a whole] is an entirely separate part of the PUD standard of review that involves the balancing of potential Comprehensive Plan inconsistencies with other competing Comprehensive Plan consistencies. *See* Subtitle X § 304.4(a). The manner in which the Commission must acknowledge potential Comprehensive Plan inconsistencies and determine whether such inconsistencies are outweighed by other competing Comprehensive Plan priorities has been clearly discussed by the D.C. Court of Appeals ("Court"):

*"The Comprehensive Plan reflects numerous occasionally competing policies and goals, ...Thus the Commission may balance competing priorities in determining whether a PUD is consistent with the Comprehensive Plan as a whole...The Commission cannot simply disregard some provisions of the Comprehensive Plan on the ground that a PUD is consistent with or supported by other provisions of the Comprehensive Plan. Rather, if the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain [why] they are outweighed by other, competing considerations."* Friends of McMillan Park v. D.C. Zoning Commission, 211 A.3d 139 (D.C. 2019).

The Zoning Regulations and decisions of the Court are clear. A PUD's public benefits and project amenities must be judged, balanced, and reconciled with the degree of development incentives being requested and any potential adverse impacts of the PUD. In this case, the extensive public benefits proffered by the Applicant, including affordable housing that far exceeds what would be required under [matter-of-right] existing zoning, far outweigh the requested PUD-related map amendment to MU-9A, minor technical zoning flexibility (to allow a noncompliant side yard), and any potential adverse impacts resulting from the project.

4. OAG Assertion: *OAG asserts that an additional IZ set-aside is needed to balance the PUD inconsistency with the Comprehensive Plan because the PUD-related map amendment "to the high-density MU-9A zone is inconsistent with the PUD site's FLUM Medium-Density Commercial."*

**Applicant's Response: The proposed MU-9A zone is not inconsistent with the PUD site's FLUM designation of Medium Density Commercial. While the Applicant points to Z.C. Order No. 20-06 as persuasive authority, the proposed project in and of itself, particularly the proposed density of 7.99 FAR, is entirely consistent with the Comprehensive Plan's vision for a medium density, mixed use project.**

In its submission, OAG argues that the Commission cannot approve the proposed MU-9A zone simply because it is described as a high-density zone. Such a strict reading of the Framework Element is completely at odds with the language contained in the Comprehensive Plan itself on how it is intended to be interpreted. OAG's entire argument is based upon an erroneous assertion that the proposed MU-9A zone is inconsistent with the FLUM simply because it is referenced by name under the "high-density commercial" FLUM category and described as a high-density zone in the Zoning Regulations. These references, and the fact that the proposed MU-9A zone permits a maximum density of 9.36 FAR under a PUD are irrelevant. Consistent with the FLUM, as

described in the Framework Element, the proposed PUD has a density of 7.99 FAR which falls within the expected range for a medium-density mixed-use project under a PUD.

In furtherance of its argument, OAG alleges that “this FLUM inconsistency cannot be balanced out even by the [Comprehensive Plan’s] general housing goals because the FLUM inconsistency is not necessary to create the additional residential square footage as this same square footage could be accommodated on the PUD site under the MU-10 zone that the FLUM explicitly identifies as consistent with the Medium-Density Commercial designation.” OAG’s argument not only misconstrues the Applicant’s reasoning for pursuing the MU-9A zone, which is further detailed below, but also reflects a misguided application of the finding required under Subtitle X § 304.4(a). The Applicant’s proposal successfully balances the wide range of Comprehensive Plan policies, goals, and objectives, and particularly those within the Land Use, Environmental, Transportation, and Urban Design Elements, consistency with the Southwest [Small Area] Neighborhood Plan, and active policies applicable to the PUD site. *See* Ex. [3H](#) and [38H](#).

OAG is correct that the Applicant could achieve the same proposed density under the MU-10 zone. This would require increasing the height of northern portion of the project by 20 feet, or to a height of 110 feet, which is permitted for a PUD in the MU-10 zone. Indeed, the Applicant’s original design that was shown to OP, the ANC, and the community proposed this very idea, which was unanimously disfavored due to the impacts it had on the Capitol Square development to the north. As the record reflects, this early feedback is precisely why the Applicant is pursuing the additional height provided under the MU-9A zone so that the primary massing of this clearly medium-density project can be shifted toward Maine Avenue.

Furthermore, as Mr. Dettman pointed out at the public hearing, OAG’s assertion that the proposed MU-9A zone is inconsistent with the PUD site’s FLUM designation contradicts entirely the final zoning order OAG authored when it served as counsel to the Commission. *See* Z.C. Order No. [20-06](#).<sup>2</sup> Just as in that other case, while the requested MU-9A zone is referred to in the Framework Element’s description of the “High Density Commercial” FLUM designation, **the proposed PUD is not a high-density project**. Rather, the density of the proposed PUD is well within that which is expected under a PUD in areas designated on the FLUM for medium-density mixed-use development. As the record clearly states, the Applicant is pursuing the MU-9A zone solely to allow greater height at the southern end of the PUD site so that massing and density can be shifted away from the Capitol Square development to the north. The Commission’s ability to approve a zone as part of a PUD that is not expressly identified in a FLUM category is well-established in Sections 228.1(e) and 227.2 of the Framework Element.

### **E. Updated and Restated PUD Benefits and Amenities**

Based on the revised proffers included in the Applicant’s Post-Hearing Submission, the updated PUD public benefits and project amenities are as follows:

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<sup>2</sup> OAG states that the Commission’s order in Z.C. Case No. 20-06 “acknowledged the FLUM inconsistency and identified how it was specifically outweighed through the furtherance of other [Comprehensive Plan] policies.” This is a completely erroneous reading of the Commission’s order which, in no uncertain terms, states “[t]he Commission concludes that the Applicant is not inconsistent with the FLUM’s Medium Density Commercial/Institutional designation for the PUD Site...” *See* Z.C. Order No. 20-06, Conclusion of Law 11 at p. 25.

1. Housing (11-X DCMR § 305.5(f) and Affordable Housing (11-X DCMR § 305.5(g))

The project results in the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the FLUM. Overall, the project will replace a vacant office building with approximately 498 new dwelling units. This amount of housing far exceeds the amount of housing that could be provided under the site's existing MU-12 zoning, both as a matter-of-right or through a PUD. *See* 11-X DCMR § 305.5(f)(1); *see also* 11-G DCMR §§ 502.1 and 503.1.

The Applicant will set-aside 15% of the residential gross floor area (“GFA”) of the base building, or approximately 65,171 square feet of GFA, and 15% of any penthouse habitable space for affordable housing. The Applicant's affordable housing proffer will generate approximately 67 units that will be reserved for households with incomes not exceeding 60% MFI, and eight (8) three-bedroom units that will be reserved for households earning no more than 50% MFI. Thus, the project's affordable housing component will help to create a mixed-income community in a high-opportunity area of the District, and includes family-sized units at deeper affordability levels.

2. Environmental and Sustainable Benefits (11-X DCMR § 305.5(k))

The building will be designed to LEED Platinum v4 for H-Multifamily Midrise, which exceeds the LEED Gold threshold that qualifies a PUD benefit under Subtitle X, Sec. 305.5(k) of the Zoning Regulations.

3. Urban Design and Architecture (Subtitle X § 305.5(a)); Site Planning and Efficient Economical Land Utilization (Subtitle X § 305.5(c)); Streetscape plans, subject to approval by DDOT Public Space Committee (Subtitle X § 305.5(l))

The project is designed to be compatible with the overall neighborhood, with the maximum height and the majority of the density focused towards The Wharf. As depicted in the Plans, the massing of the building is configured such that impacts to light and air are minimized, primarily through the use of stepdown techniques. Notably, the height of the building is lowered by two stories at 9th and G Streets, which minimizes the additional impact of shadows on the townhouse development to the north and Jefferson Field to the northeast. Careful consideration also was given to the ultimate height of the Project along Maine Avenue.

The variation in building height also reflects a superior urban design and the proposed heights remain sensitive to the surrounding context. For instance, the southern portion of the Project mirrors the height of the buildings at The Wharf along this section of Maine Avenue.

Integrating a thoughtful urban design, the Project will replace underutilized land with a mixed-use development providing residential and ground floor retail. The existing vacant government office building is incompatible with the surrounding area and neighboring uses. The replacement of underutilized sites constitutes a significant benefit because it will enhance safety, result in aesthetic improvements to the community, and replace a use that is not compatible with the surrounding residential community or consistent with the goals of the Comprehensive Plan.



More specifically, the PUD Site's current MU-12 zoning is inconsistent with the PUD Site's FLUM designations as Medium Density Commercial. Accordingly, the PUD will result in a much more efficient and economical use of the PUD Site, providing an appropriate mix of residential and non-residential uses that achieve the District's planning objectives.

Furthermore, the Applicant is proposing additional seating and landscaping along Maine Avenue, SW that will, together with the Applicant's proposed public art, establish a new gathering area and focal point of activity at a gateway location along the corridor.

4. 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, which will design, fabricate, and install public art along Maine Avenue in the area identified as the "Art and Landscape Zone" on Sheet 72 of the plans marked as Ex. [385](#) of the case record. The public art will be designed to transform the public space into a creative, inspiring, and livable environment, consistent with the goals of the SW Small Area Plan.

In accordance with Subtitle X § 305.3(d) of the Zoning Regulations, prior to the issuance of a certification of occupancy for the PUD, the Applicant shall furnish to the Zoning Administrator evidence of the contribution and documentation that provides for the creation of a committee to review the final options for 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 committee and the artwork will be coordinated and facilitated by MYLY Design.

5. Transportation (11-X DCMR § 305.5(o))

- a. ***9<sup>th</sup> Street Reconfiguration and Improvements.*** 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. 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: (i) the reduction of exceed travel lanes (e.g., the second northbound receiving lane); (ii) the widening of sidewalks along the east side of 9th Street; (iii) the removal of the slip lane from 9th Street to G Street; (iv) the addition of a pick-up/drop-off zone in front of the main residential lobby of the Project; and (v) a reconfiguration that enables a potential traffic signal installation at the intersection of 9th and G Street. The 9th Street Improvements, which are shown at Ex. [38C](#), are subject to review and approval by the Public Space Committee.
- b. ***Monetary Contribution to HOA to Help Mitigate Existing Cut-Through Traffic at Capitol Square Place.*** The Applicant has thoroughly studied five measures to assist the HOA efforts to address existing cut-through traffic. The benefits and drawbacks for each are outlined in the memorandum prepared by Gorove-Slade Associates attached hereto at Ex. [112F](#) of the case record. The Applicant agrees to contribute \$100,000 to the HOA to help implement any of



the recommended measures, prior to the issuance of a building permit for the PUD.

- c. ***Signal Warrant Study for 9th and G Streets.*** The Applicant agrees to fund a Signal Warrant Study for the intersection of 9<sup>th</sup> and G Streets, SW, which is estimated to cost up to \$30,000 at this time. The purpose of this study will be to provide information to DDOT needed to determine whether a traffic signal is warranted at this intersection. The study will build upon the analyses already provided in the Applicant's CTR report. See Exhibit [25A](#) of the case record, and will include the following:
- i. Coordination with DDOT on project scope;
  - ii. Identification of existing traffic data, including data and analyses performed as part of the CTR:
    - Perform supplemental data collection (e.g., 13-hour TMC) to complete warrant analyses as needed; and
    - Project future volumes using similar methodologies from the CTR accounting for background growth and the future PUD
  - iii. Field work to assess any geometric or sight distance constraints and observe overall intersection operations;
  - iv. Identify other safety concerns or improvements that may need to be addressed as part of the final recommendations;
  - v. Summary of five-year historical crash data from DDOT;
  - vi. Full Signal Warrant study per MUTCD requirements:
    - 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.
  - vii. Documentation into a draft warrant study and presentation of results to DDOT; and
  - viii. Finalization of the warrant study based on DDOT comments.

The study will be submitted to DDOT prior to the issuance of a building permit for the PUD. The Applicant also agrees to provide the ANC and the HOA with periodic updates on the study and its findings.

6. Uses of Special Value to the Neighborhood (Subtitle X § 305.5(q))


The surrounding community has expressed preferences for certain uses to be included with the project. Accordingly, the Applicant agrees to lease a portion of the retail/commercial area to a bank branch. In addition, a minimum of 3,000 square feet of ground floor retail will be utilized for a neighborhood serving grocer, market, bodega, corner store, or prepared food shop.

7. 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. The application to the Public Space Committee shall be filed prior to the issuance of a building permit for the PUD, and the contribution for the installation of the corrals shall be made prior to the issuance of a certificate of occupancy for the PUD.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:   
Leila M. Jackson Batties  
Christopher S. Cohen

Encl.

cc: Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that on November 28, 2022, a copy of the Applicant's Second Post-Hearing Statement in support of Z.C. Case No. 22-06 was served on the following by electronic mail at the addresses stated below:

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4. **Dr. Marjorie Lightman**  
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