

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



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)  
February 9, 2023

Pursuant to notice, at its February 9, 2023<sup>1</sup> public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of 801 Maine Ave S.W. PJV, LLC (the “Applicant”) requesting approval of a consolidated planned unit development (“PUD”) and a PUD-related amendment to the Zoning Map (“Map Amendment”) from the MU-12 zone to the MU-9A zone to construct a mixed-use building consisting of approximately 458,644 square feet of gross floor area (“GFA”), including approximately 24,169 square feet of ground-floor retail and/or services use and approximately 498 new dwelling units, at Square 390, Lot 53 (the “Property”) pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 3 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (Zoning Regulations of 2016, the “Zoning Regulations,” or “ZR16,” and to which all subsequent citations refer unless otherwise specified). The Applicant also requested the following relief:

- Flexibility pursuant to Subtitle X § 303.1 from the side yard requirements of Subtitle G § 406.1; and
- Such other design flexibility as are set forth in the Conditions hereof.

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

**FINDINGS OF FACT**

**I. BACKGROUND**

**Parties**

1. The 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, 3A, 3B.)

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<sup>1</sup> On October 6, 2022, the Commission held a Public Hearing on the Application. At its December 15, 2022 public meeting, the Commission took proposed action to approve the Application.

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 on August 25, 2022, by Erin Berg (“Ms. Berg”), President of the Capitol Square Homeowners Association, Inc. (the “Capitol Square HOA”), on behalf of the Capitol Square HOA (Ex. 22-22B.);
  - Request filed on September 13, 2022, by Gustavo Mathias Alves Pinto (“Mr. Pinto”), citing address of 817 G Street, S.W. (Ex. 33.); and
  - Request filed on September 20, 2022, by Corrine Carroll (“Ms. Carroll”), citing address of 670 9<sup>th</sup> Street, S.W. (Ex. 39-39B.)
5. On September 7, 2022, the Applicant submitted a letter in response to the Capitol Square HOA’s party status request claiming that the Capitol Square HOA failed to file the proper documentation evidencing its authorization to participate in the proceeding in accordance with Subtitle Z § 404.1(f). (Ex. 29.)
6. On September 22, 2022, the Capitol Square HOA filed an addendum to its party status request which included a resolution of the Capitol Square HOA’s Board of Directors authorizing the Capitol Square HOA to participate in the proceeding and designating Ms. Berg as its representative. (Ex. 22A, 22B.)
7. As preliminary matters 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 those of the Capitol Square HOA because they are both members of the Capitol Square HOA and would be allowed to testify with the Capitol Square HOA or in their individual capacities.(Transcript [“Tr.”] from October 6, 2022 hearing at pp. 7-11.)

### **Notice**

8. On December 1, 2021, the Applicant mailed an Amended Notice of Intent<sup>2</sup> to file the Application to ANC 6D and the owners of all property within 200 feet of the Property pursuant to Subtitle Z § 300.7. (Ex. 3J.)
9. The Office of Zoning (“OZ”) sent notice of the October 6, 2022 public hearing, in accordance with Subtitle Z § 402.1 to:

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<sup>2</sup> The original Notice of Intent, issued on November 9, 2021, indicated that the Applicant was requesting a PUD-related Zoning Map amendment from the MU-12 zone to the MU-10 zone. The Amended Notice of Intent was issued to change the proposed zone to the MU-9A zone. (Ex. 3J.)

- Authorized counsel for the Applicant;
  - ANC 6D;
  - ANC 6D01 Single Member District (“SMD”) Commissioner, whose district includes the Property;
  - Office of the ANCs;
  - Office of Planning (“OP”);
  - District Department of Transportation (“DDOT”);
  - Department of Consumer and Regulatory Affairs (“DCRA”);
  - Office of Zoning Legal Division (“OZLD”);
  - District Department of Energy & Environment (“DOEE”);
  - Councilmember Charles Allen, the Ward 6 Councilmember in whose district the Property is located;
  - The Chairman and At-Large Members of the D.C. Council; and
  - The owners of property located within 200 feet of the Property.
- (Ex. 18, 19.)

10. OZ published notice of the public hearing in the June 24, 2022 *D.C. Register* (69 DCR 007384 *et seq.*), as well as on the calendar on OZ’s website. (Ex. 17, 18, 19.)
11. The Applicant submitted evidence that it had posted notice of the public hearing on the Property on July 21, 2022, as required by Subtitle Z §§ 402.3-402.4 and maintained said notice in accordance with Subtitle Z § 402.10. (Ex. 20, 52.)

**The Property**

12. 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 (±1.23 acres). The Property is generally bounded by G Street to the north, Maine Avenue to the south, 9<sup>th</sup> Street to 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. (Ex. 3.)
13. The Property is currently 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. (Ex. 3.)
14. The Property is located within the boundaries of Ward 6 and ANC 6D. (Ex. 3.)

**Surrounding Area**

15. 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. (Ex. 3.)

16. 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>3</sup> (Ex. 3.)
17. 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. (Ex. 3.)
18. As such, the Property is situated at a 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. (Ex. 3.)
19. 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. 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. (Ex. 3.)
20. 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. (Ex. 3.)

### **Current Zoning**

21. 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.
22. The MU-11 through MU-14 zones, which include the MU-12 zone, are mixed-use zones that are intended to be applied generally in the vicinity of the waterfront. The MU-12 zone

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<sup>3</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.

is specifically intended to permit moderate-density mixed-use development generally in the vicinity of the waterfront. (Subtitle G §§ 500.1, 500.3.)

23. The MU-12 zone permits the following:
  - A maximum density of 2.5 floor area ratio (“FAR”), with up to 3.0 FAR for projects subject to the Inclusionary Zoning (“IZ”) bonus density, 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.)
24. 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 U §§ 500.2, 507.1.)

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

25. The CP’s Generalized Policy Map (“GPM”) designates the Property as a “Neighborhood Conservation Area” (Ex. 3, 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.” (CP § 225.4.); and
  - 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. Limited development and redevelopment opportunities do exist within these areas. The diversity of land uses and building types in these areas should be maintained and new development, redevelopment, and alterations should be compatible with the existing scale, natural features, and 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.” (CP § 225.5.)
26. According to the GPM, the Property is also partially 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. (CP § 304.8.)
27. The Future Land Use Map (“FLUM”) designates the Property as Medium Density Commercial (Ex. 3, 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. 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.” (CP § 227.12.)
28. The CP’s Lower Anacostia Waterfront/Near Southwest (“AWNS”) Area Element, which applies to the Property, includes the following development priorities, among others:
- The AWNS 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.” (CP § 1907.2; AW-1.1.1: Conservation of Established Waterfront Neighborhoods);
  - The AWNS Area Element promotes the creation of “new mixed-use, mixed-income neighborhoods on vacant or underused waterfront lands[.] Within the Lower Anacostia Waterfront/Near Southwest Planning Area, new neighborhoods should continue to be developed at the Southwest Waterfront, Buzzard Point, Poplar Point, and Navy Yard/Capitol Riverfront... 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.” (CP § 1907.3; AW-1.1.2: New Waterfront Neighborhoods);
  - The AWNS Area Element “[e]ncourage[s] commercial development in the waterfront area in a manner that is consistent with the Future Land Use Map. Such development should bring more retail services and choices to the Anacostia waterfront[.]...A mix of high-density commercial and residential development should be focused along key corridors, particularly along Maine Avenue[.]” (CP § 1907.8; AW-1.1.7: Waterfront Area Commercial Development);
  - The AWNS 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 (CP § 1914.5; AW-2.5.2: Southwest Neighborhood Plan); and

- The AWNS Area Element “[p]romote[s] a mix of affordable and market rate residential units that better serve the community needs in Southwest [and] [p]rioritize[s] the creation of a greater number of affordable units than the Inclusionary Zoning requirement or more family-sized units as part of a community benefits agreement for any PUDs...” (CP § 1914.14; AW-2.5.11: Affordable and Family-Sized Housing in Southwest).

### **The Southwest Neighborhood Plan**

29. 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 S.W.; from P Street S.W., 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 (SW Plan, pp. 5-8):
  - Model Community;
  - Modernist Gem, which includes eight design guidelines (the “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.
30. 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

31. 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, stepping down to a height of 90 feet along G Street;
  - A total density of approximately 7.99 FAR;
  - Approximately 458,644 square feet of 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;
  - An 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 IZ units;
    - An allocation of at least 15% of any penthouse habitable space, or approximately 800 square feet, to rental IZ units for households with incomes not exceeding 50% of the Median Family Income (“MFI”);
    - Sixty-seven IZ units that will be reserved for households with incomes not exceeding 60% MFI; and
    - Eight three-bedroom IZ units that will be reserved for households earning no more than 50% MFI;
  - Twenty one-bedroom units that will be reserved for households earning no more than 120% MFI;<sup>4</sup>
  - Approximately 234 below grade parking spaces;
  - Approximately 167 long-term and 32 short-term bicycle parking spaces;<sup>5</sup>
  - Extensive outdoor spaces and amenities including balconies, penthouse habitable spaces for recreation, a communal pool, and courtyards for residents and neighbors. (Ex. 3-3J, 4A1-4A4, 12-12A, 14, 15-15G, 37, 38-38I, 99A1-99A2, 112-112I, 119-119A5, 127-127C.)
32. The proposed building integrates the following design elements:

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<sup>4</sup> In making this commitment, the Applicant explained that it was not proffering these “workforce housing units” as a PUD benefit, but instead at the request of the Ward 6 Councilmember. (Ex. 127, 127A, 127B.)

<sup>5</sup> The Project’s Approved Plans at Ex. 119A1-119A5 show a lower total count of 120 long-term bicycle parking spaces; however, the case record reflects the Applicant’s agreement to provide 167 long-term bicycle parking spaces in the Applicant’s Revised List of Proffers and Conditions at Ex. 126A.



- 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, 119A1-119A5.)

33. 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.<sup>6</sup> 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. 38, 38D, 38E, 112, 112D, 112E.)

34. The Project also proposes various improvements to reconfigure and redesign 9<sup>th</sup> Street that will enhance vehicular traffic flow and pedestrian and bicycle safety along and around the Property (the “9<sup>th</sup> Street Improvements”). The 9<sup>th</sup> Street Improvements include:

- The reduction of excess travel lanes (e.g., the second northbound receiving lane) to allow for the addition of bicycle lanes along 9<sup>th</sup> Street;
- The widening of sidewalks along the east side of 9<sup>th</sup> Street and the addition of landscaped areas;
- The removal of the slip lane from 9<sup>th</sup> 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 9<sup>th</sup> and G Streets. As discussed below, the Applicant agreed to fund a signal warrant study at the intersection of 9<sup>th</sup> and G Streets (the “Signal Warrant Study”) in accordance with the Conditions hereof.

(Ex. 15, 25, 25A, 38, 38C, 112.)

## **Application Requests**

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<sup>6</sup> In response to concerns from the Capitol Square HOA and residents that the new driveway would encourage “cut-through” vehicular traffic through their community’s private streets as a short cut to and from Maine Avenue, the Applicant shifted the G Street curb cut approximately 36 feet west of its initial location so that it does not align with the curb cut to the north used by Capitol Square residents. The Applicant notes that final approval of its curb cut location is subject to approval by the DDOT’s PSC; however, DDOT has indicated its support for the new location. (Ex. 112, 112D, 112E, 122.)

35. The Application requested the Commission approve a Consolidated PUD with a related Zoning Map amendment to rezone the Property from the MU-12 zone to the MU-9A zone. (Ex. 3, 3D, 3E.)
36. As a result of this PUD-related 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 the PUD height permitted under existing MU-12 zoning (maximum 60 feet); and
  - Density: 7.99 FAR 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 the PUD density permitted under existing MU-12 zoning (maximum 3.6 FAR).
- (Ex. 3, 15.)
37. 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. The Applicant explained that side yard relief is necessary as a result of decreasing the height of the northern section of the building and shifting massing toward Maine Avenue in response to feedback from OP, ANC 6D, and the community. (Ex. 15, 15A1.)
38. The Application also requested the Commission approve design flexibility as are set forth in the Conditions hereof to vary certain elements in the Application's final plans as approved by the Commission and still comply with the requirement of Subtitle X § 311.2 and Subtitle Z § 702.8 to construct the Project in complete compliance with the final plans. (Ex. 38.)

### **Applicant's Submissions**

39. On February 11, 2022, the Applicant filed its initial 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;
  - An initial set of architectural drawings and elevations;
  - A discussion of the Project's compliance with the CP, including the Citywide Elements and the AWNS Area Element; and
  - A letter dated January 25, 2022, from the Applicant addressed to ANC 6D detailing the Applicant's responses to the ANC's concerns about the adequacy of its affordable housing proffer; vehicle and truck access onto G Street; shadow impacts on the Capitol Square development and Jefferson Middle School Academy; and further community outreach efforts.
- (Ex. 3-3J.)
40. 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”). The amended list of public benefits and amenities included an upgrade of the Project’s Leadership in Energy and Environmental Design (“LEED”) rating from LEED Gold v4 for BD+C New Construction to LEED Platinum v4 for H-Multifamily Midrise; a public art concept plan featuring three new sculptures within the public space along Maine Avenue; and a commitment to lease a portion of the retail/commercial area to a bank branch and a ground-floor grocery store of at least 6,000 GFA. (Ex. 12-12A.)

41. The Supplemental Submission also stated that the Applicant met with OP and the ANC prior to submitting the Application, to inquire about the potential for a map amendment to rezone the Property to the MU-10 zone based on the site’s Medium Density Commercial designation on the Comprehensive Plan Future Land Use Map. The Applicant stated that in response, the ANC expressly stated that it did not support a standalone map amendment and wanted the Applicant to pursue a PUD instead. In response, OP specifically stated that a rezoning to the MU-10 zone could only be supported in connection with a PUD; however, if the Applicant preferred a standalone map amendment, OP could only support a rezoning to the MU-8 zone. (Ex. 12, p. 2.)
42. 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, the location of the affordable housing units, and renderings of how the building will fit into the lower-density residential neighborhood to the north. (Tr. from April 28, 2022 meeting at pp. 17-29.)
43. 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 of Subtitle G § 406.1 to provide a nine foot side yard instead of the required 21’-8” side yard to accommodate the changes made to the height and massing of the building in response to feedback;<sup>7</sup>
  - An updated list of public benefits and amenities with proposals for short- and long-term improvements to the 9<sup>th</sup> Street/G Street intersection. For the short-term, reconstructing the 9<sup>th</sup> and G Street intersection to improve navigation in tandem with reconfiguring the 9<sup>th</sup> Street right-of-way between Maine Avenue and G Street to allow

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<sup>7</sup> While the Prehearing Submission requested side yard flexibility for “portions of the eastern and western side yards,” the Applicant’s later refinements and updated architectural plans show that the Project only requires flexibility for the eastern side yard. (Ex. 119A2.) The OP Hearing Report states that the requested side yard flexibility applies to the eastern side yard. (Ex. 45.)

for the addition of a PUDO zone directly in front of the building entrance, and for the long-term, investigating the potential signalization of the 9<sup>th</sup> Street/G Street intersection;

- A clarification of the proposed building height and associated building height measuring point (“BHMP”) stating that as measured from the BHMP at the level of the curb opposite the middle of the building along the G Street frontage, the northern portion of the building will be maximum of 90 feet high, the southern portion of the building will be a maximum of 130 feet high, and the 130 foot southern portion of the building will be located approximately 290 feet from the Capitol Square residential development on the north side of G Street;
- 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 (“PTO”); 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”);
  - Providing a traffic pattern layout as requested by the community 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, 15-15G.)

44. 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”) which concludes that the Project will not have a detrimental impact on the surrounding transportation and roadway network assuming that all planned site design elements are implemented. The CTR Report found that the potential impacts of the Project would be mitigated by a Transportation Demand Management (“TDM”) plan and a Loading Management Plan (“LMP”) as proposed in the 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. 15D.)
45. 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:
    - Further discussion regarding transportation considerations and a summary of the CTR Report that had been previously submitted;
    - An 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 PTO;
    - Details pertaining to the Applicant’s coordination with the Jefferson Middle School Academy PTO and the Applicant’s agreement to make a \$150,000 contribution to the PTO to help fund field experiences and curricula for students at Jefferson Middle School over a three year period;
    - 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;
  - A complete set of updated architectural drawings and elevations;
  - A proposed circulation plan showing vehicle, bicycle, and pedestrian circulation patterns around the Project and through the service alley;
  - A set of drawings showing the Applicant’s proposed signage and storefront package; and
  - An evaluation of the Project’s consistency with the SW Plan and the eight Design Guidelines outlined in the SW Plan’s “Modernist Gem” core concept.
- (Ex. 37, 38-38I.)

46. On September 30, 2022, the Applicant submitted a letter responding to the filings in opposition to the Application,<sup>8</sup> which addressed the following issues:

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<sup>8</sup> As of the date of the Applicant’s letter, the filings in opposition consisted of three requests for party status in opposition (Ex. 22, 22A, 39, 39A, 33) and 14 letters objecting to the Applicant’s proposal (Ex. 23, 26-28, 30-32, 34, 36, 40, 41, 43, 49, 50.)

- Size and density: The Applicant explained that it is requesting a PUD-related Map Amendment to the MU-9A zone to shift height and density away from the Capitol Square community to the north and towards Maine Avenue. The proposed MU-9A zone allows the height of the southern portion of the building fronting Maine Avenue to be increased to 130 feet, thus enabling more density to be allocated towards the south and allowing the building height at the north side to be lowered from 100 feet to 90 feet. The Applicant stated that the resulting Project density falls within the range contemplated by the CP for a Medium Density Commercial site;
- Consistency with the SW Plan: The Applicant stated that the PUD is not inconsistent with the SW Plan but, rather, furthers its seven core concepts and eight Design Guidelines under the “Modernist Gem” concept, in particular: (1) the varied height and massing focuses the massing away from the townhomes on G Street towards Maine Avenue and The Wharf; (2) use of materials consistent with the newer development patterns; and (3) the proposal for landscaped and art-infused courtyards for residents and neighbors enhances the pedestrian experience;
- Traffic impacts: The Applicant asserted that the anticipated impacts to the surrounding transportation network are capable of being mitigated or are acceptable given the quality of public benefits provided by the PUD, including the 9<sup>th</sup> Street Improvements and associated streetscape and landscaping improvements. The Applicant stated that its transportation expert determined the most favorable circulation pattern involves the construction of a private driveway, with two-way operations from G Street to the loading berth and one-way, northbound operations from the loading berth to Maine Avenue. This configuration, the Applicant explained, prevents vehicles from exiting onto Maine Avenue from the driveway and will thus discourage potential cut-through traffic through the Capitol Square townhome community;
- Impacts to light and air: The Applicant explained that the Project is designed to be compatible with the overall neighborhood by focusing height and density toward the south and The Wharf and reducing shadows onto Jefferson Field as well as the Capitol Square townhomes which are located at least 110 feet away from the northern edge of the building;
- Affordable housing: The Applicant stated that the PUD’s affordable housing commitment “will provide more than three times the affordable housing that would be required under a matter-of-right development within the site’s current MU-12 zoning” and will help create a mixed-income community on a site that is in close proximity to public transit and desirable outdoor and service amenities;
- Construction activity: The Applicant noted that it has agreed to enter into a construction management plan with the Jefferson Middle School Academy PTO to mitigate impacts during construction of the Project; and
- Economic and social impacts: The Applicant stated that the PUD will result in the redevelopment of an underutilized site in a transit-rich location and anchor retail uses which will attract job opportunities to the area. In addition, the Applicant’s proposed streetscape and landscaping improvements will enhance the walkability of 9<sup>th</sup> Street and calm vehicular traffic to improve the safety of pedestrians and cyclists.

(Ex. 51.)

47. 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.)

### Applicant's Testimony

48. 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 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.
- (Tr. from October 6, 2022 hearing at pp. 13-55.)
49. At the Public Hearing, the Applicant's representatives testified as to the following:
- 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, particularly with regards to changing the Project's height on its northern portion and the Project's traffic circulation and expanding the PUD benefits and amenities package to include improvements along 9<sup>th</sup> Street reconfiguring the street coupled with the streetscaping and landscaping;
  - 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;
    - The 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 when evaluated through a racial equity lens; and
  - Justifications as to why the Application satisfies the PUD balancing test and the PUD evaluation criteria of Subtitle X §§ 304.3 and 304.4.
- (Tr. from October 6, 2022 hearing at pp. 19-55.)
50. 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, including reducing the height of the northern portion of the building facing G Street and agreeing to relocate the G Street curb cut further west;
  - 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.
- (Tr. from October 6, 2022 hearing at pp. 239-47.)

51. On cross-examination at the Public Hearing, the Applicant was asked several questions by ANC 6D and the Capitol Square HOA, including the following:
- The Applicant was asked what adjustments it would make to the intersection of G and 9<sup>th</sup> Streets. The Applicant explained that it was proposing numerous changes, including narrowing the northbound right turn lane; transforming the southbound right turn ramp to L'Enfant Plaza into a right turn lane to decrease the speed of vehicles exiting from the interstate; shrinking the amount of asphalt between the two curves on 9<sup>th</sup> Street to make more room for pedestrians and bicyclists; reorganizing and shortening certain crosswalks; and investigating the signalization of the intersection.
  - The Applicant was asked about its grocer and bank branch proffer and what type of grocery store was being sought. The Applicant explained that providing a minimum square footage for the grocer and bank branch would be Conditions of this Order and that it was already in discussions with several interested grocers and a bank.
  - The Applicant was asked about traffic in the surrounding area, including how many daily estimated vehicles would be visiting the Project. The Applicant stated that the weekday total estimated number of vehicles serving the site, including delivery trucks and rideshare visitors, is 1,244, representing a net increase of 692 cars per day over the existing use.
  - The Applicant was asked about the height of the Project. The Applicant explained that the building's maximum height is 130 feet based on a BHMP on G Street rather than Maine Avenue, as permitted by ZR16. However, due to an elevation change, the building would be higher than The Wharf buildings across Maine Avenue.
  - The Applicant was asked about the letters of support in the record. The Applicant explained that some letters were submitted through an electronic service that the Applicant used to reach people or apartment buildings in the area, which it believes is allowed by ZR16.
- (Tr. from October 6, 2022, hearing at pp. 79-102.)

### **Post-Hearing Submissions**

52. On November 21, 2022, the Applicant submitted a post-hearing statement and accompanying exhibits (the "Post-Hearing Submission"), that included the following to address the Commission's requests and issues raised by those in opposition to the Application during the Public Hearing: (Ex. 112, 112A-112I.)
- Details regarding green roof maintenance access and the redesign of the trash room to accommodate anticipated retail and residential uses;
  - Supplemental justifications regarding the Application's consistency with the Property's Medium Density Commercial FLUM designation;
  - A summary of meetings with ANC 6D and the Capitol Square HOA since the Public Hearing;
  - Further responses to the issues and concerns raised by the community, including:
    - An explanation that the proposed height of the building's northern portion was reduced from 100 feet to 90 feet in response to comments from OP and the community and that a further reduction in height and density would render the Project economically infeasible and limit its potential to advance CP policies



- encouraging infill development and affordable housing in the AWNS Planning Area;
- The Applicant’s response to traffic issues raised by ANC 6D and the Capitol Square HOA, including:
    - An agreement to fund a Signal Warrant Study for the intersection of 9<sup>th</sup> and G Streets which will be finalized and provided to DDOT prior to the issuance of a building permit and will involve periodic updates to ANC 6D and the Capitol Square HOA;
    - Relocation of the Project’s G Street curb cut facing the Capitol Square townhome community curb cut further west. The Applicant noted that the newly proposed location of the curb cut is supported by DDOT;
    - A proposed monetary contribution of \$100,000 to the Capitol Square HOA to help mitigate cut-through traffic issues. In addition, the Applicant submitted a technical memorandum prepared by its traffic consultant which analyzes and outlines mitigation measures to reduce the level of cut-through traffic. (Ex. 112F.) However, the Applicant stated that Capitol Square HOA asked for a contribution of \$500,000 to cover the cost of a transportation study, by a consultant selected by Capitol Square HOA, to analyze the level of cut-through traffic and to implement any mitigations measures recommended by the study;
  - A summary of 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, as follows:
    - The Applicant adjusted its proffer and agreed to reserve eight of the three-bedroom units in the Project for households with incomes not exceeding 50% MFI, which will allow for more family-sized units at deeper affordability levels. (Subtitle X § 305.5(g).) The Applicant previously agreed to reserve these units for households with incomes not exceeding 60% MFI;
    - The Applicant agreed to contribute \$75,000 for a public art installation along Maine Avenue directly to MYLY Design, a minority-owned, woman-owned, certified business entity based in the District, instead of the Southwest Business Improvement District (“BID”) as previously proffered, in response to the ANC’s concerns about the contribution going to the BID (Subtitle X § 305.5(d).);
    - The Applicant agreed to commit a minimum of 3,000 square feet of ground floor retail for a neighborhood serving grocer, market, bodega, corner store, or prepared food shop. The Applicant previously proffered a minimum of 6,000 square feet for a grocery but explained that the ANC and the Capitol Square HOA expressed concerns that a grocery store of such significant size would generate an unwanted amount of vehicle trips in the neighborhood (Subtitle X § 305.5(q).); and
    - The Applicant agreed to seek DDOT PSC approval to fund the installation of bike and scooter corrals along the perimeter of the PUD site in response to the Capitol Square HOA concerns about bikes and scooters being abandoned in their townhome community (Subtitle X § 305.5(r).);
  - Information regarding the Applicant’s negotiation of a construction management agreement and its agreement to make the Capitol Square HOA a party to the agreement;

- The Applicant’s commitment to involve students from Jefferson Middle School Academy in the process for cultivating a mural artwork which will be painted on the eastern façade of the building.

(Ex. 112, 112A-112I.)

53. On November 28, 2022, the Applicant submitted a supplemental post-hearing statement and accompanying exhibits (Ex. 119, 119A1-119A5, the “First Supplemental Post-Hearing Submission”) in response to the post-hearing submissions filed by the Capitol Square HOA and the Equitable Land Use Section of the Office of the Attorney General, which provided the following:

- A complete set of updated architectural drawings and elevations reflecting the changes detailed in the Post-Hearing Submission and other refinements made since the October 6, 2022 public hearing;
- A summary of the Applicant’s responses to the community’s traffic concerns, including its agreement to: (1) fund a Signal Warrant Study to provide DDOT with information needed to determine if a signal is warranted at 9<sup>th</sup> and G Streets; (2) relocate the G Street curb cut further west by approximately 36 feet of its current location to not align with the Capitol Square curb cut; (3) make a \$100,000 contribution to the Capitol Square HOA to implement mitigation measures and/or fund an independent transportation study; (4) amend the grocery store proffer to offer more specificity as to grocery type; and (5) make the Capitol Square HOA a party to the construction management agreement with the Jefferson Middle School Academy PTO;
- 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 assertions that the Application is inconsistent with the CP and that the Applicant’s affordable housing proffer is inadequate, which are detailed below in Finding of Fact (“FF”) No. 96.

54. On January 27, 2023, the Applicant submitted a second supplemental post-hearing statement and accompanying exhibits (Ex. 127, 127A-127C, the “Second Supplemental Post-Hearing Submission”) that included the following to address the Commission’s requests and other issues raised at its December 15, 2022 public meeting:

- The Applicant stated it met with the Ward 6 Councilmember on January 11, 20, and 23, 2023, and in response to those meetings, the Applicant agreed to set aside 20 one-bedroom “workforce housing units” for households earning no more than 120% MFI. The Applicant agrees that, as a condition of the approval of the PUD, a covenant, consistent with the term sheet, shall be recorded in the District land records prior to the issuance of the certificate of occupancy for the Project. (Ex. 127A.) The Applicant also clarified that the workforce housing units are not being proffered as part of the Project benefits and amenities package, but “reflects a separate effort by the Applicant to work with District leaders to identify and implement alternative strategies to address the range of housing needs in the District”;
- The Applicant clarified that the \$100,000 that it proffered to the Capitol Square HOA is intended to facilitate the implementation of any previously identified strategies to

mitigate the existing issue of cut-through traffic within the Capitol Square community or to commission additional studies on the cut-through traffic. The Applicant noted that one specific mitigation measure is the installation of controlled gates, which the Applicant estimates will cost approximately \$69,000 according to a quote it obtained and submitted (Ex. 127C.); and

- The Applicant explained it is not feasible to lower the MFI ranges for the affordable housing units to reach 30% MFI. The Applicant reiterated that the affordable housing proffer exceeds the IZ set-aside amount that would be required for a matter-of-right development under existing zoning; and stated that based on discussions with OP and the DC Department of Housing and Community Development (“DHCD”), the proffer aligns with the greatest demand for IZ units, which is currently from households earning up to 60% MFI.

### **Applicant’s Justifications for Relief**

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

55. 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 FF Nos. 56-76 below.

#### ***Framework Element – GPM***

56. The Project is not inconsistent with the Property’s Neighborhood Conservation Area designation on the GPM because the Project is: (Ex. 3H.)
- 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.
57. 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.)

58. 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.)
59. The Project responds to the Property's partial location in a Resilience Focus Area by incorporating certain strategies such as the installation of green roofs, improved stormwater infrastructure, and being designed in such a way as to achieve a LEED Platinum v4 for H-Multifamily Midrise certification and enhance the Project's climate readiness. (Ex. 3H, 12, 38A5, 45.)

***Framework Element – FLUM***

60. The Project is not inconsistent with the FLUM's Medium Density Commercial designation because:
  - The Framework Element states that density typically ranges between 4.0 and 6.0 FAR in areas designated Medium Density Commercial, with greater density possible when complying with IZ or when approved through a PUD (CP § 227.12.);
  - The zone districts specifically identified in the Framework Element as being consistent with the Medium Density Commercial category include the MU-8 and MU-10 zones, although other zones may apply (CP § 227.12.);
  - 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 zone districts listed for each category are illustrative and that other zones may also apply. Further, in selecting a zone district such as through a PUD, the Commission determines if a selected zone district is not inconsistent with the Comprehensive Plan as a whole (CP §§ 227.2, 227.3.);
  - 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.” (CP § 224.7.);
  - The proposed density of the Project falls within the permitted density range for a PUD in a Medium Density Commercial area because:
    - For a PUD with IZ bonus density, the MU-8 and MU-10 zones permit maximum densities of 7.2 FAR and 8.64 FAR, respectively; and
    - The Project will have a density of approximately 7.99 FAR; and
  - With respect to height, the Project is not inconsistent with the FLUM because:
    - For 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 130 foot maximum height at the southern portion of the Project exceeds 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, 119.)

61. 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***

62. 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 three-bedroom affordable rental units that will be set aside at 50% MFI (AW-2.5.4, AW-2.5.11.).

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

### ***Citywide Elements***

63. 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 Property’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 affordable housing in excess of the amount required by IZ, 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-2.3.12.); 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.)

64. 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.);
- 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.)

65. 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 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 2019 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 with 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.)

66. The Application is not inconsistent with the CP's Environmental Protection 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.)

67. 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.)

68. 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 faces 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.).

69. Consistent with the guidance provided in the Implementation Element and by the District of Columbia Court of Appeals, the Applicant conducted an 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 and goals, the Applicant asserted that these potential inconsistencies are outweighed by the proposal's consistency with numerous other competing CP policies relating to land use, housing, transit-oriented development, and environmental sustainability. The Applicant specifically identified potential inconsistencies with CP policies 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 Applicant argued that 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***

70. 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 Applicant argues that the Project is consistent with the applicable recommendations of the SW Plan, and in particular those relating to building height and design.  
(Ex. 3H, 38G, 38H, 99A2, 119.)

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

71. 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 of the affordable units will be reserved for households with incomes not exceeding 60% MFI; and eight 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, 119.)
72. 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. (Ex. 38A5.) Thus, the Project promotes sustainable living practices and cultivates a healthy environment for all residents and visitors of the Project. (Ex. 12, 15, 38, 38A5, 119.)

### ***Racial Equity***

73. 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.<sup>9</sup> (Ex. 3H, 99A2.)
74. The Applicant stated that 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, 112, 119.)
75. The Applicant stated that 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; and

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<sup>9</sup> The Commission released a revised Racial Equity Analysis Tool on February 3, 2023. The new requirements of the revised tool were not applied in the Commission's evaluation of this Application given that substantive proceedings in this case, specifically setdown, the public hearing, and proposed action, preceded the release date of the revised tool; and the Commission took final action on this Application shortly after the release of the revised tool on February 9, 2023.

- Sixty-seven affordable units will be reserved for households with incomes not exceeding 60% MFI, and eight three-bedroom units will be reserved for households earning no more than 50% MFI; and
  - 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 households earning no more than 50% and 60% MFI; and
  - 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;
- 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;
- 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 year period; and
- 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.)

76. Based on the themes of the Commission’s Racial Equity Analysis Tool addressed above, and as reflected in the Applicant’s submissions and testimony during the Public Hearing (Tr. from October 6, 2022 hearing at pp. 45-48.), the Applicant concluded that 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.

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

77. The Applicant provided evidence that the Application complies 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;
- The Applicant will contribute \$100,000 to the Capitol Square HOA to implement strategies to mitigate cut-through traffic through the Capitol Square community or to commission additional studies on cut-through traffic;
- The Applicant modified its grocery store proffer from 6,000 square feet to 3,000 square feet to limit the type of grocer to a neighborhood serving grocer, market, bodega, corner store, or prepared food shop instead of a large format grocer that will generate traffic from people who live outside of the immediate neighborhood; and
- Per the Applicant's CTR Report, the potential impacts of the project are mitigated through the implementation of a proposed TDM plan and a 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 three-bedroom units will be reserved for households earning no more than 50% MFI; and
  - Not involving the demolition of existing housing or physical 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;
  - 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; and
  - 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 \$150,000 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 and the Capitol Square HOA; and
- 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 9<sup>th</sup> Street.  
(Ex. 3, 15, 15A2, 25A, 38A5, 38C, 38F, 99A2, 112, 112C, 112D, 112E, 112F, 119, 121, 127.)

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

78. The Applicant stated that the Application complies with Subtitle X §§ 304.3 and 304.4(c), which, when read in conjunction, require 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***

79. The Applicant stated that the rezoning of the Property from the MU-12 zone 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***

80. The Applicant stated that its requested technical flexibility (*see* FF No. 37.) 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.
- (Ex. 15, 15A1, 119A2.)

***Public Benefits and Amenities***

81. The Applicant provided evidence that 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 south 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; and
- 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 it enhances safety, results in aesthetic improvements to the community, and replaces a use that is not compatible with the surrounding residential neighborhood; and
  - 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 (Ex. 38A5.);
  - 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; and
  - A committee will review the final options for the artwork to be installed. The committee will include at a 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 and eight (8) three-bedroom units will be reserved for households earning no more than 50% MFI;
  - Matter-of-right development of the Property under existing MU-12 zoning would require 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; and
  - Although greater affordable housing could be realized on the Property by having the Applicant forego the PUD and instead pursue a standalone map amendment that would be subject to the “IZ Plus” regulations—which are not applicable to PUDs—through the PUD process other public benefits in addition to affordable housing can be realized. In addition, the ANC expressed to the Applicant that it would not be supportive of a standalone map amendment for the Property and wanted the Applicant to pursue a PUD (*See* FF No. 41; Ex. 12, p. 2.);
- **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 (Subtitle X § 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).);**
  - The Applicant proposes various improvements to reconfigure and redesign 9<sup>th</sup> Street that will significantly enhance vehicular traffic flow and pedestrian and bicycle safety along and around the PUD site, defined and described in FF No. 34 as the “9<sup>th</sup> 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 Capitol Square HOA to help implement any of the recommended measures or for the HOA to commission additional studies on cut-through traffic; and
- The Applicant agrees to fund a Signal Warrant Study for the intersection of 9<sup>th</sup> and G Streets. The purpose is to provide information to 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).); and**
  - 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; and
- **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; and
  - The Applicant agrees to make a \$150,000 monetary contribution to the Jefferson Middle School Academy PTO to help fund field experiences and curricula for students.

(Ex. 12, 38, 99A2, 112, 119, 127.)

### III. RESPONSES TO THE APPLICATION

#### **District Agencies**

##### ***Office of Planning***

82. OP submitted a report dated April 18, 2022 (the "OP Setdown Report"), recommending that the Commission setdown the Application for a public hearing based on OP's conclusion that the Project, on balance, would not be inconsistent with the CP Elements,

FLUM, GPM, and the SW Plan. (Ex. 13.) 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 initial Application materials;
- OP found that the Applicant's proposed design flexibility, as requested in its initial Application, could result in significant changes to the approved design of the Project and therefore 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 Academy PTO to develop additional proffers.

(Ex. 13.)

83. The OP Setdown Report concluded that the Project is not inconsistent with the CP because:
- The proposed map amendment to MU-9A would allow for redevelopment that is more appropriate to the density anticipated under the Medium Density Commercial FLUM designation and consistent with existing density 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;
  - The Project furthers various policies of the CP's Land Use (LU-1.2.4; LU-1.4; LU-1.4.2; LU-1.4.3; LU-1.4.6; LU-1.4.4; LU-1.4.B; LU-1.4.C; LU-2.1.10; LU-2.1.13; LU-2.3.3; LU-2.4.4.), Transportation (T-1.1.5; T-3.3.7; T-5.2.2; T-5.2.B.), Housing (H-1.1.1; H-1.1.4; H-1.1.8; H-1.2.7; H-1.2.9; H-1.2.11.), Environmental Protection (E-2.1.2; E-2.1.3; E-3.2.2; E-4.1.1; E-4.1.2; E-6.1.3.), Urban Design (UD-1.4.1; UD-1.4.2; UD-2.1.6; UD-2.2.1; UD-2.2.2; UD-2.2.4; UD-2.2.5; UD-3.2.1; UD-3.2.2; UD-4.2.1; UD-4.2.2; UD-4.2.3; UD-4.2.4; UD-4.2.5; UD-4.2.6; UD-4.3.4.), and Arts and Culture (Goal 1401; AC-1.1.10; AC-1.2.6; AC-2.1.1.) Elements;
  - The Project furthers policies of the AWNS Area Element (AW-1.1.1; AW-2.5.2; AW-2.5.11.);
  - 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; and
  - When evaluated through a racial equity lens, the Project:
    - Would not physically displace residents since the site is currently developed for office uses;
    - Would redevelop an underutilized office building at the Property to provide increased access to affordable housing as well as economic and environmental benefits for lower-income residents that typically have not had access to high land-value development, which usually associates with environmental and health benefits, and overall access to goods and services; and

- Would significantly support the 2019 Housing Equity Report’s goal of creating 7,960 new housing units and 850 new affordable housing units.
- (Ex. 13.)

84. The OP Setdown Report concluded that the Project is not inconsistent with other adopted public policies and active programs related to the Property because:

- The Project’s proposed mixed-use development would provide market-rate and affordable housing under the IZ Program, with 15% of the residential GFA (approximately 64,773 square feet) to be set aside as affordable housing, which is more than would be required under the existing MU-12 zone as a matter-of-right (approximately 21,500 square feet). OP noted that neither it nor the neighborhood was supportive of a standalone map amendment for the Property over a PUD as outlined by the Applicant (Ex. 12.);
- The Project would identify with the SW Plan Design Guidelines that were prescribed to enhance the character of the modernist architecture of the neighborhood, and to ensure that future development is compatible with the existing design of the community. The SW Plan Design Guidelines are as follows:
  - 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 viability of ground floor uses along key commercial corridors; and
  - Encourage connectivity for pedestrians, bicycles, and vehicular access, including transit where feasible.

(Ex. 13.)

85. OP submitted a report dated September 26, 2022 (the “OP Hearing Report” and, together with the OP Setdown Report, the “OP Reports”), recommending that the Commission approve the Application. (Ex. 45.) The OP Hearing Report further conveyed the following:

- OP noted that the building’s development parameters are essentially the same as presented at setdown, except for the following changes: the building height on the north side facing G Street was lowered from 110 feet<sup>10</sup> to 90 feet in response to concerns raised by the Capitol Square townhome community and ANC 6D; the Applicant added a request for side yard flexibility in response to that height reduction; and the Applicant requested additional flexibility to convert up to 15,000 square feet of retail space to residential use or any other use permitted in the MU-9A zone;

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<sup>10</sup> The OP Hearing Report references an earlier version of the Project having a maximum height of 110 feet on the northern side of the building, which was proposed by the Applicant prior to the submission of the initial Application. The Applicant reduced the building’s northern height to 100 feet when it submitted its Application and further reduced it to 90 feet in response to comments from OP and the community. (Ex. 112C.)

- OP supplemented the CP consistency analysis provided in the OP Setdown Report and reiterated its conclusion that the updated proposal, including the proposed PUD-related map amendment to the MU-9A zone, is not inconsistent with the CP;
- When evaluated through a racial equity lens, the Project would:
  - Provide three times more affordable housing than required under the existing MU-12 zone;
  - Allow residents to have access to employment and other services as well as the improved connectivity and pedestrian experiences at The Wharf and other waterfront development; and
  - Provide positive health impacts as a LEED Platinum project and convenient access to a number of open spaces and parks, which are 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 that the Applicant provided a “thorough analysis” of the proposal’s consistency with the SW Plan. (Ex. 38G, 38H.) OP noted that the Project is consistent with SW Plan Recommendations MC.11, MC.4, and MC.6 because its proposed streetscape improvements will provide new landscaping and seating around the site (MC.11.); its proposed IZ set-aside will exceed the IZ set-aside required under the existing MU-12 zoning (MC.4.); and it will provide eight larger sized family units (MC.6.);
- 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 focuses massing away from the townhomes on G Street toward Maine Avenue where it is more consistent with The Wharf development;
  - 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;
- OP noted that the Applicant provided responses to comments made by the Commission and OP at setdown with respect to the following:
  - More explanation regarding the massing and perspectives from the townhomes in the form of a massing study and visuals/perspectives provided (Ex. 15A2.);
  - A breakdown of unit sizes including market rate and affordable; and
  - Resolution of OP’s concerns about certain requested design flexibility;
- OP stated that the benefits, amenities, and proffers appear 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, including the reconstruction of 9<sup>th</sup> Street adjacent to the Property that incorporates safety and multimodal benefits; 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 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 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.)

86. 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. (Tr. from October 6, 2022 hearing at pp. 104-09.)

87. On cross-examination at the Public Hearing, OP was asked several questions by the Capitol Square HOA, including the following:

- OP was asked why the FLUM did not recommend or identify the Property as appropriate for mixed-use. OP explained that since all commercial zones permit residential uses, there is no need for a mixed-use designation in order to incentivize housing production on the Property; and
- OP was asked how the Project is consistent with its location within a Neighborhood Conservation Area. OP stated that the GPM’s Neighborhood Conservation Area does not preclude development but only requires that it respect the context in which it is being developed or redeveloped, which the Applicant’s proposal achieves.

(Tr. from October 6, 2022 hearing at pp. 119-21.)

***Department of Energy & Environment***

88. 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.)

***District Department of Transportation***

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

- Increase the long-term bicycle parking spaces to 167 spaces to comply with DCMR 18 Chapter 1214, which requires that one space is provided for every three residential units, and ensure that access to and exit from the building is appropriately designed for safe and convenient access by bicyclists;
  - Implement the Transportation Demand Management (“TDM”) plan as proposed in the Applicant’s CTR (Ex. 25A.), for the life of the Project, unless otherwise noted with the following revisions requested in the TDM section of the DDOT report;
    - Convert the bike parking spaces from percentages to specific numbers. Those to be located horizontally on the floor is at least 84 (50%), amount to be designed with electrical outlets for e-bikes/scooters is at least 17 (10%), and at least eight (8) spaces will be designed with the larger 10’x3’ design for cargo/tandem bikes (5%);
    - Clarify that a minimum of two showers and eight lockers will be provided, consistent with the architectural plans (Ex. 38A2.); and
  - Implement the 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 for grocery deliveries by trucks larger than 35 feet in length only by installing appropriate signage along the private alley and installing a chain, or similar device, across the driveway that can be temporarily removed by the Loading Manager when large trucks arrive to the site.
90. The DDOT Report conveyed the following findings, among others: (Ex. 44.)
- To offset the traffic impacts identified in the Applicant’s CTR Report, including the impact to the intersection of 7<sup>th</sup> and Maine due to additional site-generated vehicle trips, 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 proffered public benefits of the Project because these actions will improve safety for bicyclists and pedestrians and improve the quality of the streetscape.
91. 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. (Tr. from October 6, 2022, hearing at pp. 109-10.)
92. On cross-examination at the Public Hearing, DDOT was asked several questions by ANC 6D and the Capitol Square HOA, including the following:
- DDOT was asked whether it approved the idea of placing a traffic light at the intersection of 9<sup>th</sup> and G Streets and whether the movement of the G Street curb cut as requested by the ANC would be approved. DDOT explained that it took no position on the signalization of 9<sup>th</sup> Street intersection but that the existing stop sign there is “not ideal” and that the Applicant’s proffered Signal Warrant Study was appreciated. DDOT also explained that it would examine the G Street curb cut’s location at final approval and that there would be room for more modifications if needed; and
  - DDOT was asked about the Applicant’s traffic estimates and the G Street curb cut. DDOT explained that the Applicant’s proposal to have one private alley with two curb

cuts was the best option for improving safety and vehicle flow. DDOT stated that the curb cut entrance would allow for turning movements onto G Street. DDOT also stated that the Applicant's traffic estimates match the Project's anticipated uses and proposed parking.

(Tr. from October 6, 2022 hearing at pp. 115-18, 121-26.)

***Office of the Attorney General***

93. On October 5, 2022, 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 the ("OAG Presentation"). (Ex. 93, 93A.) The OAG Presentation stated that a 33% affordable housing set-aside should be applied to the top two stories of the Project, which results in approximately 30 additional IZ units. The OAG Presentation stated that more affordable housing is necessary to counterbalance the Application's inconsistencies with the CP, specifically the GPM and FLUM.
94. 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 X § 304.3. OAG noted that other PUD cases have recently been approved with affordable housing set-aside of approximately 15%. However, in this case, OAG recommends an IZ set-aside of approximately 22% based on (i) a baseline affordable housing set-aside of 18% derived from applying the IZ Plus formula to the Project; and (ii) a higher 33% set-aside (based on the goals of the Mayor's Order 2019-036) applied to the additional two stories allowed by the PUD-related Map Amendment to the MU-9A zone. The latter is necessary, OAG argued, to counterbalance the alleged CP inconsistencies resulting from the PUD-related Map Amendment to the MU-9A zone, which OAG described as a "high-density zone" that is incongruous with the Property's Medium Density Commercial designation. (Tr. from October 6, 2022 hearing at pp. 220-26.)
95. On November 21, 2022, OAG filed a post-hearing statement that:
- Supplemented and reiterated 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 to create a baseline IZ set-aside of 18% is properly based on the MU-9A zone, even though the Applicant stated that it would have likely applied for a standalone map amendment to the MU-8 zone because OP would not have supported a non-PUD map amendment to the MU-9A zone. OAG argued that the Commission has the sole power to approve map amendments, and neither the Applicant nor OP have provided evidence that the Commission would only consider a map amendment to the MU-8 zone. OAG noted that, whether it based its calculations on the MU-9A or the MU-8 zone, the IZ Plus formula considers the percentage increase in density of the proposed development over the maximum density permitted in the existing zone, so in either the MU-9A zone proposed PUD or in a hypothetical PUD built to the maximum in the MU-8 zone, a higher IZ set-aside than the Applicant's current proffer would be required based on the additional density gained;



- OAG reiterated that the Applicant’s proposed MU-9A zone is a “high-density zone” which is inconsistent with the Property’s Medium Density Commercial FLUM designation. Instead of representing an “attractive transition between the Wharf and Southwest,” the proposed building matches the height of The Wharf buildings across Maine Avenue. OAG contends that the only way to balance this FLUM inconsistency is by providing affordable housing “above and beyond existing legal requirements.”; and
- In response to the Applicant’s argument that the MU-9A zone has been found by the Commission to be consistent with the Medium Density Commercial designation in previous PUD orders (e.g., Z.C. Order No. 20-06.), OAG stated that there were CP inconsistencies identified in that case with regard to height and density which were outweighed because the added height directly contributed to other CP policies; specifically, providing view corridors to the river and significant open space. In this case, OAG argued, “[t]he PUD will create a solid wall along Maine Avenue, blocking views to the river without providing meaningful public space. Although the greater height is used for housing, it does not further the CP’s general housing goals because the same density could be accommodated on the site under a consistent zone. Therefore, the only way in which this additional height can be balanced in the CP is through its use to provide more ‘high-priority’ affordable housing.”

(Ex. 111, 111A.)

96. As noted above, the Applicant’s First Supplemental Post-Hearing Submission (*see* FF No. 53.) responded to OAG’s arguments. The First Supplemental Post-Hearing Submission asserted that:

- OAG, in its evaluation of the Application’s affordable housing proffer, erroneously relied on the higher IZ Plus affordable housing set-aside requirement of 18% derived from the IZ Plus formula. The Applicant stated that applying IZ Plus to this case is unjustified since the IZ Plus program was intended for standalone map amendments, and ZR16 expressly exempts PUDs and PUD-related map amendments from IZ Plus;
- The correct baseline for measuring the Project’s affordable housing proffer is what would be required “through matter-of-right development under existing zoning” (Subtitle X § 305.5(g)(1).); under the PUD site’s existing MU-12 zone the regular IZ set-aside required would be approximately 21,511 GFA, which the Project’s affordable housing proffer exceeds by more than 300%.
- OAG’s analysis incorrectly balanced the Application’s project benefits and amenities against CP inconsistencies, when project benefits and amenities should be weighed against the degree of development incentives requested and the potential adverse impacts of the PUD under the balancing test required by Subtitle X § 304.3. The Applicant argues that in this case, the extensive public benefits proffered, 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 the MU-9A zone, the requested side yard flexibility, and any potential adverse impacts resulting from the Project;

- OAG’s strict reading of the FLUM categories coupled with its argument that the FLUM inconsistency cannot be balanced out even by the CP’s general housing goals because the inconsistency is not necessary as the same additional residential square footage could be accommodated under a consistent zone misconstrues the Applicant’s reasoning for pursuing the MU-9A zone and reflects a misguided application of the required finding that the Project is not inconsistent with the CP. As the case 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 Applicant acknowledges that OAG is correct that the same proposed additional residential square footage could be accommodated under a zone consistent with the Property’s FLUM category, specifically the MU-10 zone; however, this would require increasing the height of the northern portion of the Project to 110 feet, which is permitted for a PUD in the MU-10 zone, but would result in a taller Project on the northern portion than the 90 feet proposed under the MU-9A zone. Further, the Applicant argues that contrary to OAG’s CP inconsistency assertions, the proposal successfully balances the wide range of CP policies, goals, and objectives, and particularly those within the Citywide Elements, and active policies applicable to the PUD site; and
- While the MU-9A zone permits a maximum density of 9.36 FAR and is referenced as consistent with the High Density Commercial FLUM category, the Project has a lower proposed density of 7.99 FAR which is “within the expected range for a medium-density mixed-use project under a PUD.”

(Ex. 119.)

**ANC 6D**

97. ANC 6D submitted a report dated September 21, 2022 (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. (Ex. 84.) 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, as well as the vision of Maine Avenue that is incorporated within the SW Plan because:
  - The PUD’s height and density are excessive and out of line with the character of the immediate area. The ANC Report notes that the PUD should not be compared to the buildings on The Wharf side of Maine Avenue since those properties were excluded from the SW Plan. The ANC Report also states that the SW Plan does not envision Maine Avenue as an alley of tall buildings on both sides; and
  - In addition, the lack of substantial affordable housing thwarts the SW Plan’s “central tenet” of maintaining the Southwest neighborhood’s iconic social and economic diversity and would instead “intensify a growing polarization between low and high income strata;”
- The PUD would create unsafe traffic conditions detrimental to the community and provides inadequate measures to mitigate such impacts. The ANC Report notes the existing traffic problems at 9<sup>th</sup> and G Streets and the Applicant’s refusal to undertake a leadership role with a financial commitment to secure DDOT’s installation of a

stoplight. The ANC Report states that while it supported moving the proposed curb cut on G Street further west toward the intersection of 9<sup>th</sup> and G Streets, doing so creates a new problem because G Street is not wide enough to accommodate turns made by large, grocery delivery trucks without blocking the street. Furthermore, the ANC Report notes that the Project will only allow parking for retail customers, but that such parking would be used by other patrons of The Wharf. The ANC Report also argues that the traffic effects of the new alley, which would allow one-way traffic coming from Maine Avenue to the mid-point of the building for deliveries, and two-way traffic from the mid-point north, permitting entrance to and from G Street, have not been adequately investigated by the Applicant. Moreover, the new alley and curb cut on Maine Avenue with an exit onto G Street may create an escape route going north, particularly when The Wharf area becomes congested during events; and

- The PUD offers no significant community benefits that warrant the relief requested. The ANC notes that the Applicant could proffer a grocer store as it has suggested but only at a price point that would broadly serve the community and provide a meaningful alternative to the existing grocer on 4<sup>th</sup> Street, and only if it did not create delivery issues that added to the traffic challenges noted; the Applicant could also proffer significantly more affordable housing but only if it did not increase the height and density proposed.

98. 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 with regards to its height and density;
  - The Project would generate adverse traffic impacts that are not capable of being mitigated; and
  - The Applicant’s affordable housing proffer is inadequate; and
- The ANC suggested that there had been a “disinformation campaign” launched in support of the Project as evidenced by letters of support submitted into the case record by individuals outside the Southwest neighborhood.

(Tr. from October 6, 2022 hearing at pp. 128-43.)

99. Following the Public Hearing, ANC 6D submitted a letter dated November 28, 2022, which indicated that ANC 6D had met with the Applicant and “has found no justification to reverse our Commission’s opposition” to the Application. The letter reiterated ANC 6D’s concerns that the Project’s height and density violate the guidelines of the SW Plan; the affordable housing proffer is insufficient; and the Applicant has not adequately mitigated traffic issues particularly at the intersection of 9<sup>th</sup> and G Streets, despite the agreement to move the curb cut on G Street further west. The letter also stated that the Commission should require even more below market units, than suggested by OAG’s calculation in its filing at Exhibit 111, to balance the MU-9A zone inconsistency with the FLUM’s Medium Density Commercial designation for the site. (Ex. 116.)

100. ANC 6D submitted a supplemental letter dated February 2, 2023, stating it has reviewed the Applicant's supplemental post-hearing filings and remains in opposition to the Application. (Ex. 129.)

### **Persons/Organizations in Support**

101. The Commission received several letters of support from individuals and organizations. Their comments express the following reasons for supporting the Application: the Project's provision of additional housing and affordable housing; the need for more grocery stores and banks in the Southwest neighborhood; the 9<sup>th</sup> Street Improvements and overall enhancement of the pedestrian and bicycling experience; the public art component; and the Project's overall design and sustainability features. (Ex. 24, 35, 42, 46-48, 64-80, 82, 83, 85, 91, 94-96, 100-107.)
102. In response to ANC 6D's and some opponents' claims that many of the letters of support submitted to the record came from individuals outside Southwest and were disingenuous or biased (*see* FF Nos. 98, 112.), the Applicant submitted a letter dated October 6, 2022, with a geographical assessment showing that of 38 letters in support of the Application, 21 were submitted by persons residing, working, and/or conducting business within an approximate one-mile radius of the Property. (Ex. 108.)
103. Prior to the Public Hearing, the Jefferson Middle School Academy PTO submitted a letter dated October 3, 2022, indicating support for the Application. (Ex. 85.) At the Public Hearing, Ivan Fishburg, secretary of the Jefferson Middle School Academy PTO ("Mr. Fishburg"), testified in support of the Application regarding the PTO's interest in mitigating any adverse impacts on the daily operations of Jefferson Middle School Academy and the educational experience of its students. Mr. Fishburg stated that the PTO was negotiating a construction management agreement with the Applicant and that the PTO would like the Commission to memorialize that agreement as a condition of this Order. Mr. Fishburg further stated that the Applicant's \$150,000 contribution to the PTO would allow the school to take students off campus during construction or key periods. (Tr. from October 6, 2022 hearing at pp. 158-63.)

### **Party in Opposition**

#### ***Capitol Square HOA***

104. 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 Nos. 4-7.) On August 25, 2022, the Capitol Square HOA submitted its party status application to the record, claiming that it would be uniquely affected due to its members' proximity to the Property across G Street. The Capitol Square HOA 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 and negatively impact the values of the townhomes in the community;
  - The Project's residents may trespass onto the Capitol Square HOA's common areas;
  - The Project's private driveway and proposed points of ingress and egress would cause adverse traffic and noise impacts;

- The Project would cause the removal of street parking to accommodate new building entrances;
  - The Project's proposed curb cut on G Street would encourage cut-through traffic through the Capitol Square community;
  - The building design would result in adverse shadow impacts and block light onto the Capitol Square townhomes as well as the neighboring school;
  - Adverse impacts resulting from construction activity; and
  - Lack of pedestrian access.
- (Ex. 22, 22A.)

105. At the Public Hearing, the following persons testified in opposition to the Application on behalf of the Capitol Square HOA:

- Erin Berg, Capitol Square HOA president, testified that the Capitol Square HOA was unusually affected due to its location and that an influx of residents at the Project would increase traffic throughout its neighborhood and private streets. Moreover, the affordable housing proffer along with the public benefits and amenities package are insufficient to balance the relief requested. The Project also violates the SW Plan's vision for Maine Avenue. The Applicant's estimates of vehicle traffic are inadequate, and more improvements and adjustments are needed near the intersection of 9<sup>th</sup> and G Streets;
- Corinne Carroll, resident-member, testified that the Capitol Square HOA is not opposed to development or redevelopment in the Southwest neighborhood, so long as it remains compatible with the character of the community. However, the Project as proposed is incompatible with the Southwest neighborhood and will further endanger its diversity and inclusivity;
- Gustavo Pinto, resident-member, testified that the Project would further contribute to the existing traffic issues within the surrounding area, in particular the intersection of 9<sup>th</sup> and G Streets where Mr. Pinto's townhome is situated. Mr. Pinto's testimony included a PowerPoint presentation (Ex. 63A1-63A2.) showing photos of traffic and other issues he has observed at that intersection. In addition, the location of the proposed curb cut on G Street raises concerns about traffic safety and noise because it is located almost directly across from the entrance to the Capitol Square neighborhood; and
- Patricia Giorno Ramos, a resident-member 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. Ms. Ramos' testimony included a PowerPoint presentation showing the results of a shadow study she conducted depicting the shadow impacts of the Project on Jefferson Field during various times of the year, including the winter solstice. (Ex. 81A.)

(Tr. from October 6, 2022 hearing at pp. 163-93.)

106. 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 Capital Square HOA's request that the Applicant contribute up to \$100,000 and \$400,000 to fund a study of cut-through traffic and to implement mitigation measures identified, respectively; and
- The Applicant's proposed construction management plan;
- Detailed correspondence between the Applicant and the Capitol Square HOA since the Public Hearing, including the Capitol Square HOA's additional requests for an updated traffic assessment incorporating weekend/evening traffic during The Wharf events, additional plans and renderings, written assurances that the retail use will conform to public nuisance regulations, assurances that scooter and dockless bike parking will be made available to the public, resident involvement in the art selection process, and common space use in the Project for Capitol Square HOA meetings; and
- Recommended that the Commission disapprove the Application because of its inconsistencies with the CP and FLUM, the lack of significant public benefits, and unmitigated negative impacts on the Capitol Square community.

(Ex. 113.)

107. On November 21, 2022, the Capitol Square HOA's qualified architectural expert, Patricia Giorno Ramos, submitted a shadow study final report, which concluded that the Project would result in shadow impacts on Jefferson Field as well as Capitol Square during various times of the year. (Ex. 114.)
108. As noted above, the Applicant submitted a Post-Hearing Submission, a First Supplemental Post-Hearing Submission, and a Second Supplemental Post-Hearing Submission, which responded to the issues raised by the Capitol Square HOA. (*See* FF Nos. 52-54.) In addition, the Applicant submitted a supplemental response to the Capitol Square HOA's traffic concerns and reiterated that the Applicant will institute mitigation measures including further shifting the G Street curb cut west, modifying its grocery store proffer from 6,000 to 3,000 square feet to exclude large format grocers that would generate more traffic, and contributing \$100,000 to the Capitol Square HOA for the installation of gates, further studies, and/or other mitigation measures. (Ex. 121; *see* FF Nos. 52-54.)
109. On December 5, 2022, the Capitol Square HOA submitted a response to the Applicant's post-hearing submissions that:
- Indicated that the Capitol Square HOA had requested the Applicant increase its contribution to the HOA from \$100,000 to \$363,442.17 based on the estimated cost of installing gates, speed tables, signs, and asphalt markings, project management, maintenance, and asphalt replacement. The Capitol Square HOA stated that the Applicant rejected this counteroffer and, therefore, the negative traffic impacts will not be mitigated;
  - Reiterated that the Project's proposed density and height is inconsistent with the CP and its maps; and

- Stated that the Project’s benefits are inadequate. Specifically, the amount of affordable housing is insufficient; the 9<sup>th</sup> Street redesign does not resolve issues with vehicular accidents and the community is against the signal warrant study for the intersection of 9<sup>th</sup> and G Streets based on unlikely approval of the National Highway Transportation Administration; the community’s concerns about additional traffic and mitigation measures are not addressed by the Applicant’s agreement to reduce the minimum square footage of the grocery store from 6,000 to 3,000 square feet and such reduction was never requested by the community; DDOT and the Applicant have ignored the possibility of an additional Maine Avenue curb cut on the south side of the site; the public art, planters, bike/scooter parking are not exceptional public benefits; and the building would cast large shadows on Jefferson Fields. Finally, the Applicant does not have adequate community support given the opposition of adjacent communities, ANC 6D, and the Ward 6 Councilmember.

(Ex. 122.)

110. On February 2, 2023, the Capitol Square HOA submitted a supplemental response to the Applicant’s post-hearing submissions that:

- Alleged that the Applicant’s \$69,000 quote for installing traffic gates was flawed because it assumes DDOT would permit a gate of the 7<sup>th</sup> Street curb cut and that the gate would draw power from individual owner’s homes but if both assumptions are inaccurate the costs to implement gates would be significantly more expensive. (Ex. 127C.) The Capitol Square HOA’s response included a separate quote totaling \$389,391, which includes the costs of installing the gates, speed bumps, reflective signs, asphalt repair, and maintenance. Though more expensive, the Capitol Square HOA feels its plan is truly comprehensive and reduces the negative impacts of gates and the likelihood of their community having to pay out of pocket for additional mitigations; and
- Reiterated that the Project’s height and density is out of character with the Southwest neighborhood and that the Applicant has not engaged the community in a meaningful way.

(Ex. 130.)

**Persons/Organizations in Opposition**

111. The Commission received several letters or submissions of written testimony in opposition to the Application. (Ex. 23, 26-28, 30-32, 34, 36, 40, 41, 43, 49, 50, 53-63, 81, 86-87C, 88, 88A, 89, 90, 92, 98, 110, 120.)

112. The letters and testimony in opposition raised the following issues and concerns regarding the Application:

- The height and density of the Project are excessive and inconsistent with the SW Plan and CP;
- The Project will cast shadows on Jefferson Field, the Capitol Square townhomes, and the nearby parks;
- The Project will exacerbate traffic and parking issues in the neighborhood;

- The Project is out of character with the community and will create an aesthetically displeasing “tunnel effect” along Maine Avenue;
  - Construction of the Project will create negative noise and environmental impacts;
  - The proposed curb cut on G Street will increase cut-through traffic through the Capitol Square townhome community;
  - The Project does not provide a sufficient amount of affordable housing or family-sized units;
  - Some individuals or organizations opposed the proposed grocer use because it will lead to additional vehicle traffic and deliveries; and
  - Some individuals or organizations accused the developer of creating a webpage with insufficient information about the Project to solicit “inauthentic” comments from individuals outside the Southwest neighborhood.
- (Ex. 23, 26-28, 30-32, 34, 36, 40-43, 49, 50, 53-63, 81, 86, 88, 88A, 89, 90, 92, 98, 110, 120.)
113. An online petition in opposition to the Application that indicated endorsement by 220 community members was submitted. (Ex. 90.)
114. At the Public Hearing, Gail Fast, President of the Council of Co-Owners of Town Square Towers (“TST”), testified on behalf of TST 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 Applicant’s Signal Warrant Study is not a genuine public benefit because previous conversations with the federal government have indicated the government’s reluctance to install a traffic signal at the intersection of 9<sup>th</sup> and G Streets because it backs onto an Interstate 395 exit ramp; and
  - The grocery store proffer should be modified to accommodate a bodega or smaller use.
- (Tr. from October 6, 2022 hearing at pp. 215-18.).
115. The Ward 6 Councilmember Charles Allen submitted a letter dated December 5, 2022, in opposition to the Application and urging the Commission to require more IZ units in the Project, a more dramatic stepdown in height on the north side of the building, and a mitigation plan addressing community concerns about traffic patterns. (Ex. 120.)
116. The Applicant submitted a letter dated December 9, 2022, in response to Councilmember Allen’s letter stating the following:
- The Project will provide over three times the amount of affordable housing than is required under existing zoning;
  - The Project is not exceeding height limitations since the FLUM does not impose height restrictions but rather provides typical density ranges and identifies certain compatible zones;
  - The Project already incorporated a stepdown of the northern portion in response to community concerns;



- The potential traffic impacts and mitigation plans are summarized in the Applicant’s CTR which was reviewed by DDOT; and
- The Applicant requested an opportunity to further discuss the Project with Councilmember Allen in more detail.

(Ex. 123.)

117. As noted above, the Applicant submitted a Second Supplemental Post-Hearing Submission (*see* FF No. 54.), in which the Applicant indicated it held three meetings with Councilmember Allen and agreed to set aside 20 one-bedroom “workforce housing units” for households earning no more than 120% MFI and will record a covenant consistent with the term sheet submitted as a Condition of this Order. (Ex. 127-127B.)

118. Councilmember Allen submitted a letter dated January 26, 2023, withdrawing his opposition to the Application and stating that, given the modifications resulting from his meetings with the Applicant, “this project represents an improvement for the Southwest community and balances the shared goals of increased affordable housing at multiple income levels, space for incoming neighborhood-serving retail, and increasing the overall supply of housing within a high-demand neighborhood.” The letter also stated that the Councilmember would commit to engaging with DDOT “to make necessary changes to improve the public space and better control traffic demands” and that the Project will provide financial support to install traffic control devices.<sup>11</sup> (Ex. 128.)

**Undeclared Persons**

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

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

120. The Commission referred the Application to NCPC on December 20, 2022, for review and comment pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Section 1-201 *et seq.* (Ex. 124.) NCPC filed a report dated February 2, 2023, stating that pursuant to delegations of authority adopted by NCPC, NCPC had determined that the proposed Consolidated PUD and related map amendment is not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact any other identified federal interests. (Ex. 131.)

**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

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<sup>11</sup> The Councilmember’s letter initially stated that “the project will provide financial support that has been documented by third parties to sufficiently install traffic control devices.” However, in an email dated February 9, 2023, Councilmember Allen amended this statement to remove the word “sufficiently” after speaking to neighbors of Capitol Square and acknowledging that there has been no agreement with the Applicant about the scope of these traffic control devices. (Ex. 128A.)

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:
  - (a) *Results in a project superior to what would result from the matter-of-right standards;*
  - (b) *Offers a commendable number or quality of meaningful public benefits; and*
  - (c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
  
3. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established that the CP’s purposes are:
  - *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.*
  
4. 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.” (CP § 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 Commission through its enactment as part of a Comprehensive Plan amendment, a Small Area Plan provides only supplemental guidance to the Commission and it does so only to the extent it does not conflict with the Comprehensive Plan. (CP § 224.5.)
  
5. 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 (Durant I)*, 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...’ *Durant I*, 65 A.3d at 1170.” (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1033–35 (D.C. 2016).)

6. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must “judge, balance, and reconcile the relative value of the public benefits and 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:
  - *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
  - *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*
  - *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.*
  
7. Pursuant to Subtitle X §§ 305.2, 305.3, 305.4, and 305.12, the PUD’s benefits and amenities must “benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions”, in majority part “relate to the geographic area of the Advisory Neighborhood Commission in which the application is proposed” and “meet the following criteria: (a) Benefits shall be tangible and quantifiable items; (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) Benefits may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need; and (d) Monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.” Moreover, a PUD “may qualify for approval by being particularly strong in only

one (1) or a few categories [of public benefits], but must be acceptable in all proffered categories and superior in many.”

8. Pursuant to Subtitle X §§ 303.11 and 303.12: “The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission” and “A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”

**Satisfaction of PUD Eligibility Standards (Subtitle X § 301.1.)**

9. The Commission concludes that the Application meets the minimum land area requirement of Subtitle X § 301.1 because the Property consists of approximately 53,363 square feet (±1.23 acres). (FF No. 12.)

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

10. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and PUD-related Zoning Map amendment, is not inconsistent with the CP and with other public policies and active programs related to the Property.
11. 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. The Commission believes that the Project’s design furthers the CP’s recommendation of maintaining the “diversity of land uses and building types in [the] area.” (CP § 225.5.) In addition, the Commission believes the Project is not inconsistent with its partial “Resilience Focus Area” designation because it has been sustainably designed and will achieve a LEED Platinum certification. (FF Nos. 25, 26, 56-59, 81-87.)
12. The Commission concludes that the Project is, on balance, not inconsistent with the Property’s “Medium Density Commercial” designation on the CP’s FLUM despite some potential inconsistencies. Namely, the Commission acknowledges a potential inconsistency in that the CP’s Framework Element states that the typical densities for the Medium Density Commercial designation range “between a FAR of 4.0 and 6.0,” yet the Project has an FAR of 7.99. (CP § 227.12.) However, the Framework Element also states that greater density may be possible when complying with IZ or when approved through a PUD. (*Id.*) Here, the Applicant is seeking approval of the Project as a PUD and is offering significant public benefits, including affordable housing that exceeds IZ requirements. Therefore, the Project’s density is not entirely beyond what the FLUM envisions for a property designated Medium Density Commercial. The Commission acknowledges another potential inconsistency in that the Framework Element states that the proposed MU-9A zone is consistent with the High Density Commercial designation; further, the Zoning Regulations describe the MU-9A zone as intended to permit “high-density mixed-use development.” (Subtitle G § 400.8(a).) However, the Commission is persuaded by the Applicant’s claims that it is not seeking a PUD-related map amendment to the MU-9A

zone to maximize density, but rather to shift massing and height towards Maine Avenue and away from the lower-scale townhome developments and residential uses to the north in furtherance of CP policies that encourage appropriate transitions in building height and intensity in response to the surrounding neighborhood context (e.g., LU-1.2.6; UD-2.2.4.). While this results in a maximum building height on the southern portion that matches or exceeds the buildings on The Wharf, the Commission believes that this potential inconsistency is outweighed because the additional height will advance the aforementioned policies and critical CP policies that encourage housing and affordable housing near transit in the AWNS Planning Area (e.g., LU-1.2.4; LU-1.4.3; LU-1.4.4; LU-1.4.C; H-1.1.1; H-1.1.8; H-1.2.9; H-1.2.11; AW-2.5.11.). The Commission notes that the Project's FAR of 7.99 is below the maximum density permitted for a PUD, both in the proposed MU-9A zone and the MU-10 zone; notably, the maximum density permitted for a PUD in the MU-10 zone is 8.64 FAR and the MU-10 zone is expressly described as consistent with the Medium Density Commercial designation. (*Id.*) In addition, 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, the Commission is persuaded by the justifications in the record that demonstrate the Project is not inconsistent, on balance, with the Property's Medium Density Commercial designation on the CP's FLUM. (FF Nos. 27, 52, 60-69, 82-87, 95, 96.)

13. The Commission concludes that the Project is not inconsistent with the Lower Anacostia Waterfront/Near Southwest Area Element, which applies to the Property, because the Project is a mixed-use, mixed-income development on an underutilized property close to transit that will bring significant residential and retail opportunities to the Maine Avenue Corridor. The Project will generate approximately 498 residential units, of which approximately 75 units will be devoted to affordable housing. Moreover, the Project's affordable housing component includes eight three-bedroom rental units, set aside at 50% of the MFI, to accommodate larger households at deeper levels of affordability. (FF Nos. 28, 31, 62, 71.)
14. The Commission concludes that the Project furthers the CP's Land Use Element. The Commission agrees with the findings in the OP Reports that the Project advances various Land Use Element policies (LU-1.2.4; LU-1.4; LU-1.4.2; LU-1.4.3; LU-1.4.6; LU-1.4.4; LU-1.4.B; LU-1.4.C; LU-2.1.10; LU-2.1.13; LU-2.3.3; LU-2.4.4.) because it will redevelop an underused infill site with a new, mixed-use development that will advance the production of housing and affordable housing in proximity to transit, employment, education, and services. Moreover, the Commission believes that the Applicant's shifting of height and density towards Maine Avenue (facilitated by the proposed MU-9A zone) allows the Project to transition from higher-density at its southern portion to lower-density at its northern portion consistent with the surrounding buildings both to the south and north. The Commission agrees with OP that there is a potential inconsistency with regards to the Land Use Element's recommendation that existing development be retained and/or remodeled (LU-1.2.F.); however, the Commission also concurs with OP's conclusion that retaining the existing building on the Property would not be preferable to redevelopment

since the current structure does not provide the height and density anticipated by the FLUM. (FF Nos. 31-34, 63, 82-87.)

15. The Commission concludes the Project furthers the CP's Transportation, Housing, Environmental Protection, Economic Development, Arts and Culture, 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. The Applicant identified potential inconsistencies with regard to policies aimed at supporting and renovating lower-cost office spaces (ED-2.1.4; ED-2.1.5; ED-2.1.B.). However, the Commission agrees with the Applicant's determination that the potential inconsistencies with these policies are outweighed by other CP policies which encourage more affordable housing and retail opportunities in amenity-rich neighborhoods. Overall, the Project will transform an underutilized site with a new mixed use, mixed income building that will further many CP policies and objectives as cited in the OP Reports. (FF Nos. 31-34, 64-69, 82-87.)
16. The Commission concludes that to the extent the Project is inconsistent with any other CP policies, such inconsistencies are far outweighed by the Project's advancement of numerous CP policies under the Lower Anacostia Waterfront/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 Nos. 31-34, 55-69, 82-87.)
17. The Commission concludes that the Project is not inconsistent with the SW Plan. The Commission acknowledges that the Project's alleged inconsistency with the SW Plan was a primary argument advanced by the opposition in this case. Specifically, ANC 6D, the Capitol Square HOA, and several individuals claimed that (i) the Project's height and density exceed the type of development and character envisioned for the Southwest neighborhood and the area north of Maine Avenue; and (ii) the Project's affordable housing component is insufficient, and its disproportionately high share of market-rate rental units will weaken the neighborhood's social and economic diversity. (FF Nos. 29-34, 45, 46, 70, 97-100, 104-112.)
18. The Commission acknowledges that the Project's height facing Maine Avenue is comparable to the heights of the buildings along The Wharf, which were excluded from the SW Plan. However, the Commission believes the Applicant has taken adequate measures to modify the Project's design and step down its height from 130 feet facing Maine Avenue to 90 feet facing the Capitol Square townhomes. The Commission believes this re-design respects the SW Plan's vision for Maine Avenue as a "gateway boulevard that unifies Southwest and The Wharf" while also allowing the Applicant to further important CP goals encouraging the creation of housing and affordable housing in this area.

Therefore, the Commission concludes that the Project, taking into account its stepdowns and unique location on Maine Avenue, is not inconsistent with the SW Plan. (FF Nos. 29-34, 45, 46, 57, 70, 82-87.)

19. The Commission also recognizes that some opponents view the Project as a threat to the social and economic diversity of Southwest. The Commission disagrees. While there is a potential inconsistency with the SW Plan's stated goal of retaining the neighborhood's 19% of subsidized units (MC.4.), that goal also promotes "establishing targets that exceed current Inclusionary Zoning thresholds for future development ... in future Planned Unit Developments." The Project advances that objective by providing affordable housing in excess of current IZ requirements and offering more family-sized units at deeper levels of affordability than required. The Commission notes that nearly all of the letters of support in the record cite the Project's affordable housing component as a reason for supporting the Application. While a greater amount of affordable housing would be commendable, the Commission concludes that the Project's affordable housing component will further the SW Plan's objectives by allowing a significant number of residents from a broad range of affordability levels to live in the Project and benefit from its transit- and amenity-rich location, thereby enhancing the social, economic, and cultural diversity of Southwest. (FF Nos. 29-34, 45, 46, 70, 82-87, 97-102, 104, 105, 112.)
20. In addition, the Commission is persuaded by the evidence in the record that the Project advances the seven core concepts of the SW Plan, particularly the Design Guidelines of the "Modernist Gem" core concept. The Project furthers many of the SW Plan's goals, such as those related to affordable housing, building height diversity, sustainable living, and pedestrian connections. The Commission is persuaded by OP's findings in the OP Reports that the Project's design adheres to the Design Guidelines by varying building height and density to focus massing away from the townhomes on G Street and towards Maine Avenue; using materials consistent with newer development patterns along The Wharf; and proposing "landscaped and art-infused courtyards for residents and neighbors, which would enhance the pedestrian experience along the perimeter of the site." Overall, the Commission concludes that the Project is an appropriate development for the Property in light of the SW Plan's recommendations and will be a compatible contribution to the Southwest neighborhood. (FF Nos. 29-34, 45, 46, 70, 82-87.)
21. 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 and 50% MFI. The Commission notes that the Project will provide eight three-bedroom units at the 50% MFI level. The Project will also reserve 20 one-bedroom units at the 120% MFI level; however, these 20 units are not a proffered public benefit of the Project. (FF Nos. 31, 54, 71, 117.)
22. 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 Nos. 40, 59, 72.)

*Racial Equity Lens Analysis*

23. Pursuant to CP §§ 2501.4-2501.6, 2501.8, the Commission is tasked with evaluating the Application's consistency with the CP through a racial equity lens. Consideration of equity is intended to be based on the policies of the CP and is a part of the Commission's consideration of whether the Application is "not inconsistent" with the CP, rather than a separate determination about the Project's equitable impact. The CP Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (CP § 213.6.) Further, "[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, health care, technology, workforce development, and employment opportunities." (CP § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (CP § 213.9.) The CP Implementation Element provides guidance to help the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states that "[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District-wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of different areas in the District." (CP § 2501.6.)
24. The Commission concludes that the Project is not inconsistent with the CP when evaluated through a racial equity lens. The Commission reached its conclusion based on the racial equity analyses provided by the Applicant and in the OP Reports, which found that the anticipated goals of the consolidated PUD and PUD-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 and their anticipated outcomes, the Commission believes 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 the potential for economic and cultural displacement via the Application's affordable housing proffer, which provides opportunities for households earning no more than 60% MFI and 50% MFI, as well as the public art installation along Maine Avenue which will serve to strengthen the Southwest neighborhood's character and identity. The Project will dedicate at least 3,000 square feet to a neighborhood-serving grocer, bodega, or corner store and a portion of the ground-floor retail/commercial space to a bank branch at the community's request, which could bring diverse job opportunities for future employees who may live within the neighborhood or the Project. Furthermore, the Project is likely to generate favorable outcomes 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 analyses of the Applicant and of OP and finds that the Project advances the racial equity objectives underlying the CP. (FF Nos. 49, 52, 73-76, 82-85.)

25. Based on the evidence provided in the case record, the Commission concludes 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))**

26. 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 not outweighed by the Project’s proffered public benefits and amenities.
27. 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 Nos. 31-34, 46, 77.)
28. The Commission concludes that the Project will have zoning impacts that are capable of being mitigated or acceptable given the quality of public benefits. For a PUD, the existing MU-12 zone permits a height of 60 feet. Therefore, the proposed zone change from MU-12 to MU-9A would result in a height gain of 70 feet (maximum building height of 130 feet) at the southern portion of the building along Maine Avenue and a height gain of 30 feet (maximum building height of 90 feet) at the northern portion of the building along G Street where the Property faces the Capitol Square townhome development. The Commission notes that the townhome development has a maximum height of approximately 50 feet. With respect to density, the existing MU-12 zone would permit a density of 3.6 FAR and the proposed MU-9A zone would permit a density of 9.36 FAR, under a PUD; however, the proposed density for the Project is approximately 7.99 FAR, a gain in density of 4.39 FAR—i.e., the Applicant is utilizing only 80% of the potential gain under the proposed MU-9A zone. The Commission believes that there will be some adverse impacts resulting from the increased height and density of the Project, including an increase in shadows and loss of privacy. However, the Commission believes that the Applicant has mitigated these impacts through a significant stepdown in height towards the northern portion of the building facing the townhomes that are likely to be most affected. The Commission also notes that the distance from the 90-foot tall northern edge portion of the Project to the townhomes is approximately 110 feet; and the distance from the 130-foot tall southern portion of Project to the townhomes is approximately 290 feet. The Commission believes that any remaining impacts are acceptable since the height and density will enable the Project to further the District’s and the CP’s goals of producing more housing and affordable housing. For these reasons, the Commission concludes that the impacts of the height and bulk of the Project are mitigated or acceptable given the quality of public benefits of the Project, namely the additional housing, the affordable housing, and superior urban design. (FF Nos. 31-34, 36, 43, 45, 46, 77, 104-110, 112.)

29. The Commission concludes that the Project will have transportation impacts that are capable of being mitigated or acceptable given the quality of public benefits. Those in opposition argued that the Project will have negative impacts on the neighborhood's parking and transportation networks and, in particular, will exacerbate cut-through traffic through Capitol Square's streets. However, DDOT has determined that, subject to its proposed revisions which are incorporated in this Order's conditions, the Applicant's TDM plan and LMP will mitigate any potential adverse impacts on the traffic network resulting from the Project. Moreover, the Project will provide a sufficient amount of bicycle and vehicle parking in line with the District's requirements. 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 and qualify as a significant public benefit that will help offset the Project's impacts on transportation. The Commission agrees that the Applicant has made significant adjustments to the Project's proposed driveway to discourage cut-through traffic through Capitol Square, including moving the G Street curb cut approximately 36 feet west so that it does not align with Capitol Square's curb cut and restricting the Project's Maine Avenue access point to large trucks and one-way, northbound operations that will be enforced in accordance with the Conditions herein. The Commission has reviewed the separate quotes obtained by the Applicant and the Capitol Square HOA regarding the costs to install traffic gates as a mitigation measure. The Commission finds that the Applicant's \$100,000 contribution to the Capitol Square HOA is sufficient to install traffic gates and mitigate any remaining transportation impacts of the Project. The Capitol Square HOA quote of \$389,391 includes the costs of the additional mitigation measures identified by the Capitol Square HOA, such as the installation of new speed tables and markings (\$75,000), a peer review traffic study (\$12,220), signage (\$9,000) and asphalt repair and replacement (\$136,671), and maintenance for 20 years (\$50,000), that the Commission does not believe the Applicant should bear, especially if the proposed gates are installed. The Commission has considered the additional mitigation measures identified in the Capitol Square HOA's quote and believes that the \$100,000 contribution from the Applicant is sufficient to fund additional, or separate, measures needed to mitigate traffic impacts from the Project after taking into account the Applicant's other efforts to design the G Street curb cut and alley to deter cut-through traffic to and from Maine Avenue. (FF Nos. 33, 34, 46, 52-54, 77, 89-92, 104-110, 112.)
30. 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 Nos. 40, 46, 59, 63, 72, 77, 81.)
31. 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 restricted to households earning no more than 50% MFI. (FF Nos. 31, 46, 77.)

32. 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 Nos. 31, 46, 77.)
33. The Commission concludes that the Project will not have any unacceptable impacts with respect to parks, recreation, and open space. (FF Nos. 31, 32, 75, 77.)
34. 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. The Commission notes that the Jefferson Middle School Academy PTO, which has a heightened interest in preserving light and air for the Jefferson Middle School Academy and Jefferson Field, supports the Application. (FF Nos. 31, 32, 77, 103, 104-110.)
35. The Commission finds that the Project will not have any unacceptable impacts on the District's historic preservation efforts. (FF No. 77.)
36. The Commission concludes that impacts to community services and facilities are favorable or acceptable given the quality of public benefits and because of the Property's proximity to various community resources. (FF Nos. 15-20, 77.)
37. 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 contribute \$150,000 to the Jefferson Middle School Academy PTO and enter into a construction management plan with the Jefferson Middle School Academy PTO and Capitol Square HOA to minimize impacts to students, staff, and nearby residents during redevelopment of the site.(FF Nos. 33, 45, 75, 77, 103.)
38. 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 Nos. 34, 77.)

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

39. 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, and therefore justify approval of the PUD.
40. 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 Nos. 39, 40, 43, 45, 52-54, 81, 85.)
41. The Commission concludes that the Applicant's proposed PUD-related 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, as discussed above;
  - 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 Nos. 27, 46, 52, 60-72, 79.)
42. The Commission concludes that the Applicant's proposed technical relief to permit the proposed side yard is balanced by the proffered benefits and amenities resulting from the Project, in particular the housing and affordable housing that will be facilitated by the requested side yard relief. (FF Nos. 37, 43, 80, 85.)
43. 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 Nos. 38, 45, 82, 85.)

44. The Commission considered OAG's arguments at the hearing and in its post-hearing submissions stating that the Project's affordable housing proffer is insufficient and recommending that: an IZ set-aside of approximately 22% is appropriate based on (i) a baseline set-aside of 18% derived from applying IZ Plus to the Project; and (ii) a higher 33% set-aside applied to the additional two stories, allowed by the PUD-related Map Amendment to the MU-9A zone, to counterbalance the proposed MU-9A zone's inconsistency with the Property's Medium Density Commercial designation on the CP's FLUM. (FF Nos. 93-96.)
45. The Commission rejects OAG's assertions and concludes that the Project's affordable housing proffer is sufficient when properly balanced, together with the PUD's overall benefits and amenities, against the Application's requested development incentives and the Project's potential adverse effects. With respect to the first component of OAG's recommendation, IZ Plus is not the relevant standard or baseline for a PUD. In fact, the Zoning Regulations expressly state that IZ Plus does not apply to a map amendment related to a PUD application. (Subtitle X § 502.2(a).) Accordingly, the Commission finds that OAG incorrectly applied an 18% IZ Plus set-aside as a baseline for the Project's affordable housing proffer. The relevant applicable standard for measuring the Project's affordable housing proffer is what would be required through matter-of-right development under existing zoning (Subtitle X § 305.5(g)(1).); when applied, the Project's affordable housing proffer will provide more than three times the affordable housing than would be required for a matter-of-right development under the site's existing MU-12 zoning. With respect to the second component of OAG's recommendation, PUD benefits and amenities should be weighed against the degree of development incentives requested and the adverse impacts of the PUD under the balancing test required by Subtitle X § 304.3. Therefore, OAG's recommendation to apply a higher 33% set-aside to the two additional stories of the Project, i.e., a higher affordable housing proffer, to counterbalance the MU-9A zone's alleged inconsistency with the CP misapplies the balancing test required. As asserted by the Applicant (*see* FF No. 96.) and herein, the Commission agrees that the Project's public benefits and amenities, including the affordable housing proffer, are balanced against the degree of development incentives requested and the adverse impacts of the PUD; and that the Project satisfies the balancing test required by Subtitle X § 304.3. (FF Nos. 39, 40, 43, 45, 46, 52-54, 77-81, 85.) And as discussed above (*see* Conclusion of Law ["COL"] No. 12.), the Commission has separately addressed OAG's concerns with the proposed MU-9A zone's alleged inconsistency with the FLUM and determined that the Project is not inconsistent, on balance, with the Property's Medium Density Commercial FLUM designation and the CP as a whole.

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

46. 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).)

47. The Commission finds OP’s analysis of the Application, its conclusion that the Application satisfies the PUD evaluation requirements and is not inconsistent with the CP maps and Citywide Elements, the Lower Anacostia Waterfront/Near Southwest Area Element, or SW Plan, and its recommendation to approve the Application persuasive and concurs with OP’s recommendation. (FF Nos. 82-87.)

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

48. 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).)
49. The Commission carefully considered the issues and concerns raised in the ANC Report. Below is a list of each issue/concern and the Commission’s responses: (FF Nos. 39, 46, 52, 81, 89-92, 97-100.)
- Violations of the SW Plan: ANC 6D argued that the PUD’s height and density are excessive and incompatible with the character of the neighborhood and Maine Avenue, which was not envisioned as an “alley of tall buildings” on both sides according to the ANC. In addition, the lack of substantial affordable housing contravenes the SW Plan’s intent to maintain Southwest’s demographic diversity and would instead intensify growing polarization between low- and high-income populations;
    - Commission’s Response: The Commission is not persuaded by ANC 6D’s arguments that the Project is inconsistent with the SW Plan. As demonstrated by the Applicant and affirmed by OP, the Project’s massing and design furthers the SW Plan’s intent for Maine Avenue to serve as a gateway boulevard and for the site to reflect a transition between The Wharf and the townhouse development to the north. The Commission concurs with the Applicant’s position that its affordable housing proffers is significant and triple the amount of IZ units that would be required for a matter-of-right development;
  - Traffic Issues: ANC 6D argued that the Project will exacerbate existing traffic issues at the intersection of 9<sup>th</sup> and G Streets. ANC 6D stated it supports moving the existing curb cut on G Street west, but expressed concern that the driveway would nevertheless create issues for large trucks turning into/out of the Project and exacerbate cut-through traffic. Furthermore, ANC 6D noted issues with the Applicant’s parking proposal and its potential for misuse by non-customers or non-residents;
    - Commission’s Response: 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 and LMP are acceptable given the estimated vehicle traffic and incentives for non-auto travel. The

Commission notes DDOT's support for the 9<sup>th</sup> Street Improvements, which will improve safety for motorists, bicyclists, and pedestrians, as well as enhance the quality of the streetscape on 9<sup>th</sup> Street and Maine Avenue. The Commission believes that the Applicant has adequately responded to community input on the proposed driveway by moving its location further west and adopting restrictions for trucks entering from Maine Avenue. The Commission credits the Project's provision of vehicle and bicycle parking in accordance with District law, as recommended in the DDOT Report; and

- Lack of Meaningful Community Benefits: ANC 6D argued that the Project “offers no public benefits that warrant an extraordinary exception” to the SW Plan. ANC 6D stated that the Applicant’s grocery proffer will nevertheless create delivery and traffic issues; and the Applicant’s affordable housing proffer will result in an objectionable increase in height and density;
  - Commission’s Response: The Commission finds that the public benefits and amenities proffered in connection with the PUD are substantial and outweigh the development incentives and flexibility requested by the Applicant, as discussed above. In particular, the Commission believes the Applicant’s housing and affordable housing proffers advance numerous CP policies and warrant the height and density requested;

## 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, pursuant to Subtitle X, Chapter 3, and Subtitle Z, Chapter 3;
- An amendment of the Zoning Map to rezone the Property from the MU-12 zone to the MU-9A zone, pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 3; and
- Such other design flexibility as are set forth in the Conditions hereof.

### **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 the signage and storefront package, as modified by the guidelines, conditions, and standards herein (collectively, the “Approved Plans”). (Ex. 119A1-119A5, 38B.)
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, S.W., and a maximum building height of approximately 90 feet at the northern portion of the building along G Street, S.W.;

- 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; and
  - Eight three-bedroom IZ units will be reserved for households at 50% MFI;
- 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 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 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 beyond the parameters of the Material Palette, 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(o)); and (vi) Arts, Design, and Creation (11-B DCMR § 200.2(e)); and

- 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 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 warrant Study and presentation of results to DDOT; and
  - h. Finalization of the warrant Study based on DDOT comments.
3. **No less than every six months prior to issuance of the first building permit for the Project**, the Applicant shall provide the affected Advisory Neighborhood Commission and the Capitol Square Place HOA with updates on the progress of the Study and any findings.
  4. **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 (the “HOA”), to be expended at the HOA’s discretion, to support any additional traffic studies and/or facilitate the implementation of any cut-through mitigation measures recommended in Exhibit 112F and/or Exhibit 127C of the case record or alternative measures identified by the HOA. The Applicant shall provide proof to the Zoning Administrator that the funds have been contributed to the HOA specifically for the traffic studies and/or mitigation measures contemplated by this condition.
  5. **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 enter into an agreement with the Jefferson Middle School PTO and the Capitol Square HOA regarding a Construction Management Plan and shall abide by the terms of the agreement.

**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 installed approximately 10,411 square feet of extensive green roof systems.
3. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that there are at least 16 electric vehicle (“EV”) charging stations in the underground parking garage for the residential portion of the Project.

4. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has constructed the streetscape and landscaping improvements abutting the PUD site along 9<sup>th</sup> Street, S.W. and Maine Avenue, S.W., subject to DDOT approval, consistent with Sheets 65-71 of the Approved Plans.
5. **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, S.W. for approval, and will implement the CMP as fully approved by DDOT. Any metered parking shall be installed at the Applicant's expense.
6. **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, S.W., pursuant to the Approved Plans, subject to review and approval by DDOT; the 9<sup>th</sup> Street Improvements include, but are not limited to:
  - a. The reduction of excess travel lanes;
  - b. The widening of sidewalks along the east side of 9<sup>th</sup> Street, S.W. and the addition of generous landscaped areas;
  - c. The removal of the slip lane from 9<sup>th</sup> Street, S.W. to G Street, S.W.;
  - d. The addition of a pick-up/drop-off ("PU DO") zone in front of the main residential lobby of the Project; and
  - e. A reconfiguration of 9<sup>th</sup> Street, S.W. that enables the installation of a future traffic signal at its intersection with G Street, S.W.
7. **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.
8. 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; and

- 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 shall 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 ANC 6D. The process for selecting the artwork will be coordinated and facilitated by MYLY Design, or a comparable design firm, with emphasis to be placed on the arts and cultural strategy and recommendations contained within the SW Neighborhood Plan.
9. **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 recorded a Workforce Housing Unit Covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is consistent with the term sheet and in the form of the draft covenant. (Ex. 127A, 127B.)
10. **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 made a \$150,000 contribution to the Jefferson Middle School Academy PTO to help fund field experiences and curricula for students at Jefferson Middle School Academy over a three year period. 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.

**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 three-bedroom units at no more than 50% MFI; and
- 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 (MWCOG) or other comparable service if MWCOG 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 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 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 32 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 spaces designed for longer cargo/tandem bikes (10'x3'), 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 place 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 showers and eight 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 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, 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 lockers for use by employees;
  - d. The Applicant will install a minimum of one 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, S.W. 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 9<sup>th</sup> Street S.W. or Maine Avenue S.W. 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 S.W. or G Street S.W. 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). 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 S.W.; truck access only through Maine Avenue S.W.).

## **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): 4-0-1**

(Peter G. May, Robert E. Miller, Anthony J. Hood, and Joseph S. Imamura to **APPROVE**; 3<sup>rd</sup> Mayoral appointee seat vacant, not voting)

**FINAL ACTION**

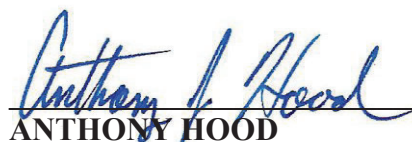
**Vote (February 9, 2023): 4-0-1**

(Peter G. May, Joseph S. Imamura, Anthony J. Hood, and Robert E. Miller to **APPROVE**; 3<sup>rd</sup> Mayoral appointee seat vacant, not voting)

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 June 9, 2023.

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

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

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

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

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