

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Leila M. Jackson Batties
202.457.7167
leila.batties@hklaw.com

Christopher S. Cohen
202.469.5127
christopher.cohen@hklaw.com

June 27, 2023

VIA IZIS

Zoning Commission
for the District of Columbia
441 4th Street, NW, Suite 210-S
Washington, D.C. 20001

Re: Z.C. Case No. 22-06
Applicant's Answer in Opposition to Motion for Reconsideration filed by the
Capitol Square Homeowners Association

Dear Members of the Commission:

On behalf of 801 Maine Ave SW PJV LLC (the “**Applicant**”), and in accordance with Subtitle Z § 700.8 of the Zoning Regulations, we hereby submit this answer in opposition to the “Motion of the Capitol Square Homeowners Association (CSHOA) for Reconsideration of Decision” filed on June 20, 2023 (Ex. [135](#)) (the “**Motion**”). In the Motion, CSHOA seeks the Zoning Commission’s reconsideration of several areas of the PUD and Zoning Map amendment approval granted in Zoning Commission Order No. 22-06 (the “**Order**”) (Ex. [133](#)). For the reasons discussed below, the Motion should be denied.

1. Traffic Impacts

The CSHOA claims that the Zoning Commission (the “**Commission**”) “erroneously deemed the Applicant’s \$100,000 proffer towards mitigating the increase in cut-through traffic mitigation...sufficient” and overlooked exhibits and testimony to the contrary. In its Motion, the CSHOA asks the Commission to reassess the CSHOA’s submission at Ex. [130](#) and consider denial if the Applicant fails to provide adequate funding.

Subtitle X § 304.3 provides: “In deciding a PUD application, the Zoning Commission shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the cases.” There is nothing in the Order that suggests the Commission did not “judge, balance, and reconcile” the evidence in the case record as it pertains to traffic impacts. In fact, the Commission’s assessment of the cut-through traffic issue, as well as the adequacy of the Applicant’s contribution is thoroughly addressed in Conclusion of Law No. 29. See Order at page 58. Below are two relevant excerpts:

- *“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...so that it does not align with Capitol Square’s curb cut[.]”*
- *“The Commission has considered the additional mitigation measures identified in the Capitol Square CSHOA’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.”*

Furthermore, Conclusion of Law No. 29 specifically states that the Commission “does not believe the Applicant should bear” the costs related to additional mitigation measures identified by the CSHOA (e.g., new speed and table markings, a peer review traffic study, signage and asphalt repair and replacement, and maintenance for 20 years).

Given that the Commission reviewed the documents and testimony related to the traffic impacts and applied the appropriate standard of review, the Order is not erroneous. The Commission’s findings regarding cut-through traffic and the Applicant’s proffers to address this issue are detailed thoroughly. Therefore, CSHOA’s request to the stay the order, reopen the case, and reconsider CSHOA’s submissions in the case record should be denied.

2. Zoning Choice

The CSHOA claims that the Commission erred in not questioning the Applicant’s zoning choice of MU-9A, and suggests that the Commission should require zoning at the PUD site that is specifically intended for waterfront-vicinity parcels.

Subtitle X § 300.4 permits a PUD applicant to request a related zoning map amendment that “is valid only in combination with and contingent upon a project being built and operated under the conditions of a PUD approval.” There is no limitation or requirement that a PUD applicant pursue certain zones – or, in this case a waterfront-vicinity zone. A PUD applicant is at liberty to pursue any zone. That said, Subtitle X § 303.12 provides that “[a] PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD. At Conclusion of Law No. 12, the Order states the Commission’s rationale as to why the MU-9A zone is appropriate, despite some potential inconsistencies with the PUD Site’s designation of Medium Density Commercial on the Comprehensive Plan Future Land Use Map. *See* Order at p. 52. At Conclusion of Law No. 41, the Order outlines five reasons why PUD-related map amendment from the MU-12 to the MU-9A zone is appropriate.

Moreover, Subtitle G § 500.1 states that the MU-11 through MU-14 zones are mixed-use zones that are intended to be applied **generally** in the vicinity of the waterfront, but it does not limit zoning in the vicinity of the waterfront to these zones. (Emphasis added.) The Comprehensive Plan, not the Zoning Handbook, is the legal framework that guides development in the District.

Given that the Comprehensive Plan designation for the site supports the MU-9A zone, and the Commission properly evaluated the rezoning against the applicable legal standard of review, the CSHOA request to reopen the case and change the zoning for the site to MU-14 should be denied.

3. Shadow Studies

The CSHOA argues that the Commission erred in finding the Applicant's shadow studies to be acceptable, and asks the Commission deny the PUD if the Applicant "is still not willing to reduce the height on the southern part of the building[.]"

While the CSHOA may disagree with the Commission's findings regarding impacts to light and air, this does not mean the Applicant presented inaccurate evidence. The Applicant provided an initial set of shadow studies with its original application filed on February 11, 2022. *See* Ex. [4A3](#), Sheets 53-54 and Ex. [4A4](#), Sheet 55. A few months later, revised shadow studies were included with the Applicant's Prehearing Submission filed on June 4, 2022. *See* Updated Architectural Drawings, Ex. [15A2](#), Sheets 51-53.¹ The updated shadow studies account for various adjustments to the building design since the Applicant's initial filing, and rectifies modeling discrepancies in the prior version. The revised shadow studies also indicate that the project will have lesser impact on the adjacent properties than the original building design. The Applicant's Prehearing Statement included a detailed discussion on the methodology behind the revised shadow studies. *See* Ex. [15](#), p. 5.

The Order notes that "[t]he Commission believes that there will be some adverse impacts resulting from the height and density of the Project, including an increase in shadows and loss in privacy." *See* Conclusion of Law No. 28 at p. 57. **However, the Order also clarifies that "[t]he Commission has evaluated all of the shadow studies submitted to the record, both by the Applicant and the opposition, and concludes, and finds that the additional shading resulting from the proposed Project is acceptable given current conditions."** (Emphasis added.) **In light of these Conclusion of Law stated in the Order, the CSHOA's claim that the Commission erred in evaluating the shadow impacts of the project is without merit and the request that the Commission reconsider CSHOA's shadow studies should be denied.**

4. Great Weight Afforded to ANC 6D

The CSHOA alleges that the Zoning Commission did not give great weight to ANC 6D because, in the Order, the Zoning Commission did not respond to all of the concerns in the ANC's reports and testimony. However, the CSHOA's claim is unsubstantiated when the contents of the Order are considered holistically. In the table below, the Applicant identifies where the Order addresses the issues that CSHOA claims were disregarded by the Commission.

¹ The updated shadow studies are also provided at Sheets 60-62 of the plans filed with the Applicant's Supplemental Prehearing Submission on September 16, 2022 (*see* Ex. 38A4 and 38A5) and at Sheets 60-62 of the plans filed with the Applicant's Post-Hearing Submission on November 28, 2022 (defined as the Approved Plans in the Order).

Exhibit	Page	Issue Not Addressed	Applicant's Response
86	1	Challenging site does not support a "very large building"	Conclusion of Law No. 27 summarizes the Zoning Commission's conclusion regarding the project's impacts to land use. The Commission concluded that "the Project will transform an underutilized site...into a high-quality, transit-oriented mixed-use development that will address citywide housing needs and provide opportunities for neighborhood-serving retail and services." Also, in Conclusion of Law No. 34 , the Zoning Commission finds that "the Project concentrates height and density where appropriate."
86	4	"The Applicant's traffic studies are insufficient...They fail to account for the traffic flows at the intersection and on G Street when there are events at The Wharf or game days at the Nats and Audi stadiums. And they ignore the inadequacy of the stop signs that control current traffic, let alone the additional traffic that will flow from a bigger, higher, and larger mixed-use building."	Conclusion of Law No. 29 assesses the project's transportation impacts. The Commission credits DDOT's determination that the Applicant's TDM plan and LMP will mitigate any potential adverse impacts on the traffic network resulting from the project. Also, in Conclusion of Law No. 49 the Zoning Commission addresses the ANC's concerns regarding traffic.
116	2	"In addition, should this dramatic increase in height and density be permitted, it would put other parcels at risk for redevelopment, particularly those built before 1975 and now under rent control that provide affordable housing in low and moderate density complexes."	Conclusion of Law No. 28 concludes that the Project will have zoning impacts that are capable of being mitigated or acceptable given the quality of public benefits. "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 [Comprehensive Plan's] goals of producing more housing and affordable housing."
116	2	"The Applicant offers no justification other than to argue that a further decrease in height and density would be "economically infeasible" and produce fewer affordable units than the number they have proffered. We remind the Zoning Commission that this parcel was purchased for redevelopment of an extremely challenging site and with current limits attached, with the expectation that these limits would be overcome by exception. That the Applicant's ability to develop the parcel at all is dependent on that exception amounts to a coercion inappropriate to a consideration before the Zoning Commission."	Conclusion of Law No. 31 concludes that the Project will have favorable impacts to housing. Also, Conclusions of Law Nos. 39 and 40 , states that the proffered benefits and amenities outweigh the requested zoning flexibility and any potential adverse impacts that are not capable of being mitigated.

116	2	"The proffer of 15% affordable units is not better than the IZ set-aside and is below the 18% required for a map amendment to support the increase in density in a matter-of-right development."	Conclusions of Law Nos. 44 and 45 discusses the affordable housing proffer. 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 impacts. <i>See</i> Order at p. 61.
116	3	"The Applicant has now agreed to move the curb cut on G Street further west. This will still not prevent all cars from cutting through the Capitol Square private streets."	Conclusion of Law No. 29 acknowledges the Applicant’s efforts to discourage cut-through traffic through Capitol Square, and concludes that any impacts to transportation are capable of being mitigated or acceptable given the quality of public benefits.
116	4	"The green space will be diminished not increased, and the treasured value of racial, social, and economic integration memorialized in the SW Small Area Plan and adopted by the Council will be challenged."	Conclusion of Law No. 19 states: “The Commission also recognizes that some opponents view the Project as a threat to the social and economic diversity of Southwest. <u>The Commission disagrees.</u> ” (Emphasis added.) The Zoning Commission discusses how the Project will advance the affordable housing objectives of the SW Plan, “thereby enhancing the social, economic, and cultural diversity of Southwest.” Conclusion of Law No. 17 , states that the project is not inconsistent with the SW Plan.

In light of the foregoing, the Order addresses, with particularity and precision, all of the issues and concerns raised by ANC 6D. There is no basis for the Commission to reconsider the Order on these grounds, and CSHOA’s Motion should thus be denied.

5. Public Benefits

The CSCSHOA claims that the Commission erroneously accepted the Applicant’s proffers as public benefits and argues that several items would still result as a matter of right. The CSHOA also alleges “[o]ther items proffered and seemingly [*sic.*] erroneously weighed as benefits by the Commission are actually mitigation of potential adverse impacts of the PUD.” Subtitle X § 304.3 states that “[i]n deciding a PUD application, the Zoning Commission shall judge, balance and reconcile **the relative value of the public benefits and project amenities offered**, the degree of development incentives requested and any potential adverse effects **according to the specific circumstances of the case.**” (Emphasis added.) Further, Subtitle X § 305.5 outlines several categories under which PUD applicants can proffer new construction, items, or services as public benefits.

The Commission's analysis of the public benefits against the flexibility achieved through the PUD is discussed in detail in the Order. *See* Conclusions of Law Nos. 39-45, at pp. 60-61. In the Motion, the CSHOA challenges the validity of certain proffers, alleging that the Commission erroneously accepted the list of proffers by the Applicant as public benefits. The Applicant's responses to the CSHOA points of reconsideration for the proffers in question is provided in the table below.

Public Benefits/Amenities Proffered	Reference in Exhibit 133	Point of Reconsideration	Applicant's Response
LEED Platinum Certification	P. 66, B.1.; and again mentioned in P. 68, D.1	This proposed "benefit" fails the "matter-of-right" provisions (Subtitle X, 305.1) of the public benefit requirement. LEED Platinum construction standards, green roofs, and other environmental/ sustainable design features are agnostic of PUD zoning and could still take place under current zoning.	Pursuant to Sub. X § 305.5(k)(5), meeting the minimum standards for LEED Gold constitutes a PUD benefit. Therefore, meeting the standards for LEED Platinum, which is above and beyond the LEED Gold rating, is properly considered a benefit of the PUD. A project constructed as a matter of right is not required to be constructed to LEED Platinum standards as a condition of a building permit or certificate of occupancy.
Signal Warrant Study	P. 66, Item B.2.	These actions are designed to mitigate adverse effects of the new development on 9th Street and G Street which will generate <i>additional</i> traffic in the intersection, and therefore are not public benefits, per Title 11, Subtitle X, 305.9. Furthermore, a study and its findings do not include commitment from the applicant to take any action to mitigate adverse impacts.	According to the DDOT report, only one of the nine study intersections (7th and Maine) would unacceptably degrade in the level of service due to vehicular trips generated by the PUD. <i>See</i> Ex. 44 at p. 2. This traffic impact is offset by the Applicant's TDM program, which is designed to encourage non-auto travel. The Signal Warrant Study is outside the scope of the TDM, and constitutes a public benefit given its purpose. <i>See</i> Order, Decision B.2 at pp. 66-67.
\$100K to Capitol Square for cut through traffic mitigation	P. 66, Item B.4.	This action is required to mitigate potential adverse effects of the new development's generation of <i>additional</i> traffic and should not be weighed as a benefit. Furthermore, CSCSHOA noted that the amount provided is insufficient. CSCSHOA indicated in Exhibit 130 how the logistics supposed in the Applicant's quote were impossible, and therefore the amount not enough. CSCSHOA provided a new estimate based on	The cut-through traffic is an existing condition, and is not an adverse impact generated by the development of the PUD Site. The monetary contribution of \$100,000 to the CSHOA, which is to be expended at the CSHOA's discretion, is greater than the cost to install the exit-controlled gates. Moreover, the Zoning Commission found "that the Applicant's \$100,000 contribution to the [CSHOA] is sufficient to install traffic gates and to mitigate any

		the factual context in which the CSHOA can install and operate gates.	remaining transportation impacts of the traffic.” See Order, Conclusion of Law No. 29 at p. 58. Thus, the proposed contribution is properly deemed a proffer because it will directly address a traffic condition that <i>currently</i> exists and is “beyond that needed to mitigate any potential adverse impacts” of the PUD. 11-X DCMR § 305.5(o).
Bike and scooter corrals along perimeter of the property	P. 67, Item B.5.	These actions are required to mitigate potential adverse effects of the new development and are not public benefits, per Title 11, Subtitle X, 305.9. Furthermore, these actions would still be required under matter-of-right	Implementation of the TDM Plan is required to mitigate traffic impacts from the project. The installation of the bike and scooter corrals along the perimeter of the property are beyond the mitigation in the TDM Plan. The bike and scooter corrals were proffered by the Applicant in its Post-Hearing Statement, <u>at the request of the CSHOA</u> , due to concerns about bikes and scooters being abandoned in their townhome community. See Ex. 119 at p. 10. Furthermore, a project constructed as a matter of right would not be required to install bike and scooter corrals along the perimeter of the property as a condition of the building permit or certificate of occupancy.
LEED Platinum Certification Green Roofs EV charging stations	P.67, Item D.1 P. 67, Item D.2 P. 67, Item D.3	As noted above, these proposed “benefits” fail the “matter-of-right” provisions (305.1) of the public benefit requirement. LEED Platinum construction standards, green roofs, and other environmental/ sustainable design features are agnostic of PUD zoning and can still take place under current zoning.	Pursuant to Sub. X § 305.5(k)(5), meeting the minimum standards for LEED Gold is a project benefit. Therefore, meeting the minimum standards for LEED Platinum is a project benefit. A project constructed as a matter of right is not required to be constructed at LEED Platinum certification as a condition of a building permit or certificate of occupancy.

9 th St SW reconfiguration and redesign	P. 68, Item D.6	The community, in concurrence with the Zoning Commission, has noted on record existing traffic concerns and issues with 9th ST SW and how they would be WORSENERD by this project. These actions are <i>required</i> to mitigate adverse effects of the new development and are not public benefits, per Title 11, Subtitle X, 305.9.	In its report to the Zoning Commission, DDOT states that it “supports the proposal to reconfigure the curb line on 9 th Street, realign the intersection of 9 th and G Street, and install bike lanes on 9 th Street as a Community Benefit [citing to Ex. 38C] since it will improve safety for bicyclists and pedestrians and improve the quality of the streetscape.” See Ex. 44 at p. 2. (Emphasis added.)
Public Art Proffer of \$75K to a minority-owned, woman-owned, certified business entity based in Washington, DC	P. 68, Item D.8.a	Fails the “matter-of-right” provisions (Subtitle X, 305.1) of the public benefit requirement; provision of public art is not significant and could take place under current zoning.	A project constructed as a matter of right is not required to make a public art proffer as a condition of a building permit or certificate of occupancy. Commemorative works or public art is specifically listed as a PUD benefit category under Sub. X § 305.5(d).
Workforce Housing	P. 69, Item 9	Not considered as public benefit per Exhibit 133 (page 18, #54, first bullet) but at least one Commissioner made statements as if it was a benefit (see Transcript of February 9, 2023 Public Meeting – page 20, lines 11-13).	As noted in Conclusion of Law No. 21 of the Order, the workforce housing units were not proffered by the Applicant or accepted by the Zoning Commission as a public benefit. ²
Jefferson Middle School PTO proffer of \$150K over 3 years for field experiences and curricula	P. 68,	Fails the “matter-of-right” provisions (305.1) of the public benefit requirement	If the project were constructed as a matter of right, the Applicant would not have been required to engage with the Jefferson Middle School PTO and make a contribution to the PTO as a condition of a building permit or certificate of occupancy.
3,000 sq. ft. for a grocer; market; bodega; corner store; or prepared food shop use; and space for a bank branch.	P. 68, E.2.a.	The square footage of the original proposed grocery (subsequently reduced to 3000 sq. ft for something less-than a grocery) was never large enough to qualify as a benefit given the availability of convenience vendors in the immediate vicinity and includes no documentation of commitment from any retailer. A bank, never requested by the community (most “Letter in Support” referencing such language written by the Applicant, was accepted erroneously per Subtitle Z Section	Members of the ANC previously expressed a need for full service bank and grocery store in the immediate neighborhood, which is why the uses were proffered as uses of special value to the neighborhood. Uses of special value to the neighborhood or the District of Columbia as a whole is a specific public benefit category under Subtitle X § 305.5(q). The format for the grocery store, or a comparable use, was reduced from 6,000 square feet (“s.f.”) to 3,000 s.f. during the zoning approval process in

² “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.)”

	<p>206.5(d)) and the Applicant never demonstrated how such would serve the surrounding area. The Applicant has yet to provide an MOU for any retail or commercial use of the space, as required by Subtitle Z Section 401.2 to be considered a proffer/public benefit.</p>	<p>response to concerns expressed by the CSHOA about the traffic impacts associated with a larger grocery store.³</p> <p>The proffer relates to the types of uses, not specific users, tenants, or operators, and the condition requiring the uses is self-executing. As such, an MOU is not required to validate the proffer.</p>
--	---	---

In light of the foregoing, there is no basis for the Commission to reconsider the validity of the proffers or the balancing of the project benefits against the flexibility achieved through the PUD. CSHOA’s request for reconsideration should therefore be denied.

6. Affordable Housing Proffer

The CSHOA alleges that the Commission “failed to apply an appropriate methodology” to determine whether the Applicant’s affordable housing proffer “was truly an exceptional amount.” In support of its argument, the CSHOA cites to the methodology posited by OAG in its filings and during its testimony at public hearing.

As explained in Conclusion of Law No. 45, OAG’s recommendation and analysis are flawed for two reasons. First, OAG’s recommendation is based on the calculation for IZ Plus, which is not the standard for a PUD. Second, OAG incorrectly applies the balancing test in Subtitle X § 304.3 by recommending a 33% affordable housing set aside for the two additional stories gained by the PUD and Zoning Map amendment process. **The Zoning Commission concludes that the project’s affordable housing proffer is sufficient when properly balanced, together with the overall benefits and amenities, against the Applicant’s requested development incentives and the Project’s potential adverse effects. Therefore, CSHOA’s request for the Zoning Commission to adopt OAG’s position should be denied.**

7. Use of “Transition” to Support Building Height

The Motion claims the Order makes erroneous references to a “transition” from The Wharf to the low-rise townhomes to the north of the project.

The Order evidences the Commission’s careful consideration of the building’s step down in height – from 130 feet along Maine Avenue to 90 feet along G Street. At Conclusion of Law No. 12, the Commission acknowledges that the maximum building height on the southern portion “matches or exceeds the buildings on The Wharf,” but notes that this potential inconsistency is outweighed “because the additional height will advance the aforementioned and critical [Comp

³ The Applicant did not proffer a grocery store use pursuant to the benefit category in Subtitle X § 305.5(j). See Applicant’s Revised List of Proffers and Conditions, Ex. 126 at p. 11. Thus, the ANC’s assertions about failing to satisfy a certain square footage threshold are without merit. Furthermore, the proffer to allocate 3,000 s.f. for a use of special value to the neighborhood also contemplates a market, bodega, corner store, or prepared food shop.

Plan] policies that encourage housing and affordable housing near transit in the ANWS Planning area." See Order at p. 53. Conclusion of Law No. 18 states that the proposed design is appropriate in light of the SW Plan's vision for Maine Avenue; and Conclusion of Law No. 34 states that the building height transition will achieve "a complementary relationship" with The Wharf to the south of the PUD Site. and the Capitol Square planned unit development to the north of the PUD site.

As evidenced by the aforementioned Conclusions of Law in the Order, the Order does not recklessly, improperly, or erroneously use the word "transition" in support of the Commission's findings. Therefore, CSHOA's request to update the case file to strike references to a "transition" and require the Applicant to lower the building's height on Maine Avenue should be denied.

8. Financial Considerations

The CSHOA alleges that the shifting of height and density toward Maine Avenue was intended to benefit the Applicant economically, and that the Zoning Commission "was erroneously persuaded" by this justification. This claim is baseless and without merit. Where the Order addresses the Commission's evaluation of the PUD pursuant to Subtitle X § 304.4, **there is no Conclusion of Law that references the economic feasibility or infeasibility of the Project.**⁴

Notwithstanding the foregoing, the District of Columbia Court of Appeals has held that the economic viability is an appropriate consideration when evaluating a PUD. See, e.g., *Friends of McMillan Park v. D.C. Zoning Comm'n*, 211 A.3d 139 (2019) (upholding Commission's conclusion that medical use was critical to economic viability of proposed PUD); see also, e.g. *Barry Farm Tenants and Allies Ass'n v. D.C. Zoning Comm'n*, 182 A.3d (2018) (holding that economic necessity justified departure from small area plan's recommended number of units).

In light of the foregoing, the CSHOA's request for the Zoning Commission to consider in writing other reasons for the project design should be denied.

9. Letters of Support

The CSHOA's Motion calls into question the legitimacy of several letters that were filed in support of the project, and argues that these letters were erroneously included in the case file. The CSHOA specifically takes issue with the letters of support marked as Ex. 64-80, 83, 91, 94-96, and 100-107 in the case record. These are not grounds to grant the CSHOA's Motion.

There is no Conclusion of Law or other aspect of the Order that suggests the Commission was improperly persuaded by the aforementioned letters. Even if the comments submitted via www.899Maine.com are eliminated from the record, there remain four (4) letters of support from persons that worked or lived within a mile of the project and did not submit their letter of support via the aforementioned website: (i) Shawn Seaman, President, Hoffman & Associates, Inc. (Ex. 46); (ii) William Rich (Ex. 48); (iii) Ryan Quinn (Ex. 82); and (iv) the Jefferson Middle School

⁴ The Order only references the Applicant's argument regarding economic feasibility in Finding of Fact No. 52, which summarizes the Applicant's Post-Hearing Submission (Ex. 112, 112A-112D).

Parent Teacher Organization (Ex. 85). That said, the Applicant is not suggesting that these letters in support of the project carry greater weight. For obvious reasons, basing zoning decisions on merely a "scoreboard" of letters in support versus those in opposition would be a flawed approach.

Ultimately, the Commission is required to evaluate a PUD application according to the evaluation standards in Subtitle X § 304. The Order thoroughly states the Commission's conclusions in this regard, and therefore is not erroneous. For this reason, the CSHOA's request to reconsider the approval of the application based on the number of letters of support versus those in opposition should be denied.

10. Allegations of Inconsistent Treatment

The Motion alleges that the Commission gave preferential treatment to the subject PUD application, and cites to the Commission's review of Z.C. Case No. 22-11 in support of its claim. Subtitle X § 304.3 states, in relevant part, that "[i]n deciding a PUD application, the Zoning Commission shall judge, balance, and reconcile. . . **according to the specific circumstances of the case.**" (Emphasis added.) **Therefore, the CSHOA's request for the Commission to reconsider the Order and apply the same issues and considerations relevant to Z.C. Case No. 22-11 should be denied.**

Conclusion

Subtitle X § 700.6 states that a motion for reconsideration shall state specifically the respects in which the final order is claimed to be erroneous. In this case, the CSHOA expresses its disagreement with various areas of the Commission's approval, but does not demonstrate how the Order was erroneous in these areas. For this reason, coupled with the counterarguments above, the Applicant respectfully requests that the Zoning Commission deny the Motion at the earliest available public meeting date.

Thank you for your careful attention to this matter.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Leila M. Jackson Batties
Christopher S. Cohen

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that, on June 27, 2023, a copy of the foregoing Answer in Opposition to the Motion for Reconsideration filed by the Capitol Square Homeowners Association in Z.C. Case No. 22-06 was served on the following **via electronic mail** at the addresses listed below:

Office of Zoning Legal Division

Hillary Lovick: hillary.lovick@dc.gov

Dennis Liu: dennis.liu@dc.gov

D.C. Office of Planning

Jennifer Steingasser: jennifer.steingasser@dc.gov

Joel Lawson: joel.lawson@dc.gov

Karen Thomas: karen.thomas@dc.gov

District Department of Transportation

Aaron Zimmerman: aaron.zimmerman@dc.gov

Emma Blondin: emma.blondin@dc.gov

Capital Square Place Homeowners Association

Party in Opposition

c/o Erin Berg, President: eringberg@gmail.com

Advisory Neighborhood Commission 6D

ANC6D@anc.gov

Commissioner Fredrica “Rikki” Kramer

ANC 6D Chair

6D07@anc.dc.gov

Commissioner Bob Link

Single-Member District Representative, SMD 6D01

6D01@anc.dc.gov

/s/ Christopher S. Cohen

Christopher S. Cohen

Holland & Knight LLP