

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-11
Z.C. Case No 22-11
MCRT Investments, LLC
(Consolidated PUD & Related Map Amendment @
807 Maine Avenue, S.W. [Square 439S, Lot 15])
January 26, 2023

Pursuant to notice, at its public meeting on January 26, 2023¹, the Zoning Commission for the District of Columbia (the “Commission”) considered a request from MCRT Investments, LLC (the “Applicant”) for a consolidated planned unit development (“PUD”) and Zoning Map amendment from the MU-12 zone to the MU-10 zone to construct a new residential building (the “Application”) at 807 Maine Avenue, S.W. (Square 439S, Lot 15) (the “PUD Site” or the “Property”) pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 3 of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations,” 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 minimum lot occupancy requirements of Subtitle G § 404, the minimum side yard requirements of Subtitle G § 406, and the minimum rear yard requirements of Subtitle G § 405; and
- Such other design flexibility as 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

Notice

1. On May 26, 2022, the Office of Zoning (“OZ”) sent notice of the September 15, 2022 public hearing, in accordance with Subtitle Z § 402.1 to: (Exhibit [“Ex.”] 19, 20.)
 - Authorized counsel for the Applicant;
 - The affected Advisory Neighborhood Commission (“ANC”) 6D;
 - The ANC 6D01 Single Member District (“SMD”) Commissioner, whose district includes the PUD Site;

¹ The Commission held a brief public hearing on September 15, 2022, that was continued to November 14, 2022, and took proposed action at its December 15, 2022 public meeting.

- The Office of the ANCs;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Consumer and Regulatory Affairs (“DCRA”);²
 - The Office of Zoning Legal Division (“OZLD”);
 - The District Department of Environment (“DOEE”);
 - Councilmember Charles Allen, the Ward 6 Councilmember in whose district the PUD Site is located;
 - The Chair and At-Large Members of the D.C. Council; and
 - The owners of property located within 200 feet of the PUD Site.
2. Notice of the September 15, 2022 public hearing was also published in the June 3, 2022 D.C. Register (69 DCR 006396 *et seq.*). (Ex. 18.)
 3. On June 9, 2022, OZ sent a corrected notice of the September 15, 2022 public hearing, to the same recipients listed in Finding of Fact (“FF”) No. 1. (Ex. 23.)
 4. The corrected notice of the September 15, 2022 public hearing was also published in the June 17, 2022 D.C. Register (69 DCR 007166 *et seq.*). (Ex. 21.)
 5. At the September 15, 2022 public hearing,, the Commission continued the hearing to November 14, 2022, to give the Applicant more time to work with neighborhood residents and the affected ANC 6D to address their concerns.
 6. The Applicant submitted evidence that it posted notice of the public hearing on the PUD Site, as required by Subtitle Z § 402.3, and maintained said notice in accordance with Subtitle Z § 402.10. (Ex. 24, 37.)

Parties

7. The following are automatically parties in the proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant;³ and
 - ANC 6D.
8. On August 23, 2022, the Commission received one request for party status from Gail Fast, the President of the Council of Co-Owners of Town Square Towers Condominium (“TST”) on behalf of the TST Board of Directors. (Ex. 27.) On September 13, 2022, the request was supplemented with a signed authorization from the Board of Directors of TST for Gail Fast to testify on TST’s behalf at the public hearing. (Ex. 27A.) The party status request stated the PUD Site is within 200 feet of TST. The request stated that TST would be affected by the Project because of what TST alleged was the Project’s lack of consistency with the Southwest Small Area Plan and the Comprehensive Plan, congestion, traffic,

² DCRA was converted to the Department of Buildings (“DOB”) following issuance of the notice.

³ The Application lists the owner of the Property as “Disabled American Veterans.” (Ex. 1.)

noise, and parking effects caused by the Project, and that Project was out of scale with surrounding buildings and the neighboring school.

9. On August 30, 2022, the Applicant filed a response opposing TST's request for party status primarily on the basis that TST's concerns failed to meet the standard for party status, under Subtitle Z § 404.14, to clearly demonstrate that its interests would likely be more significantly, distinctively, or uniquely affected by the proposal because TST's concerns were not distinct from those of anyone else living in Southwest. (Ex. 31; *see* FF No. 42.)
10. As a preliminary matter during the September 15, 2022 public hearing, the Commission considered TST's request for party status but was split by a vote of 2-2-1; therefore, the motion to grant TST party status failed due to lack of majority vote and was denied. The Commissioners who were opposed to TST's request for party status found that TST had not clearly demonstrated that its interests would likely be more significantly, distinctively, or uniquely affected by the proposed zoning action compared to other persons in the general public, as required by Subtitle Z § 404.14. The Commission acknowledged the proximity of the Project to TST, but believed that TST had not demonstrated it would be more uniquely affected by the Project because the issues raised in its party status request were not distinct from those living in the neighborhood.
11. TST submitted a second request for party status (Ex. 71), which the Applicant opposed in a second response with largely the same rationale as its first response opposing TST's party status request. (Ex. 73; *see* FF No. 47.)
12. The Commission considered TST's second request for party status at its November 14, 2022 public hearing; the Commission was again split by a vote of 2-2-1 for the same reason as at the September 15, 2022 public hearing. Because the Commissioners stated they were not changing their votes, the Commission decided not to vote on the motion a second time. (Transcript ["Tr."] from the November 14, 2022 hearing at pp. 6-9.)

The PUD Site

13. The PUD Site is located at 807 Maine Avenue, S.W., and is known as Lot 15 in Square 439-S. The PUD Site is a relatively small triangularly-shaped parcel and contains approximately 23,664 square feet of land area. The PUD Site is well-positioned as a potential gateway entrance to the Southwest-Waterfront neighborhood from the west approach along Maine Avenue, the north approach along 7th Street. (Ex. 3.)
14. The PUD Site is generally bounded by 7th Street to the east, Maine Avenue to the south, and the Thomas Jefferson Middle School Academy ("Jefferson") to the north. To the southwest of the PUD Site are District-owned properties known as Lots 812, 813, and 814 in Square 439-S; lot 812 is in between the PUD Site and Maine Avenue. (Ex. 3.)
15. The PUD Site is presently improved with an office building known as the Denvel D. Adams National Service and Headquarters for Disabled American Veterans ("DAV"). (Ex. 3.)

16. The PUD Site 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.
17. The PUD Site is generally surrounded by a mix of residential and non-residential uses and with a mix of densities, including medium-and high-density buildings, including the Banks Apartments to the east, across 7th Street, and the Wharf and the Capitol Square PUDs to the south, across Maine Avenue⁴. Further to the west, along Maine Avenue, is Benjamin Banneker Park, and medium-density condominium building exists to the northeast of the PUD Site across 7th Street (i.e., Town Square Towers). Directly to the north of the PUD Site is the Jefferson school. (Ex. 3, 69A1.)
18. The PUD Site is well-served by public transit options. The L’Enfant Plaza Metrorail station is located approximately 0.5 miles to the north of the PUD Site and services the Blue, Orange, Silver, Green, and Yellow lines. In addition, the Waterfront Metrorail is located approximately 0.4 miles to the southeast of the PUD Site and services the Green line. Both stations are approximately 0.5 miles away about a 10-minute walk from the PUD Site. The PUD Site also is served by the 52 and 74 Metrobus routes. (Ex. 3.)
19. The PUD Site is located within the boundaries of Ward 6 and ANC 6D01. (Ex. 3.)

Existing Zoning

20. The PUD Site is zoned MU-12. (Ex. 3D.) The MU zones provide for mixed use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities. (Subtitle G § 100.1.) The MU zones are also designed to provide facilities for housing, shopping, and business needs, including residential, office, service, and employment centers. (Subtitle G § 100.2.)
21. The purposes of the MU zones are to, among other things:
 - 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;
 - Encourage safe and efficient conditions for pedestrian and motor vehicle movement; and
 - Preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities. (Subtitle G § 100.3.)
22. The MU-12 zone is intended to permit moderate-density mixed-use development generally in the vicinity of the waterfront. (Subtitle G § 500.3.) The maximum permitted density in the MU-12 zone is 2.5 floor area ratio (“FAR”), with up to 3.0 FAR for Inclusionary Zoning (“IZ”) projects, and with a maximum non-residential density of 1.0 FAR. (Subtitle G § 502.1.) The maximum permitted building height in the MU-12 zone is 45 feet, with up

⁴ The Wharf was the subject of ZC Case Nos. 11-03 and 11-03A-J; Capitol Square was the subject of ZC Case No. 98-10.

to 50 feet for IZ projects. (Subtitle G § 503.1.) The MU-12 zone permits a maximum penthouse height of 12 feet and one story, except 15 feet and a second story is allowed for mechanical space. (Subtitle G § 503.2.) The maximum permitted lot occupancy for residential use in the MU-12 zone is 80%. (Subtitle G § 504.1.)

Comprehensive Plan (Title 10-A DCMR, the “Comp Plan” or “CP”)

23. The PUD Site is designated as Mixed Use (Medium Density Commercial / Medium Density Residential) on the CP Future Land Use Map (“FLUM”). The CP’s Framework Element explains that a “Mixed Use” designation on the FLUM is not intended to be interpreted according to its separate land use categories. Rather, “Mixed Use” on the FLUM is a specific land use category unto itself. The Mixed-Use designation is assigned to areas where the mixing of two or more land uses is encouraged, but is not mandatory, with the particular combination of uses desired in a given area depicted in the specific striped pattern on the FLUM. (CP § 227.20.) The general density and intensity of development within Mixed Use areas are determined by the specific mix of uses shown on the FLUM. If the desired outcome is to emphasize one use over another, the FLUM may note the dominant use by assigning it a higher density. The Area Elements may also provide detail on the mix of uses envisioned for a site. (CP § 227.21.) In this case, the Mixed Use (Medium Density Residential / Medium Density Commercial) FLUM designation does not indicate a preference for a particular use on the PUD Site.

The Framework Element states that the Medium Density Commercial 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.)

The Framework Element states that the Medium Density Residential designation is used to define neighborhoods or areas generally, but not exclusively, suited for mid-rise apartment buildings. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. Pockets of low and moderate density housing may exist within these areas. Density typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The RA-3 Zone District is consistent with the Medium Density Residential category, and other zones may also apply. (CP § 227.7.)

24. The PUD Site is designated as a Neighborhood Conservation Area and in a Resilience Focus Area on the CP Generalized Policy Map (“GPM”). The CP Framework Element states that the guiding philosophy for Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address

city-wide housing needs. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the FLUM and Comp 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.)

25. The PUD Site is located in a Resilience Focus Area on the GPM where 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.)
26. The PUD Site is within the Lower Anacostia Waterfront/Near Southwest Area Element of the Comp Plan, which establishes a variety of policies and actions that are intended to guide growth and neighborhood conservation decisions in tandem with the policies and actions set forth in the Citywide Elements of the Comp Plan. (CP § 1907.1.)
27. The PUD Site is within the boundaries of and subject to the policies set forth in the Council-approved Southwest Neighborhood Plan (“SW Plan”), which is the Small Area Plan applicable to the PUD Site.

II. THE APPLICATION

The Project

28. The Application, as amended, proposes to redevelop the Property with a new residential building (the “Project”) which will provide:
 - A maximum building height of 110 feet plus a 20-foot penthouse;
 - Approximately 194,839 square feet of gross floor area (“GFA”) (8.21 FAR) devoted to residential use;
 - Approximately 195 residential units;
 - A larger sized unit mix consisting of approximately 44 two- and three-bedroom units to provide:
 - 16 two-bedroom units;
 - 19 two-bedroom units plus den; and
 - 9 three-bedroom units of which three units would be devoted to IZ.
 - An affordable housing component as follows:
 - Approximately 29,226 square feet or 15% of GFA will be set aside for rental IZ units, of which 1%⁵ will be reserved for households earning no more than 50% Median Family Income (“MFI”) and 14% will be reserved for households earning no more than 60% MFI;
 - Approximately 990 square feet or 15% of penthouse habitable GFA will be set aside for rental IZ units for households earning no more than 50% MFI;

⁵ The Application initially proposed that one percent of residential GFA be reserved for households earning no more than 80% MFI and was later amended.

- A total of 27 IZ units will be provided, of which 3 will be reserved for households earning no more than 50% MFI and 24 will be reserved for households earning no more than 60% MFI; and
 - Three three-bedroom units will be IZ units;
 - A penthouse consisting of residential units, amenity space, and a second story for mechanical space;
 - A roof level including a pool and terrace;
 - Approximately 78 on-site parking spaces located in a two-level below grade garage; and
 - Approximately 84 long-term bicycle spaces located in a two-level below grade garage and 12 short-term bicycle parking spaces located on the perimeter of the site. (Ex. 3, 69.)
29. The Application states that the proposed Project was designed to leverage its prominent location on Maine Avenue, S.W., by creating a three-sided building that is engaging and visually appealing from every approach. The base of the building is double height and will be activated by active ground floor residential amenity uses. Above the ground level the building is horizontally differentiated by three, three-level building forms, which break down the building height into smaller, more pedestrian-friendly proportions. Within this horizontal expression, the building's corners produce an interlocked wave that creates a context-sensitive design that relates to the shape of the PUD Site and surrounding buildings. This design motif helps to overcome the PUD Site's limitations resulting in shorter facades along the prime elevations. The proposed building is setback an additional six feet along the Maine Avenue street section and approximately an additional 10-feet along 7th Street, reflecting deliberate efforts to enhance pedestrian circulation on the PUD Site facilitating a walkable community and providing additional room for new public space elements to be integrated and establish continuity with the streetscape on Maine Avenue. (Ex. 3.)
30. After the September 15, 2022 public hearing,, and in response to comments from the community and ANC regarding the Project's massing, the Applicant reduced the size of the building from approximately 204,459 square feet of GFA (8.64 FAR) to approximately 194,839 square feet of GFA (8.21 FAR), primarily by removing density located at the Property's northeast corner, which resulted in a reduction of residential units from 202 to 195 and replacement of the ground floor retail space with residential use. In addition, the PUD Site's northeast corner, which is located at the western terminus of I Street, S.W., was converted to publicly accessible open space with new landscaping, bioretention planters, special and permeable paving, benches, art, and other pedestrian-oriented improvements. The SW Plan characterizes the western terminus of I Street, S.W. as an important east-west connector that should provide a beautiful and shaded pedestrian experience and this additional publicly accessible open space is consistent with the SW Plan's vision for the important corridor. (Ex. 69.)
31. Circulation, Parking, and Loading. The Project's circulation, parking, and loading are designed to limit impacts to surrounding properties, minimize traffic congestion, and maximize pedestrian safety. A curb cut on 7th Street will provide vehicular access to the

Project's loading facilities and below-grade parking garage. One loading berth and one service-delivery space are located within the building, and a second service-delivery space is located on the PUD Site adjacent to the garage entrance. All loading turn movements can be accommodated on-site. Two levels of below-grade parking are provided to accommodate approximately 78 parking spaces. Long-term bicycle parking will be provided in the first garage level of the building, and short-term bicycle parking will be provided at the perimeter of the PUD Site. (Ex. 3.)

32. Streetscape Improvements. The Project's streetscape and landscape features are designed to enhance the existing pedestrian environment and are provided in accordance with DDOT standards. The streetscape improvements include new trees and tree boxes, plantings and planting beds, bioretention areas, special and permeable paving, benches, and public art. These improvements being provided are over and above what would otherwise be required for matter-of-right development at the PUD Site. (Ex. 3.)
33. Sustainable Features and LEED. The Project is designed to satisfy the LEED-H Multifamily Midrise v4 Gold rating level. In doing so, the Project implements a holistic and integrative approach to sustainable design strategies, including incorporating innovative stormwater management techniques, high performance mechanical and ventilation systems, and high performance building envelope systems. (Ex. 3.)

Zoning and Design Flexibility Requested

34. The Application requested that the Commission approve a consolidated PUD with a related Zoning Map amendment from the MU-12 zone to the MU-10 zone, which would allow a maximum building height of 110 feet and a maximum density of 8.64 FAR, with up to a 4.02 FAR permitted for non-residential use. (Ex. 3, 69, 81A1.) As a result of the PUD-related Zoning Map Amendment to the MU-10 zone, the Project can achieve additional height and density. The Project's proposed height of 110 feet, is a gain of 60 feet when compared to the height permitted in a matter-of-right IZ development under the existing MU-12 zoning (maximum 50 feet), and a gain of 50 feet when compared to the PUD height permitted under the existing MU-12 zone (maximum 60 feet). The Project's proposed density of 8.21 FAR, is a gain of 5.21 FAR when compared to matter-of-right density permitted under existing MU-12 zoning (maximum 3.0 FAR with IZ), and gain of 4.61 FAR when compared to the PUD density permitted under existing MU-12 zoning (maximum 3.6 FAR). (Ex. 81A1.)
35. The Application requested additional PUD-related zoning flexibility pursuant to Subtitle X § 303.1 to allow:
 - A maximum lot occupancy of 82%⁶ whereas a maximum of 80% lot occupancy is permitted under Subtitle G § 404. The Applicant notes that it is only when the building's floors are combined with its unique angles that the overall lot occupancy exceeds 80% as the first and second floors have a lot occupancy of 63% and none of the upper floors individually exceed 80% lot occupancy;

⁶ With respect to lot occupancy, the initial proposed lot occupancy for the Project was 88.7%. The Applicant submitted revised plans with its Second Supplemental Prehearing Submission that reduced the FAR and lot occupancy of the Project. (See FF Nos. 46, 54.)

- A side yard with varying widths, all of which are less than the required width of 18 feet, 4 inches under Subtitle G § 406. The Applicant proposes a side yard of varying widths to overcome the irregular triangular shape of the PUD Site; and
 - A maximum rear yard depth of seven feet whereas a rear yard depth of 22 feet, 11 inches feet is required under Subtitle G § 405. The Applicant proposes a rear yard of only 7 feet to overcome the irregular triangular shape of the PUD Site. (Ex. 3, 69.)
36. The Application also requested the Commission approve design flexibility to vary certain elements in the Application’s final plans as approved by the Commission and still comply with the requirements of Subtitle X § 311.2 and Subtitle Z § 702.8 to construct the Project in complete compliance with the final plans. The Applicant’s original request for design flexibility was included in the Statement in Support and modified in the Prehearing Statement (Ex. 3, 16).

The Applicant’s Submissions and Testimony

37. On March 7, 2022, the Applicant submitted the original application, which included the following: (Ex. 1-5.)
- 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 project amenities proffered;
 - An evaluation of the Project’s consistency with the Comp Plan; and
 - An initial set of architectural plans and elevations.
38. The Commission voted to set down the Application for a public hearing at its May 12, 2022 public meeting.
39. On May 13, 2022, the Applicant submitted a Prehearing Submission that responded to the Commission’s comments at the setdown meeting and OP’s requests for additional information. At the setdown meeting, both the Commission and OP requested that the Applicant enhance its public benefits and amenities package. The Applicant’s Prehearing Submission included: (Ex. 15-16.)
- Updated landscape plans;
 - An explanation as to how the Applicant would maximize private outdoor space in the Project; and
 - A statement that the Applicant would file additional information and analyses requested regarding the plaza, the commemorative artwork, and materials prior to the public hearing on the Application.
40. On August 4, 2022, the Applicant submitted a Comprehensive Transportation Review (“CTR”) report dated August 1, 2022, which assessed the Project’s transportation impacts and concluded that: (Ex. 26, 26A.)
- The proposed development has a low parking supply, a robust Transportation Demand Management (“TDM”) plan, and a high-quality pedestrian realm design, which meets DDOT’s goals of supporting adjacent transit routes, minimizing impacts on the transportation network, and the conditions for a Low Impact Development (“LID”) Exemption from a CTR and traffic impact analysis;

- The PUD Site is surrounded by an existing network of transit, bicycle, and pedestrian facilities that create an excellent environment for safe and effective non-vehicular transportation;
- The Project introduces bicycle facilities that exceed zoning requirements;
- The Applicant will install a protected bicycle lane along the PUD Site's 7th Street frontage between I Street and Maine Avenue, S.W., which will improve the quality and attractiveness of active transportation to and from the PUD Site;
- The Project provides vehicle parking spaces in the below-grade garage, including electric vehicle spaces;
- The loading area will be accessed via 7th Street, S.W., and will include one 30-foot loading berth, one 20-foot service/delivery space, and one short-term 20-foot service/delivery space, exceeding zoning requirements and meeting the practical needs of the Project;
- The Project will provide a Loading Management Plan ("LMP") to ensure efficient operation of the on-site loading facilities, and a Construction Management Plan ("CMP") to minimize the impacts from construction of the Project; and
- The TDM measures adequately promote non-vehicular modes of travel for residents and visitors.

41. On August 26, 2022, the Applicant submitted a Supplemental Prehearing Submission, which included the following: (Ex. 28.)

- Updated architectural plans and elevations, which included updates to bicycle parking, landscape and streetscape elements, and façade materials and colors; the addition of a protected bike lane on 7th Street between I and Maine Streets as requested by DDOT; the addition of a short-term vehicular loading/delivery space; and a proposed Tree Preservation Plan ("TPP") as requested by the ANC at Sheet C09; (Ex. 28A1-28A2.)
 - As shown on the TPP, the Applicant is preserving 10 trees, and removing and replacing six trees. The Applicant will otherwise comply with all District requirements regarding the preservation and/or removal and replacement of existing trees on and surrounding the PUD Site;
- A Project Resiliency Checklist identifying the resilient design strategies incorporated into the Project in response to OP; (Ex. 28B.)
- An evaluation of the Application's consistency with the SW Plan; (Ex. 28D.)
- An updated description of the Applicant's proposed public benefits and project amenities; (Ex. 28.)
- Responses to each of the specific comments and concerns raised by ANC 6D to date, including submitting a CMP, a LMP, and the TPP; and an analysis regarding how the proposed building height is not inconsistent with the Comp Plan and SW Plan, consistent with the surrounding neighborhood context, and would not result in adverse effects; and (Ex. 28, 28C, 28E.)
- A summary of the Interagency Meeting held on July 19, 2022, and the Applicant's responses to specific comments and requests for information from District agencies, including OP, DHCD, DPR, and DOEE, during that meeting. (Ex. 28.)

42. On August 30, 2022, the Applicant submitted a response in opposition to TST’s party status request (the “Response to Party Status”). (Ex. 31.) The Response to Party Status explained that: (i) Ms. Gail Fast did not meet the standard for party status pursuant to Subtitle Z § 404.1(f); (ii) Ms. Fast did not provide evidence that TST met the standard for party status pursuant to Subtitle Z § 404.14; and (iii) the majority of TST residents do not live within 200 feet of the PUD Site.
43. On September 14, 2022, the Applicant submitted a response to letters in opposition filed in the case record (the “Response to Opposition Letters”). (Ex. 53.) The Response to Opposition Letters responded to each of the issues identified in the letters submitted to the record in opposition to the Application, including comments related to: (i) the Project being inconsistent with the SW Plan; (ii) impacts associated with traffic, parking, safety, noise, and WMATA; (iii) the Project being out of scale within the neighborhood context and resultant reduction in property values; (iv) the Project’s impacts on Jefferson; (v) lack of residential demand in the Southwest neighborhood; (vi) generalized comments from residents north of G Street, S.W.; (vii) lack of support for providing a contribution to the Southwest Business Improvement District (“SW BID”); (viii) gentrification; (ix) pet waste; (x) retail concerns; and (xi) tree preservation. The Applicant’s response also included a Market Analysis prepared by RCLCO Real Estate Consulting dated September 1, 2022 regarding the impact of the project on property values in the neighborhood. (Ex. 53, pp. 19-35.)
44. On September 14, 2022, the Applicant also submitted a PowerPoint presentation and photographs of the proposed building materials for the Project. (Ex. 52, 53A.)
45. At the September 15, 2022 public hearing, the Commission continued the hearing until November 14, 2022, to give the Applicant additional time to work with the community and ANC. At the hearing, the Commission echoed some of the community concerns raised regarding the Project’s proposed density being the absolute maximum, consistency with the SW Plan, and its concerns about the affordable housing unit mix and the need for further collaboration with the community and ANC to address their various issues. (Tr. from September 15, 2022 public hearing at pp. 11-18.)
46. On October 25, 2022, the Applicant submitted a filing (the “Second Supplemental Prehearing Submission”), which included the following: (Ex. 69-69E.)
- Further updated architectural plans and elevations (the “Plans”), which showed a reduced project massing and density (from approximately 204,459 square feet of GFA and 8.64 FAR to approximately 194,839 square feet of GFA and 8.21 FAR), fewer residential units (from 202 to 195), and more publicly-accessible green space at the Project’s northeast corner where the Project’s density was reduced;
 - An updated evaluation of the Applicant’s affordable housing proffer; (Ex. 69E.)
 - An update on the Applicant’s contribution to Jefferson and information about how the Project, as revised, would not cause adverse impacts on Jefferson:
 - This included updated shadow studies showing the shadow impacts on Jefferson; (Ex. 69A2, sheets 042-047.), as well as drawings showing the relationship between the Project and the surrounding built environment (Ex. 69A1, sheets 005-016.);

- A commitment to make contributions to Habitat for Humanity (“Habitat”) and MYLY Design, rather than to the SW BID;
 - Information on the significant landscape improvements to public and private space;
 - An agreement to restrict residents of the project from obtaining Residential Parking Permits (“RPPs”);
 - Information demonstrating that the Project will help to advance racial equity;
 - An updated SW Plan analysis; and (Ex. 69D.)
 - An updated list of public benefits and project amenities.
47. On November 7, 2022, the Applicant submitted a response in opposition to TST’s second party status request (the “Second Response to Party Status”). (Ex. 73.) The Second Response to Party Status explained why TST did not provide evidence that it met the standard for party status pursuant to Subtitle Z § 404.14.
48. On November 11, 2022, the Applicant submitted an updated PowerPoint presentation. (Ex. 81A1-81A2.)
49. At the November 14, 2022 public hearing, the Applicant:
- Presented the Application, including updates to the Project since the September 15, 2022 public hearing, and its agreement to the two conditions in the DDOT report. The Applicant’s presentation was supported by the testimony of: (Ex. 81A1-81A2.)
 - Randy Reese, on behalf of DAV;
 - Shane Dettman, on behalf of Goulston and Storrs, accepted by the Commission as an expert in land use planning;
 - Christopher Huffer, on behalf of SK+I Architects, accepted by the Commission as an expert in architecture;
 - Matt Clark, on behalf of LandDesign, accepted by the Commission as an expert in landscape architecture; and
 - Daniel Solomon, on behalf of Gorove/Slade Associates, accepted by the Commission as an expert in transportation planning;
 - In response to questions from the Commission, the Applicant:
 - Addressed how it was going to support the large cantilever over the metro tunnel;
 - Addressed privacy issues on the ground floor;
 - Stated it would supply additional information about its IZ proffer;
 - Described the changes it made to Project to mitigate potential adverse impacts on neighboring properties, namely taking off a corner of the building;
 - Explained that further lowering of the Project’s density would result in a commensurate reduction of Project benefits and amenities, and that adding balcony space would come at the expense of larger unit sizes; and
 - Addressed the issues and concerns in the ANC report directly; and (Tr. from November 14, 2022 at pp. 44-45, 48-51, 51-54, 34-39, 65-75, 76-79, 83-84.)
 - The Applicant also presented rebuttal following a presentation by the Office of the Attorney General (“OAG”) regarding the Project’s affordable housing. (Ex. 85.)

50. On November 28, 2022, the Applicant submitted a post-hearing submission that provided additional information requested by the Commissioners at the public hearing (the “Post-Hearing Submission”), which included the following: (Ex. 86-86A.)
- Additional information regarding the proposed color and maintenance of the building materials;
 - IZ unit location plans for every floor in the building;
 - Information regarding the relationship between the ground floor units and the adjacent public space; and
 - Supplemental architectural and landscape sheets to supplement the written information provided (the “Supplemental Sheets”).
51. On December 2, 2022, the Applicant submitted a response to OAG’s Post-Hearing Submission (the “Applicant’s Response to OAG”), which provided the following arguments: (Ex. 88.)
- OAG incorrectly applied the IZ Plus standard in determining whether the proffered affordable housing should be considered a public benefit under the PUD. The Applicant explained that IZ Plus regulations specifically state that IZ Plus “shall not apply to a map amendment that is related to a PUD application;” (*See* Subtitle X § 502.2(a).)
 - OAG recommended a 21% affordable housing set-aside based on incorrectly applying the IZ Plus standard to a matter-of-right project in the requested MU-10 zone. The Applicant explained that the correct standard in determining whether the proffered affordable housing should be considered a public benefit is whether the affordable housing exceeds what would be required “through matter-of-right development under existing zoning.” (*See* Subtitle X § 305.5(g)(1).) Under the PUD Site’s existing MU-12 zone the IZ set-aside for a matter-of-right development, assuming a residential project and full utilization of bonus density, would be approximately 5,916 to 8,874 square feet of GFA (excluding penthouse and projections), and the proffered affordable housing is approximately 29,226 square feet of GFA (excluding penthouse and projections). Therefore, the proffered affordable housing is well above what would have been required through matter-of-right development under the existing MU-12 zone and is properly classified as a public benefit;
 - OAG mischaracterized the Applicant’s assertions at the public hearing, which were intended to state that OP had advised the Applicant that it would not support a stand-alone map amendment to the MU-10 zone for the Property without a PUD. Moreover, OAG’s assertion that the Commission would approve a map amendment to the MU-10 zone even if OP opposed the application because the Framework Element identifies the MU-10 zone as being consistent with the PUD Site’s Medium Density Commercial FLUM designation was without merit. In addition, OAG applied the wrong IZ Plus calculations in comparing the proposed PUD to the MU-8 zone, which, when done correctly, demonstrate that the affordable housing proposed under the PUD still exceeds what would be required under an MU-8 IZ Plus development. The Applicant provided its calculations at Ex. 88, p. 4; and
 - OAG ignored the extensive public benefits package provided as part of the PUD and focuses only on the Applicant’s affordable housing proffer to determine whether the proposed benefits balance against the degree of incentives and adverse impacts.

52. On December 21, 2022, the Applicant submitted its final list of proffers and conditions pursuant to Subtitle X § 308.8. (Ex. 91.)
53. On January 3, 2023, the Applicant submitted its revised list of final proffers and conditions pursuant to Subtitle X § 308.12. (Ex. 93.)
54. On January 12, 2023, the Applicant submitted a response to the ANC's letter (Ex. 95), dated January 12, 2023, stating the ANC's understanding of the Applicant's acceptance in whole or in part to the ANC's six conditional approval requirements outlined in its ANC Report (Ex. 82), dated November 10, 2022. (Ex. 96.) The Applicant responded to the ANC's conditions of approval as follows:

ANC Condition No. 1: The Applicant should provide at least 21% of the residential units (no less than 42 units) as affordable housing at 60%-80% of the MFI, consistent with the recommendation of the Office of the Attorney General ("OAG").

Applicant's Response to ANC Condition No. 1:

- OAG's recommendation to provide 21% affordable housing is inconsistent with the Zoning Regulations, which specifically state that IZ Plus "shall not apply to a map amendment that is related to a PUD application;" (Subtitle X § 502.2(a).)
- OAG presented incorrect IZ Plus calculations in arriving at the purported 21% IZ requirement and erroneously treated building projections and penthouse habitable space as PUD bonus density. The Applicant provided the correct IZ analysis at Exhibit 88, pp. 2-3, which sets forth the amount of affordable housing being provided in the PUD that exceeds the amount of IZ that would have been required under existing zoning; and (*See* Subtitle X § 305.5(g).)
- The PUD's overall benefits and amenities package, including the Applicant's proffer of 15% IZ, far outweighs the degree of development incentives and technical zoning flexibility requested. Therefore, the Applicant does not agree with this condition.

ANC Condition No. 2: The Applicant should continue to pare back the FAR, so the project falls within the required limits.

Applicant's Response to ANC Condition No. 2: The Applicant reduced the proposed density from 8.64 FAR when the application was initially filed, to 8.21 FAR as currently proposed, which is less than the maximum permitted density of 8.64 FAR for a PUD in the MU-10 zone. With respect to lot occupancy, the initial proposed lot occupancy for the Project was 88.7%, which the Applicant reduced to 82%, whereas 80% maximum lot occupancy is permitted. Although zoning relief of 2% is required, this is a nominal degree of relief, the relief is supported by the Office of Planning, and the relief will not result in any adverse impacts. Moreover, as thoroughly described by the Applicant at the public hearing and as shown on Sheet 41 of the Architectural Plans and Elevations, the proposed building design does not result in a lot occupancy of more than 80% on any individual floor of the building. (Ex. 69A.) In short, the Applicant has significantly reduced the FAR and lot occupancy since the Application was initially filed.

ANC Condition No. 3: The ANC's conditional support does not alter its commitment to the SW Plan.

Applicant's Response to ANC Condition No. 3: The Applicant acknowledges this commitment.

ANC Condition No. 4: Rather than providing \$100,000 to Habitat for Humanity ("Habitat") as a public benefit, the Applicant should reallocate this contribution to the Parent Teacher Organizations of Amidon-Bowen Elementary School ("Amidon") and the Richard Wright Public Charter School ("Richard Wright"), and the Applicant should make the contributions immediately upon recordation of the PUD.

Applicant's Response to ANC Condition No. 4: The Applicant is committed to making a \$100,000 contribution to Habitat, which will advance the District's goals of providing more for-sale, family-sized affordable housing in Ward 6. The Amidon and Richard Wright schools have not participated in the subject case and have not indicated a specific need that this PUD should address. Regarding the timing for issuance of the contributions, the Applicant's proposal of demonstrating compliance prior to the issuance of a Certificate of Occupancy for the Project is consistent with the timing in all other recently approved PUDs and with the Zoning Regulations. (*See* Subtitle X § 305.3.)

ANC Condition No. 5: If the Applicant's contribution to MYLY for public art is directed through a management entity, any such involvement should be a pro-bono contribution by the Applicant with no additional fees extracted.

Applicant's Response to ANC Condition No. 5: The Applicant will make the proffered contribution directly to MYLY, the artist for the design, fabrication, and installation of the public art. The contribution will not be directed through an entity for management purposes.

ANC Condition No. 6: The final order should include a Construction Management Plan ("CMP") with Jefferson, Town Square Towers ("TST"), The Wharf, The Banks, and the Applicant, in addition to a dog waste management plan.

Applicant's Response to ANC Condition No. 6: The Applicant will abide by the CMP submitted to the case record on August 26, 2022. (Ex. 28E.) The CMP will establish a community advisory committee to oversee and coordinate community concerns during construction of the project. The Applicant will work with ANC 6D to establish this committee and coordinate quarterly meetings (or on an as-needed basis) between the Applicant and community to discuss and resolve any concerns not already addressed in the CMP. Neither the ANC nor TST has responded to the CMP submitted at Ex. 28E, and the Applicant welcomes such dialogue. The Applicant is also in the process of finalizing a separate CMP with Jefferson Middle School as it relates to the project's specific interaction with and impact on the Jefferson property during construction, and it would not make sense to transfer those specific items to other property owners. (*See* discussion of the Applicant and Jefferson's work on developing a CMP together in Jefferson's support letter at Ex. 83.) In addition, the Applicant received a letter of support for the project from The Wharf and the Banks developer Hoffman & Associates ("Hoffman") (Ex. 68.), and there has been no request from Hoffman to enter into a

CMP for the project. Furthermore, the Applicant believes that including various communities on both sides of Maine Avenue with potentially competing interests would be impractical. Finally, all project residents will be expected to abide by all District regulations that require dog walkers to pick up dog waste. (*See, e.g., 24 DCMR § 900.*)

55. On January 19, 2023, the Applicant submitted a second response to the ANC's letter, dated January 12, 2023. (Ex. 95, 98.) The Applicant's second response explained that the ANC's letter re-stated its six conditions of approval and indicated that for four of the conditions it sought further clarification from the Applicant. The Applicant's second response stated that it provided such clarifications in its response to the ANC. (Ex. 96.) However, on January 19, 2023, the ANC filed a second letter stating that the Applicant had not satisfied its six conditions of approval. (Ex. 97.) Therefore, the Applicant's second response provided further explanation as to its position on the ANC's six conditions of approval as follows: (Ex. 98.)

(1) Affordable housing proffer

The ANC continues to request 21% affordable housing per the recommendation of the OAG.

As previously submitted to the case record, OAG's recommendation to provide 21% affordable housing relies on incorrect calculations and is inconsistent with the Zoning Regulations' clear rule that IZ Plus "shall not apply to a map amendment that is related to a PUD application." (*See* Subtitle X § 502.2(a).) The 21% requirement suggested by OAG and the ANC is based on IZ Plus, which should not apply in this case because the proposed map amendment is related to a PUD. Moreover, the IZ Plus calculations provided by OAG to achieve the 21% number are also incorrect. (*See* full explanation at Ex. 88.)

The Applicant provided the correct IZ analysis, which demonstrated that the proffered IZ is well above the amount of IZ that would have been required through matter of right development under existing zoning, consistent with the applicable requirement of Subtitle X § 305.5(g). (Ex. 88, pp. 2-3.)

Moreover, the Applicant's affordable housing proffer is only one of many public benefits and amenities associated with the PUD. As the Commission knows, the standard of review for a PUD requires the balancing of all the benefits and amenities with the degree of development incentives and potential adverse impacts, in compliance with Subtitle X § 304.3. As has previously been documented in the case record and as discussed at the public hearing, the PUD's overall benefits and amenities package, including the IZ proffer, far outweighs the degree of development incentives and zoning flexibility requested. (*See, e.g.,* Applicant's analyses provided at Ex. 85 and 88, and OP's conclusions at Ex. 35 and at the public hearing where OP stated that: "[OP] continues its recommendation that this application be approved as the flexibility requested and the potential impacts could be adequately mitigated and outweighed

when balanced against the potential benefits of the project overall.” (Nov. 14, 2022 Tr. at p. 95.) See also Commissioner May’s discussion at the public hearing stating that “there are many, many other factors that go into a PUD and other benefits that may accrue to the community that go beyond affordable housing. There are probably certain minimum amounts that we’d want to achieve, but even those minimum amounts can be quite variable depending on the economics of a particular project, where it is, what it’s doing for the neighborhood as a whole, what other factors it might be mitigating...” (Nov. 14, 2022 Tr. at pp. 121-122.) Accordingly, the Applicant is not proposing to change its previously-proffered affordable housing benefit.

(2) Reduction in FAR and Lot Occupancy

The ANC continues to ask the Applicant to pare back the FAR so the project falls squarely within existing required limits. As previously submitted to the case record, the project’s density is well below the maximum permitted density for a PUD in the MU-10 zone (8.21 FAR proposed; 8.64 FAR permitted). As it relates to lot occupancy, the 2% flexibility being requested is a nominal degree of relief, supported by OP, and will not result in any adverse impacts. Every single floor of the building, when viewed individually, meets the 80% lot occupancy requirement. Only when the overlapping floors are calculated according to the strict method of calculating lot occupancy under the Zoning Regulations does the total lot occupancy exceed the maximum permitted (82% proposed; 80% permitted). The Applicant does not propose to reduce the lot occupancy any more than currently depicted on the plans.

(3) Commitment to the Southwest Neighborhood Small Area Plan (“SW Plan”)

The ANC reiterated its previous assertion that its conditional support for the PUD should not be seen as altering the ANC’s commitment that the SW Plan should be the foundation document for future development in the southwest.

The Applicant appreciates the ANC’s commitment to the SW Plan, and reasserts that the application has been thoroughly evaluated and found to be not inconsistent with the SW Plan and the Comprehensive Plan. (See Applicant’s Statement in Support and Comprehensive Plan analysis (Ex. 3, 3H.), Applicant’s Supplemental Prehearing Statement and SW Plan analysis (Ex. 28, 28D.), the Applicant’s amended and updated SW Plan analysis (Ex. 69D.), and the testimony at the public hearing of the Applicant’s expert in land use and planning (Ex. 81A1.)) The Office of Planning also found the application to be not inconsistent with the SW Plan, explaining in its Setdown Report, Hearing Report, and Supplemental Report (Ex. 14, 35 and 74, respectively) that the project would not be inconsistent with the SW Plan and would instead help to advance many of the SW Plan’s priorities and design guidelines. OP also testified at the public hearing that the project would “satisfy[] the southwest small area plan’s design and affordability guidelines.” (See Nov. 14, 2022 Tr. at p. 99; see also *Id.* at pp. 95, 98-99.) Accordingly, the Applicant submits that the project is fully consistent with the SW Plan and therefore consistent with the goals of the ANC.

(4) Reallocation of Monetary Contributions

The ANC continues to assert that the Applicant should reallocate its \$100,000 commitment from Habitat for Humanity (“Habitat”) to Amidon-Bowen Elementary School (“Amidon”) and the Richard Wright Public Charter School (“Richard Wright”).

The Applicant maintains its previous commitment to contribute the funds to Habitat. As previously submitted to the case record, Habitat will apply the funds “towards the production of 2-3 new for-sale affordable housing units reserved for households earning between 50% and 60% of the MFI in Ward 6.” (See Habitat Support Letter at Ex. 69B.) This is a concrete commitment to Habitat that will directly benefit households in Ward 6, and not a “generally unclear case for future investment” as alleged by the ANC. The Applicant will also contribute funds to Jefferson, which is the school located directly adjacent to the PUD Site and with whom the Applicant has engaged extensively. Amidon and Richard Wright have not been involved in the PUD process at all and have not identified a need for a contribution. Accordingly, the Applicant maintains its commitment to contribute \$100,000 to Habitat, which is fully consistent with the requirements of Subtitle X § 305.3, which permit monetary contributions so long as no Certificate of Occupancy is issued for the project until the Applicant provides proof that the items or services funded have been or are being provided.

(5) Management of Contribution for Public Art

The ANC condition would have prohibited the Applicant from extracting additional fees associated with paying a management company to coordinate the proffered contribution to MYLY for public art.

As stated in the Applicant’s initial ANC response letter, the Applicant will make the contribution directly to MYLY without using a management company. Accordingly, the ANC’s Second Letter acknowledged that this condition was satisfied. (Ex. 96, 97.)

(6) Construction Management Plan (“CMP”)

The ANC continues to state that the Applicant should enter into a CMP with Jefferson, Town Square Towers, The Wharf, and the Banks.

The Applicant provided a lengthy discussion explaining that it would abide by the CMP already submitted to the case record and would continue to work with ANC 6D to resolve any outstanding concerns not addressed by the CMP. (Ex. 96, 28E.) The Applicant also explained that it was finalizing a separate and specific agreement with Jefferson, the closest neighbor to the PUD Site, and that the developer for The Wharf and the Banks has already submitted its support for the project and has not requested a CMP. (Ex. 68.) Moreover, neither the Zoning Regulations in general, nor the PUD regulations specifically, address the construction of buildings. Indeed, issues pertaining to construction impacts are not relevant to the Commission’s review. Construction issues are governed by the Construction Codes, and the Applicant will comply with all

applicable regulations within the Construction Code and with all other laws and regulations regarding building construction. Accordingly, the impact of construction of the PUD is not a relevant criterion for the Commission to consider. (See Z.C. Order No. 15-29; FF. Nos. 106(e), 109.) Accordingly, the Applicant maintains its position as previously stated regarding establishment of a CMP.

Applicant's Justifications For Relief

Consistency with the Comp Plan and Other Public Policies (Subtitle X § 304.4(a))

56. The Applicant asserted that the Application complies with Subtitle X § 304.4(a) because the Project is not inconsistent with the Comp Plan as a whole, including its maps and policies, and other adopted public policies and active programs related to the PUD Site, as set forth in FF Nos. 57-89 below.

Framework Element - GPM

57. The Project is not inconsistent with the PUD Site's designation on the GPM as a Neighborhood Conservation Area because the Project is compatible with the diversity of land uses and building types found in the surrounding area, as well as with the scale and character of the neighborhood, both existing and as envisioned in the SW Plan. The Project will contribute to addressing citywide housing needs on a site that is in close proximity to Metrorail and numerous neighborhood services and amenities, which is consistent with the guiding philosophy in Neighborhood Conservation Areas. The Project consists of a medium-density development that is not inconsistent with the FLUM and Lower Anacostia Waterfront / Near Southwest Area Element policies, consistent with the recommendations and design guidelines in the SW Plan, and is responsive to the scale, pattern, and character of the immediate context. (Ex. 3H.)
58. The Project is consistent with the SW Plan design guidelines, since the massing and 110-foot building height is consistent with the heights of residential building in the immediate context, which range from 90 to 130 feet. The recessed ground-floor and additional open space provided at street level relate to the surrounding context and establish active pedestrian-oriented street frontages. The publicly accessible green space at the northeast corner of the PUD Site is located at the western terminus of I Street, S.W., which the SW Plan characterizes as an important east-west connector that should provide a beautiful and shaded pedestrian experience. Accordingly, the proposal to incorporate green space on the PUD Site is fully consistent with the SW Plan's vision for the important corridor. (Ex. 3H.)
59. The Project design is consistent with the PUD Site's location in a Resilience Focus Area on the GPM as it will incorporate a number of strategies from the DOEE Climate Ready DC Resilient Design Guidelines, it will be designed to satisfy the LEED-H Multifamily Midrise v4 Gold rating standard, and it will incorporate additional sustainability elements such as innovative stormwater management techniques, high performance mechanical and ventilation systems, and high performance building envelope systems. (Ex. 28, 28B.)

Framework Element - FLUM

60. The Project, including the requested Zoning Map amendment to the MU-10 zone, is not inconsistent with the PUD Site's designation on the FLUM as Mixed Use (Medium Density Commercial / Medium Density Residential). (Ex. 3H.)
61. The MU-10 zone is expressly referred to in the Framework Element as being consistent with the Medium Density Commercial land use category, which 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; Ex. 3H.)
62. Although the PUD Site's FLUM designation does not expressly favor one use over another, the policy guidance provided in the Comp Plan Elements and the SW Plan consistently promote the need for more housing to help address the District's housing needs. The MU-10 zone is consistent with this guidance as it generally favors residential use over commercial use by limiting non-residential density. Specifically, under a PUD the MU-10 zone permits an overall maximum density of 8.64 FAR, of which up to 4.02 FAR may be devoted to non-residential uses. Consistent with this guidance, the Project favors residential use by devoting 100% of the Project's density to residential use. (Ex. 3H.)
63. With respect to height, the Project's 110-foot building height is consistent with other residential buildings immediately surrounding the PUD Site. Specifically, buildings at The Wharf immediately across Maine Avenue are 130 feet and 110 feet in height. The Banks development located immediately across 7th Street, and TST located to the north on 7th Street, are both 90 feet in height. (Ex. 3H.)
64. Accordingly, the Project's density and height are not inconsistent with the PUD Site's FLUM designation as follows:
 - Framework Element Guidance: 4.0 FAR to 6.0 FAR, with greater density possible with IZ or a PUD; no height limit identified;
 - MU-10 PUD Permits: 8.64 FAR and 110 ft. building height; and
 - Proposed Project: 8.21 FAR and 110 ft. building height. (Ex. 3H.)
65. Based on the foregoing and the documents in the case record, 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 Comp Plan policies as set forth below.

Lower Anacostia Waterfront / Near Southwest Area Element

66. The Project is not inconsistent with the policies set forth in the Lower Anacostia / Near Southwest Area Element. The Project will redevelop an underutilized site in close proximity to transit, the waterfront, and numerous neighborhood amenities including parks, museums, and retail, with a new development containing approximately 195 new residential units. Consistent with the FLUM and recommendations of the SW Plan, the Project will bring greater residential development to the Maine Avenue corridor. (AW-2.5.2.) The Applicant will devote 15% of the Project’s residential GFA to affordable housing, which far exceeds the amount of affordable housing that would be required under the PUD Site’s existing zoning. (AW-2.5.2, AW-2.5.11.) The Project will provide more affordable housing than would be required under a standalone MU-10 map amendment that was subject to IZ Plus. Finally, the housing within the Project, including the affordable housing units, will comprise a range of unit types. (Ex. 3, 3H.)
67. Based on the foregoing, the Application asserted that the Project would advance the following policies of the Lower Anacostia / Near Southwest Area Element: AW-1.1.5: Flood-Resilient and Climate-Adaptive Development; AW-1.1.6: Resilient Affordable Housing; AW-2.5.2: Southwest Neighborhood Plan; AW-2.5.4: An Equitable and Inclusive Southwest Neighborhood; AW-2.5.7: Southwest Sustainability and Resilience; AW-2.5.8: Southwest Arts and Culture; AW-2.5.11: Affordable and Family-Sized Housing in Southwest. (Ex. 3H, 81A1.)

Citywide Elements

Land Use Element

68. The Application will help achieve the goals of the Land Use Element and will not be inconsistent with the Land Use Element overall. 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.) The Project will deliver approximately 195 new dwelling units, and approximately 15% of the residential GFA will be dedicated as affordable housing. The residential use is appropriate for the PUD Site’s location along the edge of the Central Employment Area (“CEA”) and proximity to transit. (LU-1.4.4, LU-1.4.6.) Consistent with the FLUM, the proposed MU-10 zone will facilitate the construction of new multi-family housing, including affordable housing at 50% to 60% of the MFI in a transit- and amenity-rich area of the city. (LU-1.4.C.) (Ex. 3H, 81A1.)
69. The Project also advances the District’s goal to increase housing supply, particularly affordable units, with the parallel goals to advance sustainability, promote arts and culture, and protect neighborhood character. The approximately 195 new market rate and affordable housing units will greatly assist in achieving the housing goals for the Lower Anacostia Waterfront / Near Southwest Planning Area, and the Applicant’s commitment to achieve LEED Gold will advance District environmental and energy policies. The Project will also incorporate public art. (LU-2.3.12.) The height and massing of the Project are consistent with the surrounding context, and the GPM and FLUM. Specifically, the 110-foot building height is within the range of 90-, 110-, and 130-foot residential buildings that surround the PUD Site. Finally, as shown on the Applicant’s shadow study, the building height will not have an unacceptable impact on Jefferson and will not cast

shadows on the Jefferson recreation fields to the north of the school building. The vast majority of shadows created by the Project will be cast on Jefferson's parking and loading areas located at the rear of the school building. (LU-2.1.3.) (Ex. 3H, 81A1.)

70. Based on the foregoing, the Application asserted that the Project would advance the following Land Use policies: LU-1.2.4: Urban Mixed-Use Neighborhoods; LU-1.4.4: Affordable Rental and For-Sale Multi-family Housing Near Metrorail Stations; LU-1.4.6: Development Along Corridors; LU-1.4.C: Metro Station and Inclusionary Zoning; LU-2.1.1: Variety of Neighborhood Types; LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods; and LU-2.3.12: Arts and Culture Uses in Neighborhoods. (Ex. 3H, 81A1.)

Transportation Element

71. The Application stated that the Project was not inconsistent with the Transportation Element. The Project will establish new transit-oriented development that is in close proximity to Metrorail and other forms of public transportation and bicycle infrastructure. (T-1.1.4, T-1.1.7.) The Project includes various transit-oriented development-related improvements, including the construction of new residential use 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.) The Project will also incorporate place making-strategies through seating and landscaping along 7th Street and Maine Avenue, and through the use of public art. (T-1.4.1.) (Ex. 3H, 81A1.)
72. In addition, the Project integrates bicycle and pedestrian safety considerations, such as incorporating secure indoor bicycle parking and providing exterior short-term bicycle parking to encourage residents, visitors, and employees of the Project to travel by bike. The Applicant will improve the public realm by making new landscape and lighting improvements to enhance the pedestrian experience and general safety of the surrounding area. (T-2.3.1.) Together, these physical improvements to the streetscape will improve bicycle and pedestrian safety in the area. (Ex. 3H, 81A1.)
73. The Project also includes a strong TDM program that reduces the number of vehicle trips and miles traveled and increases the efficiency of the city's transportation systems. (T-1.1.2, T-3.1.1.) As part of the TDM program the Applicant will unbundle the cost of parking from the cost of renting a residential unit, which will help discourage residents from buying or renting parking spaces. (T-3.2.D.) The Project will also include a number of transportation mitigation measures and support facilities that will help address existing transportation issues in the area and improve transportation safety and access. (T-1.1.B.) At the request of the ANC, the Applicant will also restrict residents of the Project from obtaining RPPs. (Ex. 3H, 81A1.)
74. Based on the foregoing, the Application asserted that the Project advances the following Transportation Element policies: T-1.1.2: Land Use Impact Assessment; T-1.1.4: Transit-Oriented Development; T-1.1.7: Equitable Transportation Access; T-1.1.8: Minimize Off-Street Parking; T-1.1.B: Transportation Improvements; T-1.4.1: Street Design for Placemaking; T-2.4.1: Pedestrian Network; T-2.4.2: Pedestrian Safety; T-3.1.1: TDM Programs; and T-3.2.D: Unbundle Parking Cost. (Ex. 3H, 81A1.)

Housing Element

75. The Application stated that the Project helps meet the housing needs of present and future District residents at locations consistent with District land use and housing policies and objectives. The Project will provide approximately 195 new residential units within close proximity to transit, including affordable units reserved for households at the 50% and 60% MFI levels, which will remain affordable for the life of the Project. (H-2.1.6.) The market rate and affordable housing will contribute to the District's housing goals set forth in the Housing Equity Report. (H-1.1.1, H-1.1.3, H-1.2.1, H-1.2.7, H-1.2.11.) The approximately 195 new housing units in the Project represent approximately 2.4% of the overall housing goal for the Lower Anacostia Waterfront / Near Southwest Planning Area. Further, the Housing Equity Report sets an affordable housing goal of 850 units for the Planning Area. The Project will devote 15% of the residential GFA to affordable housing for households earning no more than 50% and 60% of the MFI. The affordable housing within the Project will help the District achieve the affordable housing production goal set by the Housing Equity Report for the Planning Area. (H-1.2.9, H-1.2.F.)
76. The Project will also address citywide housing needs by developing new housing on an underutilized property in a growing and changing mixed-use neighborhood that is developing along the Maine Avenue corridor. The affordable housing will be designed and constructed according to the same high-quality architectural design standards used for the market-rate housing, and the interior amenities, including finishes and appliances, will be comparable to the market-rate materials, durable, and consistent with contemporary standards for new housing. (H-1.1.5.) The Project will also contain housing for larger households, including three-bedroom units. (H-1.1.9, H-1.3.1.)
77. Based on the foregoing, the Application asserted that the Project advances the following Housing Element policies: H-1.1.1: Private Sector Support; H-1.1.3: Balanced Growth; H-1.1.5: Housing Quality; H-1.1.9: Housing for Families; H-1.2.1: Low- and Moderate-Income Housing Production as a Civic Priority; H-1.2.7: Density Bonuses for Affordable Housing; H-1.2.9: Advancing Diversity and Equity of Planning Areas; H-1.2.11 Inclusive Mixed-Income Neighborhoods; H-1.2.F: Establish Affordability Goals by Area Element; H-1.3.1: Housing for Larger Households; and H-2.1.6: Long-Term Affordability Restrictions. (Ex. 3H, 81A1.)

Environmental Protection Element

78. The Project is not inconsistent with the policies of the Environmental Protection Element. As part of the Project, the Applicant will reconstruct the streetscape surrounding the PUD Site, which will include new trees that will add tree canopy, provide shade, improve air quality, provide urban habitat, and add aesthetic value. (E-1.1.2, E-2.1.2.) The Project will also incorporate landscaping, including sustainable landscaping practices, which will enhance and beautify the public rights-of-way, reduce storm water runoff, and strengthen the character of the public realm. (E-2.1.3.) This includes the installation of green roofs that will improve storm water management and climate resilience. (E-4.1.2, E-4.1.3.) Finally, the Project will be designed in accordance with LEED Gold standards. (E-3.2.3, E-3.2.7, E-4.2.1.) (Ex. 3H, 81A1.)

79. Based on the foregoing, the Application asserted that the Project would advance the following Environmental Protection Element policies: E-1.1.2: Urban Heat Island Mitigation; E-2.1.2: Tree Requirements in New Development; E-2.1.3: Sustainable Landscaping Practices; E-3.2.3: Renewable Energy; E-3.2.7: Energy-Efficient Building and Site Planning; E-4.1.2: Using Landscaping and Green Roofs to Reduce Runoff; E-4.1.3: GI and Engineering; and E-4.2.1: Support for Green Building. (Ex. 3H, 81A1.)

Urban Design Element

80. The Project is not inconsistent with the policies of the Urban Design Element. The Project will help achieve the goals of the Urban Design Element through its massing and quality materials that respond to the surrounding context, as well as by providing an on-site pocket plaza with publicly-accessible open space, and through improvements to adjacent public space. (UD-2.2.1, UD-2.2.2.) The 110-foot building height is compatible with existing residential buildings that immediately surround the PUD Site. As shown in the Applicant's shadow study, the Project will not cast shadows on the recreation fields located to the north of Jefferson, and any shadows that are cast will be on parking and loading areas, and on the portion of the school building containing the gymnasium. No classrooms will be impacted by shadows created by the Project. (UD-2.2.7.) (Ex. 3H, 81A1.)
81. To further relate to the surroundings, the Applicant reduced the density of the Project by recessing the ground floor and pulling the massing away from the residential uses to the northeast, which results in additional open space at the ground level. It also designed the building to have strong articulation at the upper floors through variation in façade angles and materials. (UD-4.2.1, UD-4.2.4.) The Applicant designed the ground floor of the Project to be engaging to passersby and to support the programmed residential space that is contemplated along Maine Avenue. The use of high-quality materials at the ground level will elevate the pedestrian experience and facilitate engagement. (UD-2.1.1, UD-4.2.2.) (Ex. 3H, 81A1.)
82. Based on the foregoing, the Application asserted that the Project advances the following Urban Design Element policies: UD-2.1.1: Streetscapes That Prioritize the Human Experience; UD-2.2.1: Neighborhood Character and Identity; UD-2.2.2: Areas of Strong Architectural Character; UD-2.2.7: Preservation of Neighborhood Open Space; UD-3.2.5: Safe and Active Public Spaces and Streets; UD-4.2.1: Scale and Massing of Large Buildings; UD-4.2.2: Engaging Ground Floors; and UD-4.2.4: Creating Engaging Facades. (Ex. 3H, 81A1.)

Potential Comp Plan Inconsistencies

83. In conducting its evaluation, the Applicant identified instances where the Application could be viewed as being potentially inconsistent with certain Comp Plan policies; the result being that while the Applicant did identify a few policies where the Project may be viewed as inconsistent, these potential inconsistencies are far outweighed by the Project's overall consistency with the FLUM and numerous other competing Comp Plan policies relating to land use, housing, transit oriented development, and environmental sustainability. (Ex. 3H, 81A1.)

84. The Applicant stated that the potential policy inconsistencies relate to the conceivable reuse of the existing building on the PUD Site, which was constructed as an office building in the 1980s. While the Applicant could theoretically continue to use the building for office use, the building would need to be fully renovated to be competitive in a lower-tier office market. As such, the proposed Project is potentially inconsistent with the following Economic Development Element 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. Further, given the PUD Site's FLUM designation, location, and the critical need for more housing in the District, the continued office use of the building is no longer the best use for the PUD Site. Rather, redevelopment of the PUD Site in a manner that better utilizes available land area and capitalizes on the PUD Site's proximity to transit and amenities to address citywide housing and sustainability goals far outweighs the continued use of the PUD Site for office purposes. (Ex. 3H, 81A1, p. 31.)

Racial Equity

85. The Application noted that equity is conveyed throughout the Comp Plan where priorities of affordable housing, preventing displacement, and access to opportunity are distinguished. In light of the guidance provided by relevant Comp Plan policies, the Applicant asserted that the Project and related Zoning Map amendment to the MU-10 zone would not be inconsistent with the Comp Plan when evaluated through a racial equity lens. In support of its assertion, the Applicant evaluated the Project's consistency with the Comp Plan through a racial equity lens by applying the Commission's Racial Equity Tool. (Ex. 3H.)
86. The Applicant asserted that the expected goals of the proposed zoning action are as follows:
- Approve a consolidated PUD and related Zoning Map amendment that would result in new housing, including affordable housing and larger-sized units, that is consistent with District housing and sustainability objectives at an underutilized, transit-oriented site that is compatible with the scale and character of the surrounding neighborhood;
 - Permit the following development program:
 - Approximately 195 new housing units;
 - A minimum set aside of 15% of the total residential GFA as affordable housing, with approximately 14% of the residential GFA set aside for households earning no more than 60% MFI and approximately 1% of the residential GFA set aside for households earning no more than 50% MFI;
 - A minimum set aside of 15% of the penthouse habitable space devoted to households earning no more than 50% MFI;
 - Three three-bedroom units at 60% MFI; and
 - Sustainability measures that include LEED Gold Certification and rooftop solar; and
 - Deliver a comprehensive public benefits and amenities package, including, among other things, public art, a contribution to Jefferson, and a contribution to Habitat. (Ex. 81A1.)
87. The Applicant asserted 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;
- Limits economic displacement because:
 - 14% of the base building GFA will be devoted to households earning no more than 60% MFI ;
 - 1% of the base building GFA will be devoted to households earning no more than 50% MFI ; and
 - 15% of the penthouse habitable space will be devoted to households earning no more than 50% MFI ;
- Does not contribute to cultural displacement or loss of belonging or shared neighborhood identity because:
 - The public art proffer will be developed with neighborhood input; and
 - New landscaping and streetscape improvements will foster opportunities for community interaction and engagement.
- Result in positive outcomes for all District residents, regardless of socioeconomic status, with respect to housing because the Project will:
 - Generate approximately 195 dwelling units (market rate and affordable), which represents approximately 2.4% of the housing production goal for the Planning Area, per the Housing Equity Report;
 - Dedicate new IZ units; and
 - Provide three three-bedroom units devoted to affordable housing at 60% MFI, which will accommodate family-sized 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, since the PUD Site is located approximately 0.3 miles from Metrorail and adjacent to the D.C. Circulator and priority bus corridors;
 - Involves the reconstruction of the adjacent streetscape along Maine Avenue and 7th Street that includes landscape and seating;
 - Will provide a protected bicycle lane along 7th Street; and
 - Will install other transportation improvement benefits identified through the DDOT CTR process;
- Result in positive outcomes for all District residents, regardless of socioeconomic status, with respect to employment because the Project will:
 - Create new construction, building maintenance, and 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 outcomes for all District residents, regardless of socioeconomic status, with respect to the environment because the Project will:
 - Be constructed to achieve LEED Gold certification; and
 - Include the installation of green roofs, solar panels, stormwater management improvements, and compliance with the Green Building Act;
- Improve access to community facilities and wellness and education opportunities for all District residents, regardless of socioeconomic status, because:

- The PUD Site is in close proximity to the Southwest Waterfront and other open space areas, parks, educational facilities, the Southwest Library, and the Future Southwest Community Center, and cultural attractions; and
- The Applicant will provide a \$150,000 contribution to Jefferson to help fund curricular resources to support student learning and field trips and excursions that were eliminated during the COVID-19 pandemic; and
- Improve access to amenities and recreational opportunities for all District residents, regardless of socioeconomic status, because:
 - The PUD Site 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. (Ex. 3H, 28, 69E.)

88. Based on the themes of the Commission’s Racial Equity Tool addressed above in FF Nos. 85-87, and as reflected in the Applicant’s submissions and testimony during the public hearing, the Applicant asserted 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 Comp Plan when evaluated through a racial equity lens.

SW Plan

89. The Application is not inconsistent with the SW Plan because the Project: (Ex. 69D.)
- Advances recommendations under the “Model Community” vision by: (SW Plan, MC-4, MC-5, MC-6, MC-7, MC-11; Ex. 69D, pp. 1-2.)
 - Providing new housing where no housing currently exists, including significant new affordable housing that exceeds what would be provided as a matter of right under existing zoning;
 - Incorporating larger sized residential units, including IZ units, to better serve families;
 - Establishing context-sensitive streetscape improvements, landscaping, and open space that provide opportunities for community interaction. Streetscape amenities include benches, bike racks, planters, public art, special paving, and tree boxes, which collectively integrate with the existing street design and create better connections within the neighborhood; and
 - Providing building setbacks to allow for additional space for pedestrian use and enjoyment, and incorporating façade undulation and building setbacks to establish a context-sensitive design that leverages the PUD Site’s location while respecting surrounding uses;
 - Advances recommendations under “Principles 1-8” by:
 - Proposing building height and massing that complement and uphold adjacent and nearby development (P-1.);
 - Achieving design excellence with a dynamic, sustainable building and landscape elements that pique visual interest through distinguished architecture and high-quality materials (P-2.);
 - Promoting variation in building frontages through the use of façade undulation and ground level setbacks that avoid the creation of a “superblock” and establish an

- engaging structure that is appropriately scaled and approachable from all directions (P-3.);
- Enhancing green space through landscape design that includes new bioretention plant beds, special and permeable paving, tree boxes, green roof areas, and other user-friendly green spaces within the urban infrastructure (P-4.);
 - Incorporating sustainable building and site design by achieving LEED v4 Gold and otherwise implementing a holistic and integrative approach to sustainable design that includes innovative stormwater management techniques, high performance mechanical and ventilation systems and building envelopes, bioretention areas, and solar, among others, and incorporating a variety of strategies from DOEE's Resilient Design Guidelines (P-5.);
 - Ensuring that parking is not a detractor by providing all parking and loading on-site, proposing a low parking supply that is entirely below-grade, and providing a new curb cut that will result in a safer pedestrian environment (P-6.);
 - Maximizing transparency of ground floor uses by locating active residential uses on the ground floor and incorporating substantial public space improvements that will promote pedestrian-oriented usage on both street frontages (P-7); and
 - Encouraging connectivity for pedestrians, cyclists, vehicles, and transit by improving the streetscape to enhance the pedestrian experience, constructing a protected bicycle lane on 7th Street, and bringing new landscaping to the area to establish a well-designed and safe urban environment;
 - Advances the SW Plan's Design Guidelines by:
 - Proposing appropriate building height and massing;
 - Achieving design excellence of architectural character;
 - Establishing building setbacks to create views through and around the Project;
 - Developing a new multi-family building with significant new housing and affordable housing;
 - Reducing the "urban canyon" effect by providing substantial new green space, public art, and landscape improvements on both street frontages;
 - Establishing a significant building setback which will provide publicly-accessible open and green space; and
 - Providing additional open space on the roof of the building for residents;
 - Advances the objectives of the "Green Oasis" concept by: (SW Plan; GO-8, GO-11, GO-12, GO-13, GO-14; Ex. 69D, pp. 5-7.)
 - Providing substantial open space along the street frontages with new plantings, trees and tree pits, benches for social engagement, bicycle racks, public art, and other pedestrian-focused features;
 - Reducing stormwater runoff through innovative stormwater management techniques, bioretention and green roof areas, native and adapted plant materials, and permeable paving, among others;
 - Incorporating features to mitigate future flood risk;
 - Maximizing sustainable practices that incorporate elements from DOEE's Resilient Design Guidelines; and
 - Providing EV charging infrastructure;
 - Advances the goal of providing art in the public realm and reinforcing the Southwest's identity as an arts and cultural destination by: (Ex. 69D, p. 7.)

- Contributing \$75,000 to MYLY Design, a local minority-owned, women-owned, certified business entity based in Washington, D.C., which will design, fabricate, and install public art on Maine Avenue, S.W., between 7th and 9th Streets, S.W.; and
- Designing and installing a publicly-accessible art piece within the property line located at the northeast corner of the PUD Site;
- Advances the goals of providing safe pedestrian connections and bicycle infrastructure, and ensuring that Maine Avenue provides an attractive transition from the SW neighborhood to the Wharf by: (VC-4, VC-4, VC-8): (Ex. 69D, pp. 8-9.)
 - Incorporating significant improvements to the public and private spaces adjacent to the building with new wide sidewalks, special and permeable paving, trees and plantings, benches, lighting, and other pedestrian-focused features to improve safety and encourage pedestrian activity;
 - Installing a new protected bicycle lane on 7th Street that will include pavement markings and barriers to enhance cyclist safety and improve circulation patterns; and
 - Enhancing the corner of Maine Avenue and 7th Street by providing ground floor open space, building articulation, and significant new streetscape improvements that will create a hospitable environment for residents of the building and visitors to the neighborhood.
- OP also found that the Project was not inconsistent with the SW Plan, stating in its Setdown Report, dated May 2, 2022, that the Project incorporates the SW Plan’s Design Guidelines by providing an attractive building exhibiting unique architecture; incorporating façade articulation and an interesting pedestrian experience; including green roof and landscaping; constructing the building to LEED Gold; and locating parking below-grade. (See Ex. 14, pp. 1, 13-14.) OP also stated that the SW Plan makes several recommendations that would be furthered by the Project, including (i) prioritizing affordable units above the IZ requirement, including providing three-bedroom units; (ii) increasing the number of benches along sidewalks through the Southwest neighborhood; (iii) increasing tree canopy in the Southwest Planning Area; and (iv) encouraging the installation of electric vehicle charging stations; and (Ex. 14, p. 14.)
- In its Hearing Report, dated September 6, 2022 and in its Supplemental Report, dated November 7, 2022, OP continued to find that the Project would not be inconsistent with the SW Plan, including the design principles of the SW Plan. (Ex. 35, pp. 1, 8-9; Ex. 74, pp. 1, 5.) OP also testified at the public hearing that the Project would “satisfy[] the southwest small area plan’s design and affordability guidelines.” (See November 14, 2022 Tr. at p. 95, 98-100.)

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

90. The Applicant asserted that the Application complied with Subtitle X § 304.4(b), which requires that a PUD not create any potential adverse impacts that cannot not be mitigated or balanced out by public benefits, as follows:

- The Project will not result in unacceptable impacts on the surrounding area or on the operation of city services and facilities, and will instead have a favorable impact on the surrounding area. The Project will transform an underutilized office site into a new

residential building that is compatible with immediate and surrounding uses. The Project involves critical improvements to the adjacent streetscape and significantly improved conditions for pedestrian, vehicular, and bicycle traffic. The Project will benefit the area by contributing a significant number of new residential units, including affordable housing units, in an area designated for medium density uses; (Ex. 3.)

- The Applicant evaluated the potential impacts of the Project as it relates to land use, transportation, housing, environmental protection, economic development, urban design, community services and facilities, educational facilities, and infrastructure, and found that for each topic area the potential impacts would be favorable or capable of being mitigated. (Ex. 3; 81A1.) Various District agencies also reviewed the Project and determined that it would not have any unacceptable impacts on land use, arts and culture, economic development, and urban design (favorable recommendation from OP); transportation (no objection letter from DDOT); housing (no objection received from DHCD); historic preservation (no objection received from HPO); environmental protection (no objection received from DOEE); parks, recreation, and open space (no objection received from DPR); community services and facilities (no objection received from DPR, DCPL, or FEMS); educational facilities (no objection received from DCPS); and infrastructure (no objection received from DC Water, WMATA, or Washington Gas). (Ex. 81A1, pp. 35-37.)
- The potential transportation impacts of the Project were specifically analyzed in the Applicant's CTR Report, which was prepared in coordination with and reviewed by DDOT. (Ex. 26A.) The CTR Report found that the Project will not have any adverse impacts on the roadway network;
- In order to mitigate any adverse impacts caused by parking in the surrounding neighborhood by future residents of the Project, the Applicant agreed to restrict residents of the building from obtaining RPPs for the life of the Project; (Ex. 69)
- In order to mitigate any adverse impacts to existing trees, the Applicant agreed to implement a TPP during construction of the Project; and (Ex. 69A3, p. C09)
- In order to mitigate any adverse impacts caused by construction activities at the PUD Site, the Applicant agreed to implement a CMP during construction of the Project. (Ex. 28E.)

Zoning Flexibility to be Balanced Against Public Benefits (Subtitle X §§ 304.3 and 304.4(c))

91. The Applicant asserted that the Application complied 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.

Zoning Map Amendment

92. The Application asserted that the Zoning Map amendment from the MU-12 to the MU-10 zone will:
- Not be inconsistent with the Comp Plan, including the FLUM and the GPM;
 - Allow development of the PUD Site to be compatible with the mix of uses, heights, and densities, in the surrounding area; and

- Allow the Project to provide more housing, including affordable housing, than could be provided as a matter-of-right under the existing MU-12 zoning. (Ex. 3, 3H.)

Zoning Flexibility

93. The Application asserted that it met the standard for PUD flexibility (*see* FF No. 35) as follows:

- Lot Occupancy – The request is for a minimal increase (2%) over the maximum 80% lot occupancy permitted and would not result in any adverse impacts;
- Side Yard Width – It would be impractical to provide a compliant side yard due to the irregular, triangular shape of the PUD Site, the undulating building facades, and the location of the WMATA easement. Providing a non-compliant side yard will not result in any adverse impacts; and
- Rear Yard Depth – It would be impractical to provide a compliant rear yard depth due to the irregular, triangular shape of the PUD Site. Providing a non-compliant rear yard will not result in any adverse impacts.

Public Benefits and Amenities

94. The final Application proffered the following categories of public benefits and amenities, as defined by Subtitle X § 305.5:

- (a) **Superior Urban Design and Architecture (Subtitle X § 305.5(a)); Superior Landscaping (Subtitle X § 305.5(b)); and Site Planning and Efficient Economical Land Utilization (Subtitle X § 305.5(c)).** The Project reflects a superior architectural and landscape design compared to what would otherwise be developed as a matter-of-right. The Project includes high-quality building materials and utilizes unique architectural features, setbacks, and articulation that will create a visually interesting building at an underutilized site.

The Project also incorporates superior urban design features such as new and engaging streetscape improvements, plaza spaces, seating areas, street trees and planting beds, special and permeable paving, bioretention areas, and other pedestrian-centric spaces that create better connections within the neighborhood. All of these spaces will be open to the public and will result in a significant upgrade compared to the existing fenced-off condition. Moreover, the Project represents economical land utilization as it will redevelop the existing vacant office building with a new higher-density residential building.

- (b) **Commemorative Works or Public Art (Subtitle X §305.5(d)).** The Applicant will incorporate public art into the design and program of the Project as follows:
- The Applicant will design and install a publicly-accessible art piece within the property line located at the northeast corner of the PUD Site; and
 - The Applicant will contribute \$75,000 to MYLY Design, a local minority-owned, women-owned, certified business entity based in Washington, D.C., which will design, fabricate, and install public art on Maine Avenue, S.W., between 7th and 9th Streets, S.W.

(c) **Housing that Exceeds the Amount that Would Have Been Required Through Matter-of-Right Development Under Existing Zoning (Subtitle X § 305.5(f)(1)).**

The Project results in the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the SW Plan. The Project will replace an existing office building with approximately 195 new residential units. Given that existing zoning does not require housing, this amount of housing substantially exceeds the amount that could be provided if the PUD Site was developed as a matter-of-right.

Specifically, under the existing MU-12 zone with IZ, the PUD Site could be developed as a matter-of-right with approximately 70,992 square feet of GFA devoted to residential use (3.0 FAR x 23,664 sq. ft. land area). This is compared to the 194,839 square feet of GFA proposed for the Project (8.2 FAR), which is an increase of 123,847 square feet of residential use compared to matter-of-right development (174.5% increase). The Project will also include a mix of unit types, including nine three-bedroom units.

(d) **Affordable Housing that Exceeds the Amount that Would Have Been Required Through Matter-of-Right Development Under Existing Zoning (Subtitle X § 305.5(g)).**

In addition to the creation of new housing, the Project will also produce significant new affordable housing. Specifically, the Applicant will set aside a minimum of 15% of the residential GFA and penthouse floor area to IZ units as follows: (i) approximately 1% reserved for households earning up to 50% of the MFI; and (ii) approximately 14% reserved for households earning up to 60% of the MFI. The Applicant's affordable housing proffer will help foster a mixed-income community on a site where no housing currently exists and that is in close proximity to public transit and numerous neighborhood amenities. In addition, the Project will include a mix of unit types, including three three-bedroom IZ units.

The Applicant's affordable housing proffer represents a substantial increase compared to the amount of affordable housing that would be required for a matter-of-right development in the MU-12 zone. As a matter-of-right (MU-12), the PUD Site would be required to set aside approximately 8,874 square feet of residential GFA to IZ, assuming non-Type I construction, as follows:

- 3.0 FAR with IZ = 70,992 sq. ft. of residential GFA permitted;
- 10% of residential GFA = 7,099 sq. ft. of residential GFA devoted to IZ; and
- 75% of bonus density utilized = 8,874 sq. ft. of residential GFA devoted to IZ.

The 8,874 square feet of IZ is compared to the approximately 29,465 square feet of residential GFA proposed to be devoted to IZ as part of the PUD, excluding the IZ generated by the penthouse. Accordingly, the affordable housing provided in the PUD represents approximately a 20,591 square foot increase (232% increase) in affordable housing compared to what would be provided as a matter-of-right under existing zoning.

Assuming the same size penthouse habitable space on a matter-of-right development, approximately 660 square feet of IZ would be required (10% of 6,599 square feet penthouse space) at 50% of the MFI. However, the Project is providing approximately 1,789 square feet at 50% of the MFI, which is approximately a 171% increase in the amount of affordable housing that would be provided at 50% MFI for matter-of-right development at the Site.

Taking the IZ generated by the base building and penthouse together, the Project will provide approximately 30,455 square feet of IZ, whereas a matter-of-right project with the same penthouse would only provide 9,534 square feet of IZ. This represents an approximately 20,921 square foot increase in IZ (219% increase) compared to matter-of-right development.

In addition, the PUD will include a mix of unit types, including studios, one-bedrooms, two-bedrooms, and three-bedrooms, including nine three-bedroom units, which is consistent with the SW Plan's guidance in Goal MC.6 to provide larger sized units. Providing three-bedroom units is also a public benefit pursuant to Subtitle X § 305.5(f)(3) and the PUD will provide nine three-bedroom units of which three units are IZ units.

In addition to the foregoing, for the life of the Project, the Applicant will ensure that the Project's website includes information directing potential tenants regarding how to apply for IZ units.

- (e) **Environmental and Sustainable Benefits that Exceed the Standards Required by Zoning or Other Regulations (Subtitle X § 305.5(k))**. The Project will be designed to satisfy the LEED-H Multifamily Midrise v4 Gold rating standard. In doing so, the Applicant will implement a holistic and integrative approach to sustainable design, including the incorporation of innovative stormwater management techniques, high performance mechanical and ventilation systems, and high-performance building envelope systems.

In addition, the Applicant will (i) provide 100% electric appliances within all residential units; (ii) provide eight EV charging spaces in the parking garage and ensure that an additional 16 vehicle parking spaces are EV-ready; and (iii) ensure that 10% of the bicycle parking spaces will have access to an electrical outlet for charging. The Applicant will also install a minimum of 925 square feet of solar on the roof of the building.

The Applicant will also incorporate a number of strategies set forth in the DOEE *Climate Ready D.C. – Resilient Design Guidelines*, and specifically those identified in the Resilient Design Strategies Matrix included at p. 36 of the Resiliency Guidelines. The strategies that will be incorporated into the Project are set forth in the Project Resiliency Checklist, which will help to enhance the Project's climate readiness. (Ex. 28B.)

(f) **Streetscape Plans (Subtitle X § 305.5(l)); Superior Landscaping, or Creation of Preservation of Open Spaces (Subtitle X § 305.5(b)).** As recommended in the SW Plan, the Project will include significant new streetscape improvements that create a safe and pedestrian friendly urban environment. On Maine Avenue, bike racks, benches, planter beds, tree boxes, and new concrete sidewalks will be provided. On 7th Street, bike racks, benches, planter beds, tree boxes, bioretention areas, new concrete sidewalks, public art, and an area of special/permeable paving will be provided. The proposed landscape improvements represent the redevelopment of a significant amount of public and private space, with approximately 3,524 square feet of landscaping in public space and approximately 3,520 square feet of landscaping on private property, for a total of approximately 7,044 square feet. The proposed streetscape improvements are valued at approximately \$1 million, of which approximately half is being provided over and above what would otherwise be required for matter-of-right development at the Site. These improvements will leverage the PUD Site's corner location, complement the energy and activity of the surrounding area, and provide a safe and comfortable space for building residents, visitors, and passers-by to enjoy.

(g) **Transportation Infrastructure Beyond that Needed to Mitigate any Potential Adverse Impacts (Subtitle DCMR § 305.5(o)).** The Applicant will implement the following improvements that are being provided as benefits to the PUD and are not needed to mitigate any potential adverse impacts created by the Project:

The Applicant will design, fund, and construct a protected bicycle lane on the west side of 7th Street, S.W., between I Street and Maine Avenue, S.W., as well as any infrastructure determined necessary by DDOT to manage the conflicts between buses and bicycles, subject to DDOT approval. The protected bicycle lane will be limited to pavement markings, concrete barriers, and/or flexipost bollards along the PUD Site's frontage and across the west leg of the intersection of 7th Street and Maine Avenue.

The Applicant will abide by the Loading Management Plan ("LMP"), as agreed to by DDOT, for the life of the Project. A copy of the proposed LMP is included the case record. (Ex. 28C.)

The Applicant will not seek any Residential Parking Permit ("RPP") designations for the Project on streets that would allow residents of the Project to apply for or obtain RPPs, and will also include a rider in all residential leases that restricts residents of the Project from obtaining an RPP.

(h) **Uses of Special Value to the Neighborhood or the District of Columbia as a Whole (Subtitle X § 305.5(q)).**

- Donation to Jefferson Middle School Academy. The Applicant will contribute \$150,000 to Jefferson Middle School Academy ("Jefferson") to be used for the following educational resources, as finally allocated at Jefferson's discretion: (i) supplementary curricular resources to support student learning, particularly for struggling readers and students furthest from academic success; and (ii) field trips

and excursions, particularly because these opportunities were eliminated during the Covid-19 pandemic;

- Donation to Habitat for Humanity. The Applicant will contribute \$100,000 to Habitat to aid in the production of new for-sale affordable housing units in Ward 6, which will be reserved for households earning between 50% and 60% of the MFI. The Applicant's contribution will help subsidize down payment assistance for the future homeowners and/or lower costs of construction;
- Targeted Senior Advertising. The Applicant will advertise the residential units within the Project in traditional rental guides as well as in publications such as The AARP Magazine, Today's Senior Magazine, Inspired Magazine, and other similar publications to specifically target senior citizens as potential residents of the Project. In addition, all units will be outfitted with blocking for installation of grab bars should a resident request their installation; and
- Construction Management Plan. The Applicant will abide by a Construction Management Plan ("CMP") to be in place throughout construction of the Project. A copy of the proposed CMP is included in the case record. (Ex. 28E.)

(Ex. 69E, 93.)

III. RESPONSES TO THE APPLICATION

District Agencies

OP Report and Testimony

95. On May 2, 2022, OP submitted a report (the "OP Setdown Report") recommending that the Commission setdown the Application for public hearing and requesting that the Applicant address the following issues prior to the public hearing: increase its public benefits and amenities package; address how resiliency strategies would be incorporated into the Project; maximize private outdoor space and provide balconies; and clarify that the requested design flexibility would not impact the number or square footage of IZ units. The OP Setdown report concluded the following: (Ex. 14.)

- The Application is generally not inconsistent with the Comp Plan Elements and Maps and the SW Plan;
- The proposed rezoning from the MU-12 to the MU-10 zone would not be inconsistent with the Comp Plan's maps. The proposed zone would allow essential neighborhood-serving commercial uses and residential uses, including market rate and affordable dwelling units. The PUD Site's FLUM designation is equally consistent with the MU-10 zone and the MU-12 zone. The MU-10 zone would allow for additional density and would generate more affordable residential units;
- The Neighborhood Conservation Area Policy Map designation allows for compatible redevelopment, including mixed-use buildings that are compatible with the existing scale, natural features, and character of the area, which would be supported by the MU-10 zone;
- The MU-10 zone has the potential to create significantly more residential units than the current zone, increasing the total supply of housing units in the Planning Area, which could help alleviate the pressure on housing costs overall;
- The proposed PUD with a related MU-10 map amendment would not be inconsistent with the Comp Plan when evaluated through a racial equity lens and would advance

- racial equity goals. The proposal has the potential to provide up to three times more affordable housing than a matter-of-right project;
- The proposed PUD and map amendment would create significant additional affordable housing. A stand-alone map amendment with IZ Plus from the existing MU-12 zone to the MU-10 zone would require a set-aside of approximately 20% (70% of bonus density utilized), which would result in approximately 20 dwelling units. The potential affordable housing units that could be created under the requested MU-10 zone with a PUD is higher than other rezoning scenarios and would result in deeper affordability as it would be available to households earning no more than 60% MFI. Making room for affordable housing has the potential to benefit non-white populations who on average have lower incomes than white residents;
 - The proposed PUD would not result in physical displacement of residents, as the PUD Site does not currently include a residential use. Displacement due to housing cost increases should not occur due to the level of affordable housing that would be provided by the Project;
 - The proposed development is not inconsistent with the land use, transportation, housing, environmental protection, economic development, urban design, and arts and culture policies of the Citywide Elements of the Comp Plan;
 - The proposed PUD is located in the SW Plan, which is organized around the following seven core concepts:
 - (1) Model Community;
 - (2) Green Oasis;
 - (3) Thriving Town Center;
 - (4) Modernist Gem;
 - (5) Arts and Culture Destination;
 - (6) Optimized District Parcels; and
 - (7) Vibrant Connections;
 - The Project would incorporate elements consistent with the SW Plan’s Design Guidelines, and the proposed map amendment would further several specific recommendations identified in the SW Plan, including prioritizing affordable units above IZ requirements and providing three-bedroom units, providing benches along sidewalks throughout the Southwest neighborhood, increasing the tree canopy in the Southwest Planning Area, and encouraging the installation of EV charging stations;
 - The proposed PUD would be consistent with the scale of buildings in the neighborhood, including those on the south side of Maine Avenue that are part of the Wharf development;
 - The proposed PUD would change the zoning to a medium- to high -density mixed-use zone, and on balance, would not be inconsistent with the Comp Plan and would advance the following Comp Plan Citywide and Area Element policies: Land Use: LU-1.2.4; LU-1.2.6; LU-1.2.8; LU-1.4.1; LU-1.4.2; LU-1.4.3; LU-1.4.4; LU-1.4.6; LU-2.2.4; LU-2.4.10, Transportation: T-1.1.7; T-1.4.1; T-2.4.1; T-5.2.2, Housing: H-1.1.1; H-1.1.5; H-1.1.8; H-1.2.1; H-1.2.2; H-1.2.7; H-1.2.9; H-1.2.11, Environmental Protection: E-1.1.2; E-2.1.2; E-3.2.7; E-4.1.2, Urban Design: UD-2.1.1; UD-2.1.2; ; UD-2.1.4; UD-2.2.5; UD-2.4.1; UD-3.2.2; UD-3.3.1; UD-4.2.2; UD-4.2.4, Arts and Culture: AC-2.1.1; AC-2.2.3; AC-2.2.8, Lower Anacostia Waterfront/Near Southwest

Element: AW-1.1.1; AW-1.1.8; AW-2.1.2; AW-2.1.4; AW-2.5.4; AW-2.5.11. These policies work together to support increasing density to permit more housing, including affordable housing, in proximity to transit on an underutilized lot; and

- The PUD would help the District towards attaining its affordable housing pipeline goals as identified in the Housing Equity Report and could help the Planning Area achieve its affordable housing production goal of 850 units by 2025.

96. On September 6, 2022, OP submitted a report (the “OP Hearing Report”) recommending that the Commission approve the Application⁷ and acknowledging the Applicant’s responses to OP and the Commission’s comments from setdown and amendments to the Application resulting from such comments. The OP Hearing Report stated the following: (Ex. 35.)

- A full description of the Comp Plan and analysis of the proposal against its maps and policies was provided in the OP Setdown Report. In general, there have been no changes made to the proposal after setdown that would significantly impact this analysis;
- OP continues to determine that, on balance, the proposal is not inconsistent with the Comp Plan as a whole, including the maps and the policy statements. In particular, the proposal would further policy statements contained in the Land Use, Transportation, Housing, Environmental Protection, Urban Design, and Arts and Culture Citywide Elements, and the Lower Anacostia Waterfront/Near Southwest Area Element;
- The additional height and GFA to be provided through the map amendment to the MU-10 zone would allow development of the PUD Site to the density anticipated by the FLUM and GPM and in character with new development along the Maine Avenue corridor. Flexibility would allow for additional height and GFA to support housing where none currently exists;
- OP supports the flexibility for lot occupancy, which would allow the building projections to minimize the massing along the most visible elevations from public space. OP also supports the flexibility from minimum side yard, and rear yard requirements as the PUD site’s irregular shape and the WMATA easement limit the width and depth of any proposed development on the site. Light and air to abutting Jefferson would not be substantially diminished and there are no residential or full classroom structures belonging to the school in the immediate vicinity of the rear and side yards. The Applicant provided a shadow study and the results indicate that shadows would mainly affect the open basketball court area and enclosed gym on the school property, primarily during the winter. As such, OP supports the flexibility requests due to the PUD Site’s constraints and the minimal impact shadows would have overall; (Ex. 28A2, Sheets 041-046.)
- The PUD design would satisfy the SW Plan Design Guideline principle #2. *Promote variation in building frontages along streets with continuous massing* because the proposed design includes articulation on the facades that would provide an interesting pedestrian experience and overcome the site’s disadvantages;

⁷ OP suggested that the Applicant amend the proposal to include the proposed 80% MFI units in with the 50% or 60% MFI units, to which the Applicant agreed.

- The Project’s benefits, amenities, and proffers would appear to be commensurate with the related map amendment and other requested flexibility through the PUD; and
 - A comprehensive racial equity analysis is included in the OP Setdown Report. In particular, the proposed PUD and map amendment would create significant additional affordable housing through the provision of 15% IZ. Further, the proposal would not result in the direct displacement of existing residents as there are no residential units on the site.
97. The OP Hearing Report also stated that (i) OP held an interagency meeting on July 19, 2022, to which it invited representatives from all notified agencies to participate, including DOEE, DDOT, DC Water, and DPR; and (ii) the Applicant also met separately with DDOT and WMATA to discuss the relevant aspects of the Application. The OP Hearing Report noted that the Applicant submitted responses to the concerns expressed at the interagency meeting. (Ex. 28.)
98. On November 7, 2022, OP submitted a Supplemental Hearing Report (the “OP Supplemental Report”) that stated the following: (Ex. 74.)
- OP continues to recommend approval of the PUD and related zoning map amendment, as amended by the Applicant in response to the Commission’s and the community’s concerns. On balance, the proposed development remains not inconsistent with the Comprehensive Plan text and maps and the SW Plan;
 - OP supports the revisions to the building design, including the decrease in density, lot occupancy, and unit count, and the conversion of the ground floor retail space to residential units. The revisions also include accessible on-site open space, which would create a visible sense of space and place typical of SW apartment buildings, and consistent with the SW Plan’s vision;
 - The Project’s increase in affordable housing could not be realized with a building within a lower density zone or as currently exists;
 - The proposed MU-10 zone is not inconsistent with the Comp Plan’s designation for the site and the Project would provide housing, including affordable units where none currently exists on a high land value site/location. A lower building height would not provide comparable number of IZ units dedicated to households at 50% and 60% MFI, which represent very low-income households on the DHCD’s income scale of affordability;
 - The art installation will be directly managed by the design team originally involved with the landscape recommendations for the SW Plan and with experience of public art in the neighborhood;
 - The direct contribution to Habitat would benefit District households at 50% and 60% MFI who would not qualify to purchase a new home in Ward 6, which has a high median home value;
 - OP supports the Applicant’s increased contribution to Jefferson for the specific needs identified, which will benefit the low-income students of the neighborhood who attend this school. This is also supportive of equity principles anticipated by the Comp Plan;

- OP supports the additional landscaping that would be an improvement over what exists and what may be provided for a matter-of-right development. This amenity of the PUD is consistent with the goals anticipated under the SW Plan;
- OP is satisfied that the Applicant has thoroughly addressed the issue of whether the Project is not inconsistent with the SW Plan’s vision, based on the Applicant’s submissions that outline how the Project satisfies the SW Plan’s goal for Maine Avenue to provide an attractive transition from the Southwest neighborhood to the Wharf development. OP continues to maintain that the Project as amended is consistent with the SW Plan;
- The proposed CMP would address concerns regarding dust and truck traffic during construction; and
- The proposed bicycle lane on 7th Street will manage conflicts between buses and bicycles.

99. At the November 14, 2022 public hearing, OP testified in support of the Application. In response to questions from the Commission, OP stated that it would not have supported a zoning map amendment to the MU-10 zone without a corresponding PUD for the Property. (November 14, 2022 Tr. at 98.) OP further stated that if it were a map amendment application without a corresponding PUD, OP would have supported, at most, a map amendment to the MU-8 zone, which corresponds to a 6.0 FAR. (*Id.* at 102-103.)

DDOT Report and Testimony

100. On September 6, 2022, DDOT submitted a report (the “DDOT Report”) that stated the following: (Ex. 34)

- DDOT has no objection to approval of the Application with the following conditions included in the final order:
 - The Applicant implements the TDM plan as proposed in the August 1, 2022 CTR, for the life of the Project, unless otherwise noted, with the following revision: in the Order, state the specific number of long-term bicycle parking spaces to be provided as horizontal on the floor, cargo/tandem-sized, and served by electrical outlets. They are currently cited as percentages in the TDM Plan; and
 - Prior to the issuance of a Certificate of Occupancy, the Applicant will design, fund, and construct a protected bicycle land on the west side of 7th Street between I Street, S.W. and Maine Avenue, S.W., as well as any infrastructure determined necessary by DDOT to manage the conflicts between buses and bicycles, subject to DDOT approval;
- A CTR with a Traffic Impact Analysis was not required since the Project meets DDOT’s Low Impact Development Exemption criteria in the 2022 Guidance for Comprehensive Transportation Review;
- The proposed TDM plan, as revised, in conjunction with the bike lane construction, is sufficiently robust to encourage non-auto travel and support the low assumed auto mode share;
- The Project will shift the existing curb cut on 7th Street southward, which will provide safer spacing from the I Street intersection; and

- The Project meets or exceeds all zoning requirements and DDOT standards for vehicle parking, bicycle parking, and loading facilities. Accordingly, the proposed LMP is not required to be included as a condition of approval. Instead, one of the TDM Plan conditions requires that the LMP be provided to the site's future transportation coordinator.

101. At the November 14, 2022 public hearing, DDOT testified in support of the Project with the conditions noted above. DDOT also stated that it reviewed the Applicant's supplemental memo regarding trip generation and continued to support the Project despite the small increase. (November 14, 2022 Tr. at 104.)

Office of the Attorney General ("OAG") Report And Testimony

102. On November 8, 2022, the Equitable Land Use Section of the OAG filed a PowerPoint presentation for consideration at the November 14, 2022 public hearing (the "OAG PowerPoint"). (Ex. 75A.) OAG's asserted that the baseline for valuing the Applicant's affordable housing proffer should be the amount of affordable housing required if the Property was developed pursuant to an IZ Plus map amendment to the MU-10 zone. As support for this position, OAG cited Subtitle X § 300.1, and Subtitle X § 305.2 of the Zoning Regulations, and §§ 224.7 and 224.9 of the Comprehensive Plan's Framework Element. OAG compared the amount of affordable housing provided in the Project, to the amount of affordable housing that would be required if the Property was rezoned to MU-10 under the IZ Plus standard and claimed that the amount of affordable housing provided in the Project was less than would be required under that alternative possibility. OAG also asserted the Applicant's proffered public benefits included items that were more properly characterized as mitigations. OAG asserted several of the Applicant's alleged transportation benefits were required conditions of DDOT's support for the Application. OAG further asserted that several other unspecified benefits were required by other sections of the Zoning Regulations or that the Applicant did not provide sufficient evidence to prove that they exceeded those requirements. OAG speculated that the green roof may also be used to satisfy GAR requirements, and the architectural design features did not exceed what would be developed as a matter of right. In support of these arguments, OAG cited Subtitle X § 305.9. OAG concluded the Application therefore did not satisfy the PUD balancing test under Subtitle Z §§ 304.3-304.4. OAG recommended that the Applicant increase its affordable housing proffer of 21% of the residential GFA, based on the IZ Plus formula.

103. At the November 14, 2022 public hearing, OAG testified in opposition to the Application. OAG testified that it believed the baseline requirement for judging PUD applications that include a PUD-related map amendment, should be the minimum amount of affordable housing provided if the Project was developed pursuant to an IZ Plus map amendment without a PUD, which would require a 21% of residential gross floor area set aside. (November 14, 2022 Tr. at 107-109.) OAG presented testimony related to how it believed that set aside should be calculated. (*Id.* at 112-113.) OAG also responded to questions from the Commission about its underlying assumptions.

104. On November 28, 2022, OAG filed a post-hearing statement (the “OAG Post-Hearing Statement”) that supplemented OAG’s testimony provided at the public hearing and made the following assertions: (Ex. 87.)
- OAG reiterated its claim that the appropriate baseline for measuring the value of the affordable housing proffer should be the amount of affordable housing that would be required if the Project was developed as the result of a map amendment to the MU-10 Zone District under the IZ Plus rules, which would result in a set aside of 21% of the residential GFA of the Project;
 - OAG stated that a PUD with map amendment should provide at least the amount of affordable housing that would be required for the bonus density utilized by the PUD; and that its recommended 21% set aside was calculated based on applying the IZ Plus formula to the Project’s proposed bonus density;
 - OAG included calculations based on that recommendation;
 - OAG restated its argument that “the IZ Plus program’s application of a proportional set-aside requirement to map amendments had the effect of fundamentally altering the IZ baseline for PUDs with map amendments.” (Ex. 87 at 2.) Further, “it would be contrary to the Comp Plan’s housing goals, specifically its designation of the creation of affordable housing as a “high priority” public benefit (CP § 224.9) and other District housing policies, for a PUD with a map amendment to provide less affordable housing than a non-PUD map amendment to the same zone, despite gaining significantly more height and density;” and
 - OAG addressed the Applicant and the Commission’s suggestion at the hearing that OAG should have used the MU-8 zone for its calculations based on the Applicant’s assertion that OP would not have supported a non-PUD map amendment to the MU-10 zone, but only to the lower density MU-8 zone, and as such the Commission could not have approved a non-PUD map amendment to the MU-10 zone.

ANC 6D Reports and Testimony

105. The ANC submitted a report dated September 12, 2022, which stated as follows: (Ex. 59.)
- At a duly noticed public meeting on September 12, 2022, with a quorum of Commissioners present, ANC 6D voted 6-0-0 to oppose the Project;
 - The Project violates the spirit, intent, and rationale of the SW Plan because the Project’s proposed height and density are greater than the development in the surrounding area;
 - The Application lacks meaningful community benefits; and
 - The Project will result in future impacts to the surrounding neighborhood, including impacts to traffic, on-street parking, and pedestrian/bicycle safety.
106. The ANC submitted a second report dated November 10, 2022, which stated as follows: (Ex. 82.)
- At a duly noticed special public meeting on November 10, 2022, with a quorum of Commissioners present, ANC 6D voted 6-1-0 to provide conditional support for the Project;
 - The ANC worked with the Applicant following the originally scheduled September 15, 2022 public hearing,, and recognized the additional proffers and design changes that

- will benefit the community that the Applicant made as a result of the continued engagement; and
- The ANC’s conditional support of the Project was based on the following six conditions:
 - (1) The Applicant should provide at least 21% of the residential units (no less than 42 units) as affordable housing units at 60%-80% of the MFI;
 - (2) The Applicant should continue to pare back their FAR so their project falls squarely within the existing required limits;
 - (3) The ANC’s conditional support should in no way be considered altering its commitment to the Southwest Area Plan;
 - (4) The Applicant should consult with a community group selected by ANC 6D on the public art, and any fees associated with management of the public art should be a pro-bono contribution;
 - (5) Rather than providing \$100,000 to Habitat, the Applicant should reallocate this contribution to the PTOs of Amidon-Bowen Elementary School (“Amidon”) and the Richard Wright Public Charter School (“Richard Wright”), and the Applicant should make the contributions immediately upon recordation of the PUD; and
 - (6) The final order shall include an approved CMP between Jefferson, TST, The Wharf, The Banks, and the Applicant; and a dog waste management plan.
107. Commissioner Fredrica Kramer of ANC 6D testified at the November 14, 2022 public hearing, summarizing the issues and concerns raised in the second ANC report. Ms. Kramer testified that the ANC would not support the Application unless the IZ set aside matched the 21% IZ minimum stated by OAG. (November 14, 2022 Tr. at 132-134.)
108. At the public hearing, the Commission requested that the Applicant, the ANC, and OAG make post-hearing submissions on certain enumerated issues.
109. On December 5, 2022, ANC 6D submitted a response to the Applicant’s and OAG’s post-hearing submissions (Ex. 89.) It stated that the ANC continued to believe, as stated in its second report, that the minimum amount of affordable housing that would satisfy the standards of PUD approval is 21% of the residential GFA, in addition to the other conditions stated in the second report.
110. At its December 15, 2022 public meeting, the Commission noted that there were several issues and concerns raised in the ANC reports in the form of “conditions,” and that the Applicant had not fully addressed those conditions. The Commission therefore requested that the Applicant respond in writing to address all of the conditions listed in ANC 6D’s reports, and gave the ANC a chance to respond in turn. The Commission also encouraged the Applicant and ANC to meet to discuss any outstanding issues regarding the Application.
111. On January 12, 2023, the ANC submitted a letter explaining the ANC’s understanding of the Applicant’s acceptance in whole or in part to the ANC’s six conditions of approval noted in its second report, dated November 10, 2022. (Ex. 95.) The ANC’s letter stated its understanding that the Applicant did not accept any of the six conditions as proposed and

requested further clarification from the Applicant for four of the six conditions. The letter also stated that the condition of greatest importance to the ANC was an increase of the affordable housing proffer to 21%. And of equal importance was the ANC's formal confirmation that any final conditional support of the Application would in no way alter its commitment to the SW Plan as the foundation document for all future development in Southwest.

112. On January 19, 2023, ANC 6D submitted a letter stating that the elements of its conditional approval for this case had not been met by the Applicant. (Ex. 97.) The letter also provides a discussion of the ANC's final understanding of the Applicant's position regarding each of its six conditions of approval.

Persons and Organizations in Support

113. Letters or testimony in support of the Application were submitted to the record as follows:
- Thirteen individuals (Ex. 30, 36, 40, 46, 62, 64, 66, 68, and 76-80);
 - Habitat for Humanity (Ex. 69B);
 - MYLY (Ex. 69C);
 - The Westminster Presbyterian Church (Ex. 70); and
 - The Jefferson PTO (Ex. 83)

Persons and Organizations in Opposition

114. Letters or testimony in opposition to the Application were submitted to the record as follows:
- Twenty-three individuals, plus a petition (Ex. 29, 32, 33, 34, 38, 39, 41-45, 47-51, 54-57, 61, 63, 65, and 67);
 - SW Action (Ex. 58); and
 - TST (Ex. 27-27A).
115. The letters and testimony in opposition to the Application express concerns regarding the following:

(a) **SW Plan and Comprehensive Plan**

The Project is inconsistent with the SW Plan and Comp Plan, including that the SW Plan (i) requires 20% affordable units; (ii) identifies the Property as low-density commercial on the FLUM; (iii) prohibits a cascading wall effect on Maine Avenue/M Street; (iv) envisions the SW as a "Green Oasis"; and (v) encourages three-bedroom IZ units. (Ex. 45, 47, 48, 50, 55, 56)

One SW Plan Goal is specifically referenced in Ex. 45, and although the goal is not identified with a cite or number, it is quoted in Ex. 45 as follows: "Southwest will remain an exemplary model of equity and inclusion - a welcoming and engaged community that celebrates and retains a mix of races, ages and income levels and enhances well-being for all amidst neighborhood growth and change."

(b) Alleged adverse effects of the Project

- 1) The Project would result in negative impacts associated with traffic congestion, on-street parking, pedestrian safety, construction noise and dust, interference with the WMATA substation, and the proposed traffic mitigation and construction management plans are insufficient; (Ex. 33, 39, 41-44, 48-51, 54-56, 63, 65.)
- 2) The Project is out of scale with the surrounding neighborhood because of its height and density and would reduce property values; (Ex. 34, 48, 54, 56.)
- 3) The Project would adversely affect Jefferson Middle School by blocking light and air, increasing traffic, and by including windows facing the school; (Ex. 32, 39, 51, 65.)
- 4) There is a lack of residential demand for additional residential development in Southwest as current projects underway will deliver over 1,000 new residential units, and there are currently some vacant units; (Ex. 49.)
- 5) Residents north of G Street complained that the Project would cast shadows and block sunlight on their homes; (Ex. 29.)
- 6) The Project would intensify gentrification in the SW neighborhood; (Ex. 38, 57.)
- 7) The Applicant should manage pet waste; and (Ex. 41, 50, 54.)
- 8) The Applicant should preserve existing heritage trees. (Ex. 48, 50, 54.)

(c) Sufficiency and appropriateness of public benefits

- 1) The Project contains insufficient affordable housing in terms of total amount of affordable housing, affordability level, and the number of three-bedroom units; (Ex. 41, 45, 47-50, 54, 56-58, 61.)
- 2) The Applicant should not provide monetary contributions to the SW BID; (Ex. 55.)
- 3) The retail space in the Project should be neighborhood serving and affordable to neighborhood residents; (Ex. 48, 50, 54, 55.)
- 4) The Project contains insufficient greenspace; and (Ex. 49, 51, 54, 65.)
- 5) The community benefits package is not valuable as a public benefit because (i) the design and landscaping are not valuable public benefits; (ii) the protected bike lane on 7th Street should not count as a public benefit; (iv) the contribution to the E-tricycle fund is not valuable as a public benefit; (v) the targeted advertising for tenants is not valuable as a public benefit. (Ex. 55, 57, 58.)

116. At the November 14, 2022 public hearing, Gail Fast of TST (November 14, 2022 Tr. at 141-143) and Coy McKinney (Id. at 144) testified in opposition to the Application. Ms. Fast indicated she was testifying as the President of TST located at 700 7th Street, S.W. She stated that she appreciated that the Applicant reduced the density of the Project after negotiations, but that she continued to offer only “conditional support” because she agreed with the ANC and OAG that they could not fully support the Project unless it contained a greater amount of affordable housing. She further stated that she believed the Project was too tall and dense, and the public benefits package was not adequate. Mr. McKinney stated that he believed the Project would cause indirect displacement of black residents because it did not include a sufficient amount of deeply affordable housing.

National Capitol Planning Commission (“NCPC”)

117. The Commission referred the Application to NCPC on December 20, 2022. (Ex. 90.) On January 6, 2023, NCPC filed a delegated action by the Executive Director, dated December 29, 2022, stating that the proposed Project would not be inconsistent with the Federal Elements of the Comprehensive Plan nor would it adversely affect any other identified federal interest.

IV. APPLICANT’S RESPONSE TO THE CONTESTED ISSUES

118. The ANC, TST, and individuals in opposition to the Application, and the testimony provided at the public hearing, raised several issues that are categorized and summarized below, to which the Applicant responded as follows: (Ex. 53.)

- **Comment 1:** The Project is inconsistent with the SW Plan and Comp Plan, including that the SW Plan (i) requires 20% affordable units; (ii) identifies the Property as low-density commercial on the FLUM; (iii) prohibits a cascading wall effect on Maine Avenue/M Street; and (iv) the Project would be inconsistent with the vision of the SW as a “Green Oasis.”
 - **Response to Comment 1:** The Applicant provided an extensive evaluation as to how the Project is not inconsistent with the SW Plan and the Comp Plan, and OP agreed with this analysis. (Ex. 3, 3H, 14, 28D, 35, 53 69D.) The Applicant also provided the following specific responses:
 - Only District-controlled sites are encouraged to provide 20% affordable housing under the SW Plan, whereas PUDs are encouraged to prioritize affordable units above the IZ requirement or fewer affordable units but larger in size. (See SW Plan Goals MC-4, MC-6.) The Project provides well over the minimum IZ requirement, as well as three-bedroom units. (Ex. 53.) OP agreed that the increase in IZ over the matter-of-right requirements “could not be realized with a building within a lower density zone or as currently exists” and that the Project “would provide housing, including affordable units where none currently exists on a high land value site/location;” (Ex. 74, p. 3.)
 - The PUD Site is shown as Low Density Commercial at Figure 2.4 in the SW Plan, which is labeled as a 2006 FLUM map. The D.C. Council updated the FLUM during the 2021 Comp Plan update to Mixed-Use (Medium Density Residential / Medium Density Commercial). This higher-density mixed-use designation was done pursuant to an extensive public Comp Plan rewrite process, and was specifically changed to support the creation of a gateway into the community. The proposed Zoning Map amendment to MU-10 is not inconsistent with the current FLUM designation; (Ex. 3, 3H, 14, 28D, 35, 53 69D.) OP agreed with this analysis, stating that the “proposed MU-10 zone is not inconsistent with the Comp Plan’s designation for the site;” (Ex. 74, p. 3.)
 - There is nothing in the SW Plan that prohibits a cascading wall effect on Maine Avenue/M Street. Moreover, the Project does not create a cascading wall along Maine Avenue, and instead has been designed to fully comply with all of the SW Plan’s Design Guidelines; and (Ex. 28D, 53, 69D.)

- The Project is fully consistent with the SW Plan’s vision for a Green Oasis. (Ex. 69D.) (See Ex. 53, pp. 1-3, for full details on the Applicant’s response to Comment 1.) OP also found that the Project “includes significant streetscape improvements... that will serve residents of the development and provide improved access for area residents... the framework and design would respect the design principles of the Small Area Plan, including Design Principle #3 – Enhance green space through landscaped perimeters and internal green or amenity spaces.” (Ex. 35, p. 9.)
- Comment 2: The Project would result in negative impacts associated with traffic congestion, on-street parking, pedestrian safety, construction noise and dust, and would interfere with the WMATA substation.
 - Response to Comment 2: The Project will not result in negative impacts to traffic, congestion, parking, pedestrian safety, construction noise and dust, or with the WMATA substation due to the robust TDM plan, high-quality improvements to the pedestrian realm, the provision of vehicle and bicycle parking that meet minimum requirements, and the installation of a protected bicycle lane on 7th Street. (Ex. 53.) The CTR concluded that the Project will not generate additional vehicle trips during the AM or PM weekday peak hours when compared to the existing office use at the Property, and will generate a nominal number of weekend trips. DDOT agreed with the Applicant’s trip generation analysis. (See Ex. 34, e.g., at p. 2, wherein DDOT stated that the “proposed TDM Plan, in conjunction with the bike lane construction, is sufficiently robust to encourage non-auto travel and support the low assumed auto mode share.”)

The Project will not impact traffic flow along G and 9th Streets specifically, which was referenced by opposition letters, as that intersection is not adjacent to the PUD Site and vehicles originating at the Project would have no reason to travel to that intersection. The relocated curb cut will meet all DDOT standards and will create a safer environment for pedestrians and bicyclists, including Jefferson students. (DDOT Report, Ex. 34, p. 1.) Moreover, a crossing guard is already provided for Jefferson students to ensure safe crossing conditions. The Applicant will be required to submit a Traffic Control Plan (“TCP”) prior to construction, which will provide for safe and efficient movements of pedestrians, bicyclists, and vehicles. The Applicant will be required to comply with all applicable noise regulations and the Noise Control Act during construction. The Applicant has coordinated extensively with WMATA. Any development within WMATA’s “zone of influence” must be reviewed and approved prior to issuance of any building permits for the Project to ensure that it does not propose any danger or negative impacts. (Ex. 53; See Ex. 53, pp. 3-6, for full details on the Applicant’s response to Comment 2.)

- Comment 3: The Project is out of scale with the surrounding neighborhood and would reduce property values.
 - Response to Comment 3: The Project’s height is consistent with the heights of adjacent residential buildings, such that the difference between the proposed 110 foot tall building and the existing adjacent buildings at 90, 100, 110, and 130 feet tall, will be practically imperceptible from the ground level. (Ex. 53, 28.) Based on

findings in the market analysis prepared by RCLCO Real Estate Consulting (the “Market Analysis”), the Project will likely result in increased property values, rather than decreased values. (Ex. 53, pp. 19-35; *see* Ex. 53, pp. 6-8, for full details on the Applicant’s response to Comment 3; *see also* OP Report (Ex. 35, p. 11.) stating that the Project “would have a height and FAR consistent with surrounding projects” and OP Supplemental Report (Ex. 74, p. 3.) stating that a “lower building height would not provide comparable number of IZ units dedicated to households at 50% and 60% MFL.”)

- Comment 4: The Project would block light and air to Jefferson, and would make the school less attractive for prospective parents, which would reduce enrollment and funding.
 - Response to Comment 4: The Project will not block light and air to Jefferson. The Applicant’s shadow studies show that the Project casts minimal shadows on Jefferson, only during winter months, and only on the school’s parking and loading areas, gym, and basketball courts. There is no perceptible increase in shadows created by a 110 foot tall building compared to a 90 foot building. It is also settled law that a property owner is not entitled to the unobstructed passage of light and air or views without an express easement, which does not exist in this case. Moreover, Jefferson is located in an urban area where developments of greater height are visible from its grounds, and it is not unusual for schools in the District to be located in close proximity to taller buildings. (*See* Ex. 53, pp. 8-13, for full details on the Applicant’s response to Comment 4.) Moreover, the PTO submitted a letter in support of the Project stating that it has “a clear understanding of the impacts development can have on the daily operations of the school and the educational experience of its students” and that the PTO has “reviewed the proposed application and reached an agreement with the developer that covers [its] principal concerns of delivering a safe and learning conducive environment for [its] students, particularly during the construction periods.” (Ex. 83.) OP also found that “light and air to the abutting property, Jefferson Middle School, would not be substantially diminished” and that the Applicant “provided a shadow study demonstrating that the project would not have an undue impact on the neighboring Jefferson Middle School” (Ex. 35, p. 6; Ex. 14, p. 11.)
- Comment 5: There is a lack of residential demand for additional residential development in Southwest as current projects underway will deliver over 1,000 new residential units.
 - Response to Comment 5: There is a considerable need for new housing, including affordable housing, in Southwest. Indeed, the Mayor’s Order on Housing establishes a goal of producing 36,000 new homes, including 12,000 homes affordable to low-income residents, by 2025. The Housing Equity Report further indicates that the Planning Area in which the project is located needs to produce 850 affordable dwelling units in order to meet the production goal of 7,960 units by 2025. Accordingly, there is a severe need for more housing and affordable housing in this Planning Area, and the proposed project would further those goals. Additionally, as shown in the Market Analysis despite the increase in inventory in the Southwest/Navy Yard submarket, 90% of new units that have been added to the area since 2018 have been absorbed, and the market demand for new apartments

will continue to increase to meet the supply of existing available and planned residential units in the area. (Ex. 53, pp. 19-35.) Accordingly, there is still a significant demand for new housing in the immediate neighborhood, despite project opponents' statements to the contrary.

- Comment 6: Residents north of G Street complained that the Project would cast shadows and block sunlight on their homes.
 - Response to Comment 6: The Project is not located near G Street and therefore will not cast shadows or block sunlight from those homes. (See Ex. 53, p. 13, for full details on the Applicant's response to Comment 6.)
- Comment 7: The Applicant should not provide monetary contributions to the SW BID.
 - Response to Comment 7: While it is common practice for PUD applicants to provide contributions to BIDs, the Applicant subsequently revised this proffer so that all financial contributions would be provided to the specifically identified organizations. (See Ex. 53, pp. 13-14, for full details on the Applicant's response to Comment 7.)
- Comment 8: The Project would intensify gentrification in the SW neighborhood.
 - Response to Comment 8: The Project is fully consistent with the SW Plan's recommendations to provide a mix of housing, including affordable housing that substantially exceeds the amount required under existing zoning. As stated in the Market Analysis, the rising demand for urban living will be met by increasing supply. (Ex. 53, pp. 19-35.) Rising housing costs is largely caused by market forces, including strained housing supply and increased demand. Increasing supply will help to mitigate housing costs. Increasing the overall housing and affordable housing supply will put downward pressure on market housing prices, thus reducing the impacts of gentrification. (See Ex. 53, pp. 14-15, for full details on the Applicant's response to Comment 8.)
- Comment 9: The Applicant should manage pet waste.
 - Response to Comment 9: Project residents will be expected to abide by all District regulations that require dog walkers to pick up dog waste. (See, e.g., 24 DCMR § 900.)
- Comment 10: The retail space in the Project should be neighborhood serving and affordable to neighborhood residents.
 - Response to Comment 10: The Applicant converted the previously proposed retail space in the Project to residential units.
- Comment 11: The Applicant should preserve existing trees.
 - Response to Comment 11: The Applicant submitted a TPP plan and will be required to receive approval of the TPP by DDOT prior to the issuance of a building permit for the Project. (Ex. 28A2, 69A.)

In addition, the Applicant noted that many of the letters of opposition were submitted by residents who are more specifically opposed to the PUD proposed in Z.C. Case No. 22-06, located to the northwest of the PUD Site, and that many of the comments raised regarding building design, traffic, and shadows do not apply to the Project. Many of such residents are located on the north side of G Street, S.W., which is over 790 feet from the PUD Site, and accordingly the Project is unlikely to have negative impacts on these properties. (Ex. 53.)

119. OAG made four main assertions at the public hearing and in the OAG Post-Hearing Submission, which the Applicant countered as follows: (Ex. 88; *see* FF No. 51.)
- Because the IZ Plus regulations specifically state that IZ Plus “shall not apply to a map amendment that is related to a PUD application” (Subtitle X § 502.2(a)), OAG incorrectly applied the IZ Plus standard in determining whether the proffered affordable housing should be considered a public benefit under the PUD;
 - OAG presented incorrect IZ Plus calculations and erroneously treated building projections and penthouse habitable space as PUD bonus density. The correct analysis for determining whether affordable housing can be considered a public benefit under a PUD is whether the affordable housing exceeds the amount that would be required under existing zoning. (*See* Subtitle X § 305.5(g).) In this case, the proffered affordable housing is well above what would have been required through matter-of-right development under the existing MU-12 zone, and is therefore properly classified as a public benefit. The Applicant provided its calculations (Ex. 88, pp. 2-3.);
 - OAG mischaracterized the Applicant’s assertion at the public hearing, which was intended to state that OP would not have supported a stand-alone map amendment to the MU-10 zone without a PUD. At the public hearing OP confirmed the Applicant’s assertion. Moreover, OAG’s assertion that the Commission would approve a map amendment to the MU-10 zone even if OP opposed the application because the Framework Element identifies the MU-10 zone as being consistent with the PUD Site’s Medium Density Commercial FLUM designation was without merit. In addition, OAG applied the wrong IZ Plus calculations in comparing the proposed PUD to the MU-8 zone, which, when done correctly, demonstrate that the affordable housing proposed under the PUD still exceeds what would be required under an MU-8 IZ Plus development. The Applicant provided its calculations (Ex. 88, p. 4.); and
 - OAG ignored the fact that the Applicant’s affordable housing proffer was only one of many public benefits, and that the standard of review requires the balancing of all the benefits and amenities with the degree of incentives and adverse impacts. In this case, the PUD’s overall benefits and amenities package far outweighs the degree of development incentives and technical zoning flexibility requested.
120. The ANC’s second report, dated November 10, 2022, was in support of the Project with six conditions. The Applicant provided the following responses to the ANC’s stated conditions: (Ex. 82, 96, 98; *see* FF Nos. 54, 55.)
- ANC Condition No. 1: The Applicant should provide at least 21% of the residential units (no less than 42 units) as affordable housing at 60%-80% of the MFI, consistent with OAG’s recommendation.
 - Applicant’s Response to ANC Condition No. 1: As set forth in FF Nos. 51, 54, and 55, OAG’s recommendation to provide 21% affordable housing is inconsistent with the Zoning Regulations, which specifically state that IZ Plus “shall not apply to a map amendment that is related to a PUD application.” (Subtitle X § 502.2(a).) Moreover, OAG presented incorrect IZ Plus calculations in arriving at the purported 21% IZ requirement and erroneously treated building projections and penthouse habitable space as PUD bonus density. The Applicant provided the

correct IZ analysis, which sets forth the amount of affordable housing being provided in the Project that exceeds the amount of IZ that would have been required under existing zoning. (Ex. 88, pp. 2-3; *See* Subtitle X § 305.5(g).)

- ANC Condition No. 2: The Applicant should continue to pare back the FAR so the project falls within the required limits.
 - Applicants Response to ANC Condition No. 2: The Project's proposed density is 8.21 FAR, which is less than the maximum permitted density of 8.64 FAR for a PUD in the MU-10 zone. As it relates to lot occupancy, the Project's request for 82% lot occupancy, instead of 80% lot occupancy, is minimal, was supported by OP, was reduced significantly following the initial public hearing, and will not result in any adverse impacts. Moreover, as thoroughly described by the Applicant at the public hearing, the proposed building design does not result in a lot occupancy of more than 80% on any individual floor of the building.
- ANC Condition No. 3: The ANC's conditional support does not alter its commitment to the SW Plan.
 - Applicants Response to ANC Condition No. 3: The Applicant acknowledges this commitment.
- ANC Condition No. 4: Rather than providing \$100,000 to Habitat, the Applicant should reallocate this contribution to the PTOs of Amidon and Richard Wright, and the Applicant should make the contributions immediately upon recordation of the PUD.
 - Applicants Response to ANC Condition No. 4: The Applicant is committed to making a \$100,000 contribution to Habitat, which will advance the District's goals of providing more for-sale, family-sized affordable housing in Ward 6. The contribution will help subsidize down-payment assistance for future homeowners and/or lower the costs of construction, and will directly benefit District households at 50% and 60% of the MFI who would not otherwise qualify to purchase a new home in Ward 6, which has a high medium home value. Habitat submitted a letter in support of this proposal and is anticipating receipt of the funds. (Ex. 69B.) Moreover, the Amidon and Richard Wright schools have not participated in the subject case, are not impacted by the Project, and have not indicated a specific need that this Project should address. The only school that is impacted by the Project is Jefferson, with whom the Applicant has engaged significantly and has offered a generous contribution. A letter in support of the Project from the Jefferson PTO is included in the record. (Ex. 83.) As it relates to the timing for issuance of the contributions, the Applicant's proposal of demonstrating compliance is consistent with the timing in all other recently approved PUDs and with the Zoning Regulations.
- ANC Condition No. 5: If the Applicant's contribution to MYLY for public art is directed through a management entity, any such involvement should be a pro-bono contribution by the Applicant with no additional fees extracted.
 - Applicants Response to ANC Condition No. 5: The Applicant will make the contribution directly to the artist for the design, fabrication, and installation of the public art. The contribution will not be directed through an entity for management purposes.

- ANC Condition No. 6: The final order should include a CMP with Jefferson, TST, The Wharf, The Banks, and the Applicant, in addition to a dog waste management plan.
 - Applicants Response to ANC Condition No. 6: The Applicant submitted and will abide by a CMP, and all Project residents will be expected to abide by all District regulations that require dog walkers to pick up dog waste. (Ex. 28E; *See e.g.*, 24 DCMR § 900.)

CONCLUSIONS OF LAW

Authority

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

PUD and PUD-Related Zoning Map Amendment

2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
 - (a) *Results in a project superior to what would result from the matter-of-right standards;*
 - (b) *Offers a commendable number or quality of meaningful public benefits; and*
 - (c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*

3. Pursuant to Subtitle X § 304.4, in deciding a PUD application, the Commission must find that the proposed development:
 - (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
 - (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*

4. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the Comp Plan’s purposes as:
 - (a) *to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*

- (b) to guide executive and legislative decisions on matters affecting the District and its citizens;
 - (c) to promote economic growth and jobs for District residents;
 - (d) to guide private and public development in order to achieve District and community goals;
 - (e) to maintain and enhance the natural and architectural assets of the District; and
 - (f) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.
5. Small Area Plans supplement the Comp Plan 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 Zoning Commission through its enactment as part of a Comp Plan amendment, a Small Area Plan provides only supplemental guidance to the Zoning Commission and it does so only to the extent it does not conflict with the Comp Plan. (CP § 224.5.)
6. In determining whether a PUD is not inconsistent with the Comp Plan, the Commission shall balance the various elements of the Comp Plan. 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 (the “McMillan PUD”). (Z.C. Order No. 13-14(6).) In its decision affirming the Commission’s approval of the McMillan PUD, the Court stated the following:

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

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: *"The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission."*
9. Pursuant to Subtitle X § 303.12: *"A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weight the benefits of the PUD."*
10. Finally, pursuant to Subtitle X, § 304.3: *"[i]n deciding a PUD application, the Commission shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case."*

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

11. The Commission concludes that the Application meets the minimum land area requirement of Subtitle X § 301.1, because the PUD Site consists of 23,664 square feet of land area. (FF No. 13.)

Consistency with the Comp Plan and Other Public Policies (Subtitle X § 304.4(a))

12. Based on the case record and the Findings of Fact above, the Commission concludes that the Project, including the PUD and related Zoning Map amendment, is not inconsistent with the Comp Plan and with other public policies and active programs related to the Property when the Comp Plan is considered in its entirety.
13. The Commission concludes that the Project is not inconsistent with the Property’s Neighborhood Conservation Area designation in a Resilience Focus Area on the Comp Plan’s GPM. The PUD site’s Neighborhood Conservation Area designation on the GPM allows for compatible redevelopment with the existing scale, natural features, and character of the area; and the PUD site’s location in a Resilience Focus Area on the GPM encourages

design strategies to incorporate sustainability elements. The Commission finds the Project design compatible with the diversity of land uses and building types found in the surrounding area and the scale and character of the neighborhood, and notes that the Project will incorporate a number of strategies from the DOEE Climate Ready DC Resilient Design Guidelines and satisfy the LEED-H Multifamily Midrise v4 Gold rating standard.

14. The Commission concludes that the Project is not inconsistent with the Property's Mixed-Use Medium Density Commercial/Medium Density Residential designation on the Comp Plan's FLUM. In this case, the Mixed-Use FLUM designation does not indicate a preference for a particular use on the PUD Site; and the proposed MU-10 zone, and the existing MU-12 zone are equally consistent with the PUD Site's Mixed-Use FLUM designation. Further, the proposed MU-10 zone for the PUD Site is expressly referred to in the Framework Element as being consistent with the Medium Density Commercial FLUM category.
15. Nevertheless, the Commission recognizes that the density of the Project (8.21 FAR) is greater than the typical density ranges described for both the Property's Medium Density Residential (1.8 to 4.0 FAR) and Medium Density Commercial (4.0 to 6.0 FAR) designations on the FLUM. (FF Nos. 23, 28.)

However, both designations explicitly contemplate that, "greater density [than these ranges is] possible for Projects when complying with Inclusionary Zoning or when approved through a Planned Unit Development." (CP §§ 227.7 and 227.12.)

In this case, the Project does both. It is a Project that not only complies with IZ requirements, but exceeds those requirements. It is also a PUD, and includes a range of public benefits in addition to affordable housing. The Commission therefore believes the Project is not inconsistent with the FLUM even though the Project exceeds the typical height and density ranges because it includes additional affordable housing that exceeds IZ requirements, and the greater community input and public benefits of a PUD, as is explicitly contemplated in the relevant FLUM descriptions.

The Commission further concludes that to the extent there is any inconsistency, it is outweighed by various Comp Plan policies that support increasing density to permit more housing and affordable housing, in proximity to transit on an underutilized lot and other District goals. The Commission finds that the Project would advance the following Comp Plan Citywide and Area Element policies: Land Use: LU-1.2.4; LU-1.2.6; LU-1.2.8; LU-1.4.1; LU-1.4.2; LU-1.4.3; LU-1.4.4; LU-1.4.C; LU-1.4.6; LU-2.1.3; LU-2.2.4; LU-2.3.12; LU-2.4.10, Transportation: T-1.1.2; T-1.1.4; T-1.1.7; T-1.4.1; T-2.4.1; T-2.4.2; T-3.1.1; T-5.2.2, Housing: H-1.1.1; H-1.1.3; H-1.1.5; H-1.1.8; H-1.2.1; H-1.2.2; H-1.2.7; H-1.2.9; H-1.2.11, Environmental Protection: E-1.1.2; E-2.1.2; E-3.2.7; E-4.1.2, E-4.1.3, E-4.2.1, Urban Design: UD-2.1.1; UD-2.1.2; UD-2.1.4; UD-2.2.5; UD-2.4.1; UD-3.2.2; UD-3.3.1; UD-4.2.2; UD-4.2.4, Arts and Culture: AC-2.1.1; AC-2.2.3; AC-2.2.8, Lower Anacostia Waterfront/Near Southwest Element: AW-1.1.1; AW-1.1.8; AW-2.1.2; AW-2.1.4; AW-2.5.4; AW-2.5.11. (FF Nos. 66-82, 95.)

16. The Commission concludes that the Project is not inconsistent with the Lower Anacostia Waterfront and Near Southwest Area Element, which applies to the Property, for the reasons set forth in FF Nos. 66-67 and 95.
17. In addition to the potential FLUM inconsistencies identified by the Commission and discussed above, two sets of potential inconsistencies with the Comp Plan Citywide Elements were identified in the record of this case.

First, the Applicant identified several potential inconsistencies with Economic Development Element that related to the redevelopment of the property from an office use. (FF No. 84.) Namely, the proposed Project is potentially inconsistent with the following Economic Development Element 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.

The Commission concludes however, that given the PUD Site's FLUM designation, location, and the critical need for more housing in the District, the continued office use of the building is no longer the best use for the PUD Site. Rather, redevelopment of the PUD Site in a manner that better utilizes available land area and capitalizes on the PUD Site's proximity to transit and amenities to address citywide housing and sustainability goals far outweighs the continued use of the PUD Site for office purposes. The Commission therefore concludes that these inconsistencies are outweighed by the various Comp Plan policies that support increasing density to permit more housing and affordable housing, in proximity to transit on an underutilized lot and other District goals. These include: Land Use: LU-1.2.4; LU-1.2.6; LU-1.2.8; LU-1.4.1; LU-1.4.2; LU-1.4.3; LU-1.4.4; LU-1.4.C; LU-1.4.6; LU-2.1.3; LU-2.2.4; LU-2.3.12; LU-2.4.10, Transportation: T-1.1.2; T-1.1.4; T-1.1.7; T-1.4.1; T-2.4.1; T-2.4.2; T-3.1.1; T-5.2.2, Housing: H-1.1.1; H-1.1.3, H-1.1.5; H-1.1.8; H-1.2.1; H-1.2.2; H-1.2.7; H-1.2.9; H-1.2.11, Environmental Protection: E-1.1.2; E-2.1.2; E-3.2.7; E-4.1.2, E-4.1.3, E-4.2.1, Urban Design: UD-2.1.1; UD-2.1.2; ; UD-2.1.4; UD-2.2.5; UD-2.4.1; UD-3.2.2; UD-3.3.1; UD-4.2.2; UD-4.2.4, Arts and Culture: AC-2.1.1; AC-2.2.3; AC-2.2.8, Lower Anacostia Waterfront/Near Southwest Element: AW-1.1.1; AW-1.1.8; AW-2.1.2; AW-2.1.4; AW-2.5.4; AW-2.5.11. (FF Nos. 66-82, 95.)

Second, OAG identified two Comp Plan policies to support its argument that the Zoning Regulations require an affordable housing proffer to provide the amount of IZ that would be required if the Project were being developed pursuant to a map amendment to the MU-10 under the new IZ Plus Zoning Regulations instead of as a PUD with related Map Amendment. The first Framework Element policy states that, "[t]he PUD process is not to be used to circumvent the intent and purposes of the Zoning Regulations or result in an action inconsistent with the Comprehensive Plan." (CP § 224.7.) The second provides that the only "high-priority" PUD benefits are affordable housing – new or preserved" and "anti-displacement measures." (CP § 224.9; FF No. 102.)

For the reasons discussed below in Conclusion of Law 24, the Commission concludes OAG's interpretation of the Zoning Regulations is incorrect, and the correct baseline for measuring the value of the Applicant's affordable housing proffer is the existing matter-

of-right zoning of the Property. Therefore, the Commission concludes the Project is not inconsistent with the policies identified by OAG.

18. Opponents of the Application, including ANC 6D, argued that the Project is inconsistent with the SW Plan because they contend:
- (a) The Commission’s approval should be conditioned on the Project containing a minimum of 21% affordable units;
 - (b) The SW Plan identifies the Property as low-density commercial on the FLUM;
 - (c) The SW Plan prohibits a cascading wall effect on Maine Avenue/M Street;
 - (d) The Project would be inconsistent with the vision of the SW as a “Green Oasis”; and
 - (e) The Comprehensive Plan encourages three-bedroom IZ units.

(FF Nos. 105-12, 115.)

19. The Commission begins by noting that neither the ANC, nor any of the individual opponents, identified any specific provision of the SW Plan, by cite or number reference, that they claim the Project is inconsistent within their submissions to the record. Instead, the ANC claims that the Project “violates the spirit, intent, and rationale” of the SW Plan (FF No. 105.), and one opponent noted that the SW Plan includes a goal that “Southwest will remain an exemplary model of equity and inclusion - a welcoming and engaged community that celebrates and retains a mix of races, ages and income levels and enhances well-being for all amidst neighborhood growth and change.” The opponent did not identify where in the Plan this goal was to be found.⁸ (FF No. 115.)

The Commission therefore concludes that because no actual inconsistent provision in the SW Plan was identified in the record, it could end its analysis here.

However, out of an abundance of caution, the Commission takes notice of the text of the SW Plan as an official government document and concludes that it disagrees with all of the opponents’ assertions for the following reasons:

- (a) The Commission disagrees with the contention that the SW Plan requires a minimum of 20% of the residential units in the Project to be affordable; and that approval should be conditioned on a minimum of 21% affordable units. Instead, the Commission concludes that the Project is consistent with the relevant provisions of the SW Plan.

⁸ The Commission notes that its independent review of the SW Plan indicates that the quoted language is the “Model Community Vision” for the SW Plan. See SW Plan pg. 70. It is not listed in any of the individual “actions” of the SW Plan. ([See https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/swPART2FINAL.pdf](https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/swPART2FINAL.pdf).) The Commission concludes the Project is consistent with the broad language of the model community vision of the SW Plan.

The text of the relevant sections of the SW Plan provide as follows:

MC.4 Retain the neighborhood’s 19 percent of subsidized units by establishing targets that exceed current Inclusionary Zoning thresholds for future development on publicly owned land and in future Planned Unit Developments.

MC.5 Future redevelopment of District-controlled sites should, at a minimum, require at least 20 percent of the units be affordable at varying levels of the area median income (AMI), preferably for longer than 20 years. Determine if a subject site meets the requirements for additional affordable units per the “Disposition of District Land Act of 2014”.

MC.6 As part of a community benefits package through the PUD process for new construction, prioritize affordable units above the Inclusionary Zoning requirement or fewer affordable units, but larger in size (e.g., three-bedrooms) to better serve families.

First, for the entire neighborhood, SW Plan Goal MC.4 sets a goal of 19% of subsidized units. The goal explicitly acknowledges the neighborhood includes both publicly-owned land and future Planned Unit Developments. The SW Plan also explicitly recognizes that the Greenleaf Public Housing Site is located in the neighborhood and includes “almost 900 units,” 100% of which are affordable housing.⁹ The Commission therefore concludes that the SW Plan contemplates that publicly owned sites in the neighborhood will provide a much higher concentration of affordable housing, therefore the expected contribution of the non-public owned sites, including the PUD Site, is less than 19%. The Commission therefore interprets this provision as requiring this PUD to exceed IZ requirements, but not to provide a certain percentage of affordable units. The Commission concludes that the Project is consistent with this goal.

Second, the Commission concludes that SW Plan Goal MC.5 requires only District-controlled sites to provide at least 20% affordable housing under the SW Plan. This Project is not a District-controlled site, but instead is privately owned. (FF No. 7.) Therefore, the Commission concludes this provision is not applicable to the Project.

Third, SW Plan Goal MC.6 provides that future PUD’s, such as this one, must “prioritize affordable units above IZ requirements.”

⁹ See the sidebar entitled “Greenleaf Public Housing” which is shown in highlighted text directly opposite the policies cited above. SW Plan, pg. 75 accessible at <https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/swPART2FINAL.pdf>.

The Commission concludes that the Application is consistent with SW Plan Goals MC.4 and MC.6 because it is a privately-owned PUD that greatly exceeds IZ requirements. (FF No. 94; Conclusion of Law 24.)

Moreover, the Project is also consistent with the goal of SW Plan Goal MC.6 of providing family sized units as the Project provides nine three-bedroom units, three of which are IZ units. (FF No. 94.)

- (b) The Commission disagrees with the contention that the Project is inconsistent with the SW Plan, because of an inconsistency with the FLUM. This is because the FLUM designation referenced in the SW Plan is no longer the correct FLUM designation for the PUD Site.

The Commission acknowledges that the opposition is correct that the PUD Site is shown as Low Density Commercial at Figure 2.4 in the SW Plan, where it is labeled as a 2006 FLUM map. However, the D.C. Council updated the FLUM during the 2021 Comp Plan update to Mixed-Use (Medium Density Residential / Medium Density Commercial). (FF 23.) This update to a higher-density, mixed-use designation was done pursuant to an extensive public Comp Plan rewrite process to support the creation of a gateway into the community. (FF No. 118.)

The Commission therefore concludes that the outdated reference in the SW Plan is not the correct FLUM designation and instead the current FLUM designation is the correct designation to consider in its evaluation of FLUM consistency. The Commission concluded that the Project is consistent with the current FLUM designation. (Conclusion of Law 14.)

- (c) The Commission disagrees with the contention that the Project is inconsistent with the SW Plan because it will “create a cascading wall effect on Maine Avenue.”

The Commission understood this comment to refer to the 110-foot height of the Project, and the opponents’ desire to prevent the taller building heights found in the Wharf development located directly across the street from the Project from moving up Maine Avenue.

While this Project is clearly taller and denser than the current development of Maine Avenue, the SW Plan does not prohibit taller building heights along Maine Avenue, or refer to a “cascading wall effect.” (FF Nos. 58, 118.)

The Commission concludes that the Project’s height is appropriate for the site and consistent with the relevant SW Plan guidance. The increased height and density of the Project is appropriate because it allows for the creation of additional housing and is consistent with the Property’s FLUM designation. (FF Nos. 23, 60-65; Conclusion of Law 14, 15.) The Project includes context-sensitive streetscape improvements, landscaping, and open space. (FF No. 89.) The Project also

complies with the SW Plan’s Design Guidelines, and includes façade articulation, undulation, and a variety of material types, patterns, and colors. (FF Nos. 89, 118.)

The Commission therefore concludes that the height and density is consistent with the SW Plan.

- (d) The Commission disagrees with the contention that the Project is inconsistent with the SW Plan’s vision of the neighborhood as a Green Oasis.

The Commission understood this comment to refer to the lack of a designated park or additional new open space in the Project.

The Commission acknowledges that the Project does not include a designated park, but concludes the Project is nonetheless consistent with the SW Plan’s vision for a Green Oasis because it includes significant streetscape improvements that will serve residents of the development and provide improved access for area residents. (FF Nos. 89, 118.) Further, as a result of reducing the Project’s density, the PUD Site’s northeast corner was converted to publicly-accessible open space with new landscaping, bioretention planters, special and permeable paving, benches, art, and other pedestrian-oriented improvements. (FF Nos. 30, 46, 58.)

- (e) The Commission disagrees with the contention that the Project is inconsistent with the Comprehensive Plan because of an alleged lack of three-bedroom IZ units.

The PUD will provide a mix of unit types, including studios, one-bedrooms, two-bedrooms, and three-bedrooms, including nine three-bedroom units, which is consistent with the SW Plan’s guidance in Goal MC.6 to provide larger sized units. Providing three-bedroom units is also considered a public benefit pursuant to Subtitle X § 305.5(f)(3). In addition, the PUD will also provide three three-bedroom units as IZ units. (FF No. 94.)

The Commission concludes that the market rate and the IZ three-bedroom units are both valuable public benefits of the Project, and the Project is not inconsistent with the Comprehensive Plan or SW Plan because of an alleged lack of three-bedroom units, or three-bedroom IZ units.

Racial Equity Lens Analysis

20. 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.)

21. The Commission concludes that the Project is not inconsistent with the Comp Plan overall 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), and deliver a public benefits and amenities package that would, among other things, provide pedestrian-centric streetscape improvements, a public art component, and new affordable housing with a mix of unit types. 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 publicly accessible space and a public art installation. (FF Nos. 85-88, 94, 95-98.)
22. Based on the evidence provided in the case record, the Commission agrees that the Project is not inconsistent with the Comp Plan as a whole or with other adopted and applicable public policies.

Potential adverse impacts are acceptable, adequately mitigated and/or outweighed by the public benefits (Subtitle X § 304.4(b))

23. Based on the case record and the Findings of Fact above, the Commission concludes that the Project will not result in any unacceptable impacts, and that any potential adverse impacts will be mitigated or are acceptable given the quality of the Project’s proffered public benefits.

The Commission considered the potential adverse effects of the Project alleged by the Opponents and ANC 6D.

The Commission has summarized and condensed the alleged adverse impacts/effects of the Project in the bullet points below, followed by the Commission’s evaluation. For the

purposes of this Conclusion, references to the “Opponents” include issues raised by individual opponents and relevant concerns raised by ANC 6D.

- Traffic.

The Opponents alleged the Project would create additional vehicular traffic, causing several different adverse impacts. (FF Nos. 105, 115.)

The Applicant prepared a trip generation analysis, which DDOT reviewed, and then provided advice and analysis to the Commission. (FF Nos. 40, 100-101.) The Applicant also provided a response to the Opponents’ comments regarding traffic. (FF No. 118.)

The Commission considered this evidence and concludes that the Project will increase traffic, but the increase will be small and will not result in an unacceptable impact.

The Commission believes that some of the impacts of the increase in traffic will be mitigated by the proposed mitigation measures, which include a traffic demand management plan, loading management plan, and a construction management plan. (FF No. 40.)

The Commission concludes that the potential adverse impacts related to increased traffic are acceptable given the quality of the public benefits in the Project.

- On-street parking.

The Opponents alleged the Project would cause an increase in parking demand and a corresponding drop in parking availability. (FF Nos. 105, 115.)

The Project includes vehicle and bicycle parking, and loading facilities that meet or exceed all minimum zoning and DDOT requirements.¹⁰ (FF Nos. 40, 100.)

The Project includes a traffic demand management plan that will partially mitigate parking demand. (FF Nos. 40, 100.) The Project also includes a restriction on residents from obtaining residential parking permits, which will further mitigate parking demand. (FF No. 46.)

The Commission concludes there will be an increased demand for parking spaces as a result of the Project, but that the increased demand will be mitigated, and therefore

¹⁰ The Commission could end its analysis there, as it interprets the PUD standard of review under Subtitle X § 304.3 and 304.4 as requiring a review of the adverse effects/project impacts that are the result of granting the zoning relief of the PUD. In this case, the Project meets or exceeds all parking requirements, and therefore requires no parking relief, so there can be no adverse effects/project impacts related to parking relief. Nonetheless, out of an abundance of caution, the Commission applied a common-sense interpretation of the regulations’ directive to consider the adverse effects/impacts, and considered the likely impact of the Project itself.

concludes the Project will not result in unacceptable impacts associated with on-street parking demand.

The Commission concludes that the potential adverse effects related to increased demand for on-street parking are acceptable given the quality of the public benefits in the Project.

- The Project would result in negative impacts associated with pedestrian safety, particularly with Jefferson Middle School students.

The Opponents alleged the Project would cause pedestrian safety impacts for Jefferson Middle School students arriving and departing from school. (FF Nos. 105, 115.)

The Commission considered the traffic study prepared by the Applicant that showed the Project creates less traffic at the school arrival and departure times than the current office use. (FF Nos. 40, 118.) The Commission also considered that a crossing guard is already provided for Jefferson students to ensure safe crossing conditions. (FF No. 118.) The Project's relocated curb cut on 7th Street will meet all DDOT standards and will create a safer environment for pedestrians and bicyclists, including Jefferson students. (FF Nos. 100, 118.) The Applicant will be required to submit a Traffic Control Plan ("TCP") prior to construction, which the Commission believes will partially mitigate potential adverse effects during the construction phase. (FF Nos. 54, 100, 118.)

The Commission concludes the Project will not result in unacceptable impacts associated with pedestrian safety, and any potential adverse effects related to pedestrian safety are acceptable given the quality of the public benefits of the Project.

- The Project would result in negative impacts associated with construction noise and dust.

The Opponents asserted the Project would result in negative impacts associated with construction noise, dust, and traffic. (FF No. 115.)

The Commission agrees with the position asserted by the Applicant in response to the ANC's comments that neither the Zoning Regulations, nor the PUD regulations specifically, are intended to address the impacts caused by the construction of buildings. (FF No. 55.) Construction issues are governed by the Construction Codes, promulgated as Title 12 of the D.C. Municipal Regulations. They are separate from Zoning Regulations, promulgated as Title 11 of the D.C. Municipal Regulations. Furthermore, the Commission interprets the PUD standard of review under Subtitle X § 304.3 and 304.4 as requiring a review of the adverse effects/project impacts that are the result of granting the zoning relief of the PUD. Accordingly, the Commission believes that its review of impacts/adverse effects in this PUD does not include impacts caused by the construction of the Project.

However, out of an abundance of caution, the Commission nonetheless considered the potential impacts of the construction of the Project in its evaluation of this PUD.

The Applicant will be required to submit a traffic control plan prior to construction which will mitigate potential adverse effects related to construction traffic. (FF No. 118.) The Applicant will be required to comply with all applicable noise regulations and the Noise Control Act during construction which will mitigate potential adverse effects related to construction noise. (FF No. 118.) However, the Commission believes these will not completely mitigate these potential adverse effects.

The Commission therefore concludes the Project will not result in unacceptable impacts associated with construction noise and dust, and that the potential adverse effects related to construction traffic, noise, and dust are acceptable given the quality of the public benefits in the Project.

- The Project would interfere with the WMATA substation.

The Opponents asserted that the Project would interfere with the WMATA substation located nearby. (FF No. 115.)

The Applicant responded that it had coordinated with WMATA, and that it planned to further coordinate with WMATA prior to issuance of any building permits for the Project to ensure that it does not propose any danger. (FF No. 118.)

The Commission believes that any WMATA substation interference or future interference is speculative, and future coordination will be adequate to avoid any problems.

The Commission therefore concludes the Project will not result in unacceptable impacts associated with interference with the WMATA substation, and that any potential adverse effects related to interference with the WMATA substation are capable of being mitigated.

- The Project is out of scale with the surrounding neighborhood and would reduce property values.

The Opponents asserted the Project is out of scale with the surrounding neighborhood because of its height and bulk, causing related potential adverse effects, including a reduction in property values. (FF Nos. 105, 115.)

The Commission considered the potential impacts of the Project's height and density and concludes the height and density of the Project are appropriate for the site.

The Project's height and density are within the range of height and density contemplated in the PUD Site's Mixed-Use FLUM designation, given that the Project

is a PUD that exceeds IZ requirements. (FF Nos. 41, 43, 118, Conclusion of Law 14, 15.) Further, the Project advances various Comp Plan policies. (Id.)

The Applicant submitted evidence showing the height of the surrounding buildings. (FF Nos. 41, 43, 118.) The evidence shows the Project's height (110 feet with a 20-foot penthouse) is within the range of heights of most surrounding buildings, which are 90, 100, 110, and 130 feet tall.¹¹ (FF Nos. 28, 41, 43, 118.)

The Office of Planning submitted reports concluding that the Project would have height and bulk that is consistent with surrounding projects. (FF Nos. 95, 96, 98, 118.)

The Applicant reduced the bulk of the Project to pull it back from the northeast corner of the site to reduce the impact on adjacent neighbors. (FF Nos. 46, 54.)

The Commission concludes the Project will not reduce property values. The Commission was persuaded by the Market Analysis prepared by the Applicant that the Project will likely result in increased property values, rather than decreased values. (FF No. 118.)

The Commission therefore concludes that any potential adverse effects related to scale of the Project are acceptable given the quality of the public benefits in the Project.

- The Project would block light and air to Jefferson, would reduce the amount of open space and setbacks required by current zoning and make the school less attractive for prospective parents, which would reduce enrollment and funding.

The Opponents asserted that the Project will result in a reduction of light and air to Jefferson Middle School, along with a reduction in the required open space on the site, and required setbacks on the rear and side yards, all of which would adversely affect the school. (FF No. 115.)

The Commission agrees with the opponents that there will be adverse impacts related to these issues.

The Commission studied the bulk of the building, its relationship to the surrounding built environment, and the shadow studies prepared by the Applicant to analyze this issue. (FF No. 46.)

The Commission concludes the Applicant's shadow studies show that the Project will cast shadows on Jefferson. The reduction of the setbacks will result in a loss of light and air to the school, and result in a development that is simply bigger and closer to the school than what would be permitted as a matter of right.

¹¹ The exception is the Jefferson school, located to the north of the Site. The Project's impact on the school is discussed separately below.

The Commission concludes the impacts are not unacceptable. Shadows are only cast during winter months, and only on the school's parking and loading areas, gym, and basketball courts. Jefferson is located in an area where developments of greater height are visible from its grounds. (FF No. 118.)

The Commission notes that the Jefferson PTO submitted a letter in support of the Project stating that it has "a clear understanding of the impacts development can have on the daily operations of the school and the educational experience of its students" and that the PTO has "reviewed the proposed application and reached an agreement with the developer that covers [its] principal concerns of delivering a safe and learning conducive environment for [its] students, particularly during the construction periods." (FF No. 118.)

The Commission therefore concludes that the potential adverse effects related to blocking light and air to Jefferson, and the reduction of open space and setbacks, are acceptable given the quality of the public benefits in the Project.

- Residents north of G Street complained that the Project would cast shadows and block sunlight on their homes.

The Opponents alleged the Project would cast shadows and block sunlight on homes north of G Street. (FF No. 115.)

The Project is not located near G Street and therefore will not cast shadows or block sunlight from those homes. (FF Nos. 14, 41, 43, 46, 118.)

The Commission concludes the Project will not cast shadows and block sunlight on homes north of G Street.

- There is a lack of residential demand for additional residential development in Southwest as current projects underway will deliver over 1,000 new residential units, and there are currently some vacant units.

The Opponents alleged the Project would contribute to a glut of new residential development in Southwest. (FF No. 115.)

The Commission believes there is considerable demand for housing of all types in Southwest, as was established in the Mayor's Order on Housing, the Housing Equity Report, and the Market Analysis provided by the Applicant. (FF No. 118.)

The Commission simply disagrees that there is a "glut" of residential development.

- The Project would intensify gentrification in the SW neighborhood.

The Opponents asserted that the Project would intensify gentrification in the SW neighborhood. (FF No. 115.)

The Commission believes the Project will likely result in increased property values, rather than decreased values, based on the Market Analysis submitted by the Applicant. (FF No. 118.) The Commission believes this will contribute to the continued gentrification of the neighborhood.

However, the Commission believes that the gentrification of the neighborhood has been driven by rising housing costs that are largely caused by market forces, including strained housing supply and increased demand. (FF No. 118.)

The Commission concludes that these market forces are not caused by the Project.

The Project would increase the housing supply, and include a substantial amount of affordable housing. (FF Nos. 85-87, 94.)

The Commission believes that increasing the overall housing and affordable housing supply will put downward pressure on market housing prices, thus reducing the impact of the ongoing gentrification.

The Commission therefore concludes that the potential adverse effects related to gentrification are acceptable given the quality of the public benefits in the Project.

- The Applicant should manage pet waste.

The Opponents alleged the Project would create adverse impacts related to pet waste. (FF No. 115.)

Project residents will be expected to abide by all District regulations that require dog walkers to pick up dog waste. (*See, e.g.*, 24 DCMR § 900; FF No. 118.) The Commission recognizes that it is likely that some future residents will not abide by these rules, and this will have potential adverse effects.

The Commission concludes the Project will not result in unacceptable impacts associated with pet waste, and that the potential adverse impacts related to pet waste are acceptable given the quality of the public benefits in the Project.

- The Applicant should preserve existing trees.

The Opponents allege the Project would create adverse impacts related to the removal of and/or damage to existing trees on the Site. (FF No. 115.)

The Commission concludes the Project will not result in unacceptable impacts associated with tree removal or damage.

The Applicant submitted a TPP plan and will be required to receive DDOT's approval of the TPP prior to the issuance of a building permit for the Project. (FF Nos. 41, 90, 118.) The TPP plan shows the Project will result in the removal and replacement of six trees. (FF No. 41.)

The Commission concludes the TPP will mitigate the impact of the tree removal and damage somewhat.

The Commission concludes that the potential adverse impacts related to the loss of or damage to trees are acceptable given the quality of the public benefits in the Project.

Evaluating the Public Benefits (Subtitle X § 304.4(c))

24. The Commission concludes that the Project includes specific public benefits and amenities that are not inconsistent with the Comp Plan or other policies relevant to the PUD Site pursuant to Subtitle X § 304.4(c). The Commission evaluated the benefits proffered by the Applicant, and concludes as follows:

- (a) 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, commemorative works or public art, 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. The Commission concludes all those listed in FF No. 94 are public benefits and amenities, except those discussed below at Conclusion of Law 24(b);
- (b) The Applicant asserted that its commitment to abide by its Loading Management Plan (LMP), and its commitment to restrict future residents from the ability to seek RPP designations that would allow them to legally park on the street in the vicinity of the Project were public benefits of the Project; (FF No. 94(g).)

The Commission concludes these commitments are not public benefits, because it believes they are mitigations of potential adverse impacts of the Project related to traffic and parking.

The Applicant asserted its commitment to abide by a Construction Management Plan (CMP) was a public benefit of the Project. (FF 94(h).) The Commission concludes this is not a public benefit of the Project but rather a mitigation of potential adverse impacts of the Project related to traffic and parking.

- (c) OAG, ANC 6D, and Opponents asserted that the appropriate baseline for valuing the Applicant's affordable housing proffer should be a comparison to the amount of affordable housing that would be required if the Property was developed not as a PUD, but instead pursuant to a IZ Plus map amendment to the MU-10 Zone, and accordingly the PUD's IZ proffer should be increased to at least 21% of the residential GFA in order to qualify as a public benefit. The Opponents also asserted more generally that the Project contains insufficient affordable housing in terms of total amount of affordable housing, affordability level, and the number of three-bedroom units. (FF Nos.102-104, 106, 115(c)(1).)

The Commission explicitly rejects these arguments and instead concludes that the affordable housing provided in the Project is a public benefit, and that it is sufficient to justify approval of the Application:

- (1) The Commission rejects using IZ Plus map amendment requirements as a baseline for an affordable housing proffer because the correct baseline is what would have been required through matter-of-right development under the existing MU-12 zoning.

First, the Commission considers OAG's assertion that the appropriate baseline for valuing the Applicant's affordable housing proffer should be a comparison to the amount of affordable housing that would be required if the Property was developed pursuant to a IZ Plus map amendment to the MU-10 Zone. (FF Nos. 102-104.)

The Zoning Regulations are very clear that comparison to an IZ Plus map amendment is not the relevant standard for a PUD. The IZ Plus regulations specifically state that IZ Plus, "shall not apply to a map amendment that is related to a PUD application." (Subtitle X § 502.2(a).) The Commission made this intentional policy choice when it wrote the IZ Plus regulations because it recognized that PUDs differ from IZ Plus map amendments as they provide public benefits and amenities. The Commission wanted to encourage the wider range of benefits that flow from PUDs, which can be more closely tailored to the needs of the particular site, and receive a higher level of community input.

Instead of IZ Plus requirements, the correct baseline for determining whether an affordable housing proffer can be considered a public benefit under a PUD is whether the affordable housing exceeds the amount that would be required through matter-of-right development under the existing zoning. (Subtitle X § 305.5(g)(1).)

The provision reads in relevant part:

Public benefits of the proposed PUD may be exhibited and documented in any of the following or additional categories: (g) Affordable housing; except that: (1) Affordable housing provided in compliance with the Inclusionary Zoning requirements of Subtitle C, Chapter 10, shall not be considered a public benefit except to the extent it exceeds what would have been required through matter-of-right development under existing zoning. In determining whether this standard has been met, the Zoning Commission shall balance any net gain in gross floor area against any loss of gross floor area that would have been set-aside for Inclusionary Units in compliance with the Inclusionary Zoning requirements of Subtitle C, Chapter 10.

(Subtitle X, § 305.5(g)(1)(emphasis added).)

It is uncontroverted that the existing zoning of the PUD Site is MU-12, not MU-10. (FF No. 20.)

The Commission therefore concludes that the correct baseline for comparison for purposes of assessing the PUD proffer of affordable housing is the amount of IZ that would be required pursuant to a matter-of-right development under the existing MU-12 zoning. The Commission rejects the OAG argument because it is based on an incorrect assumption that the proper point of comparison is a hypothetical map amendment to the MU-10 Zone, which is not the case here.

The Zoning Regulations OAG cited in its submissions to support its argument are not persuasive. Subtitle X §§ 300.1 and 305.2, are general statements that the purpose of PUDs and the public benefits contained in them shall be superior features of the Project. OAG's interpretation of Subtitle X § 305.5(g)(1) is incorrect because OAG erroneously substitutes a hypothetical map amendment to the MU-10 zone as its baseline, when the regulation explicitly states that the correct baseline is the existing MU-12 zoning. The remaining OAG citations are references to the PUD balancing test more generally.

The Comprehensive Plan policies cited by OAG are also not persuasive because they are general statements of priorities, not specific guidance on the issue at hand. The first Framework element policy states that, “[t]he PUD process is not to be used to circumvent the intent and purposes of the Zoning Regulations or result in an action inconsistent with the Comprehensive Plan.” (CP § 224.7.) The second provides that the only “high-priority” PUD benefits are affordable housing – new or preserved” and “anti-displacement measures.” (CP § 224.9; FF No. 102.) For the reasons stated above, the Commission concludes that OAG's interpretation of the Zoning Regulations is simply incorrect. Therefore, the Applicant's assertion of the correct interpretation of the Regulations is not a circumvention of the regulations or inconsistent with the Comprehensive Plan.

Because the Commission concludes that the hypothetical IZ Plus map amendment alternative is not applicable to the Commission's review of the affordable housing proffer, the Commission need not consider or opine on the accuracy of the various IZ Plus analyses and calculations included in the written submissions to the record from OAG and others.

(2) Sufficiency of the Applicant's affordable housing proffer more generally.

Second, the Commission considers the assertion that the affordable housing proffer was insufficient more generally in terms of the total amount of affordable housing, affordability level, and the number of three-bedroom units. (FF No. 115 (c)(1).)

The Commission concludes that the proffered affordable housing is well above what would have been required through matter-of-right development under the existing MU-12 zone, and is therefore properly classified as a public benefit.

The Applicant provided a detailed analysis of all the ways in which the affordable housing provided in the Project exceeds what would have been required through matter of right development under the existing zoning, which is included in this Order at FF No. 94(d). The affordable housing proffer exceeds the amount that would have been required and includes a small increase in the amount of affordable housing at the deeper 50% of MFI level because of the increased size of the penthouse as well as three three-bedroom IZ units.

Accordingly, the Applicant's affordable housing proffer is a substantial increase compared to the amount of affordable housing that would be required for a matter-of-right development in the existing MU-12 zone.

In addition, the affordable housing proffer was only one of many Project public benefits, and the relevant standard of review for PUD's, under Subtitle X §§ 304.3 and 304.4(b) and (c), requires the balancing of all the project benefits and amenities, the degree of development incentives requested, and any potential adverse effects/impacts.

The Commission considered the Applicant's affordable housing proffer, along with all of the public benefits of the Project, and concludes they are sufficient to justify approval of the Application.

- (d) Opponents asserted that the Applicant's proposed donation to the SW BID should not qualify as a public benefit of the PUD. (FF No. 115(d)(2).)

The Commission notes that the Applicant had initially proposed to make a monetary contribution to the SW BID as one of its proposed public benefits of the Project. ANC 6D and Opponents commented that the Applicant should not provide monetary contributions to the SW BID. In response, the Applicant revised this proffer so that all financial contributions would be provided directly to the identified organizations; (FF No. 46.)

- (e) Several Opponents objected to the Applicant's initial plan for retail space on the ground floor of the Project, on the basis that the retail space in the Project should be neighborhood serving and affordable to neighborhood residents. (FF No. 115(d)(2).)

The Applicant modified the design of the Project to remove the ground floor retail space and replace it with residential use. (FF Nos. 30, 118.)

The Commission concludes the objections to the donation to the SW Bid and the retail space on the ground floor are inapplicable to the revised Project;

- (f) Several Opponents objected to the PUD, claiming that the Project contains insufficient greenspace. (FF No. 115(d)(3).)

The Commission concludes that the PUD Regulations do not require a minimum amount of greenspace as a PUD proffer. The Commission further concludes the Project includes landscaping along the street frontages that will contain new plantings, trees and tree pits, along with benches for social engagement, bicycle racks, public art, and others pedestrian focused features. (FF No. 94(a), (f).) The Commission concludes these qualify as public benefits in the category of “[s]uperior landscaping, or creation or preservation of open spaces” listed at Subtitle X, § 305.5(b). The Commission also notes that the PUD Site’s northeast corner was converted to publicly accessible open space with new landscaping, bioretention planters, special and permeable paving, benches, art, and other pedestrian oriented improvements; (FF Nos. 30, 46, 58.)

- (g) Opponents claimed that several of the items in the proffered community benefits package were not valuable as a public benefits, namely (i) the design and landscaping; (ii) the protected bike lane on 7th Street; (iv) the contribution to the E-tricycle fund; (v) the targeted advertising for tenants. (FF No. 115(d)(4).)

The Commission believes the Project is well designed on all three sides, and includes landscaping that exceeds that of a matter-of-right development. (FF Nos. 29-30.) The Commission therefore concludes the Project design and landscaping qualify as public benefits. (FF No. 94(a), (f).)

The Commission believes the protected bike lane exceeds the requirements of a matter of right development and therefore qualifies as a public benefit in the category of transportation infrastructure. (FF No. 94(g).)

The donation to the E-tricycle fund was not listed in the final list of proffered public benefits of the Project. (FF No. 94.)

The Commission believes that advertising that includes information directing potential tenants on how to apply for IZ units is a public benefit in the category of affordable housing; (FF No. 94(d).)

- (h) OAG claimed generally that the Commission should not credit any proffered public benefit that also satisfies requirements of the Zoning Regulations. (FF No. 102.) The only specific proffer mentioned by OAG in this claim was that the green roof may also be used to satisfy GAR requirements.

The Commission notes that the final proffers in the category of “environmental benefits” do not include a reference to a green roof as a public benefit; (FF No. 94(e).)

- (i) OAG claimed that the Commission should not credit architectural design features as a public benefit because the Commission lacked sufficient information to determine whether they exceeded matter of right requirements. (FF No. 102.)

The Commission has studied the plans submitted with the Application and in its opinion believes they exceed what would be developed as a matter-of-right. The Commission

therefore concludes the Application meets the standard of Subtitle X, § 305.2 because it is a benefit to 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; and

- (j) OAG claimed that several of the Applicant's claimed transportation benefits were required conditions of DDOT's support of the Project and therefore should not count as public benefits. (FF No. 102.)

The Commission compared the list of the Applicant's proffered public benefits with the conditions included in DDOT's report. The condition of DDOT support that is also listed in the final list of proffers is designing, funding, and building the protected bicycle lane. (FF Nos. 94(g), 100.) The Commission believes this proffer is in fact a public benefit of the Project. The value of the protected bike lane goes beyond merely mitigating potential adverse effects of the Project, but also improves the transportation infrastructure that will be used by others and is therefore of greater value. The Commission therefore concludes it meets the standard of Subtitle X, § 305.2 because it benefits 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.

Judging, balancing, and reconciling the benefits, development incentives and potential adverse effects (Subtitle X, § 304.3)

- 25. Based on the case record and the Findings of Fact and Conclusions of Law above, the Commission concludes that the Application satisfies the balancing test under Subtitle X § 304.3. The Commission has judged, balanced, and reconciled (a) the public benefits, (b) the development incentives requested, and (c) the potential adverse effects. The Commission concludes that the relative value of the public benefits and amenities of the Project, outweigh the requested development incentives requested as well as the potential adverse effects of the Project for the reasons discussed below:

- (a) Benefits.

The Project contains many valuable benefits, the most critical being the housing and affordable housing provided by the Project.

The Project will result in the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the SW Plan. The Project will replace an existing office building with approximately 195 new residential units. This amount of housing substantially exceeds the amount that could be provided if the PUD Site was developed as a matter-of-right. In addition to the creation of new housing, the Project will also produce significant new affordable housing. Specifically, the Applicant will set aside a minimum of 15% of the residential GFA and penthouse floor area to IZ units as follows: (i) approximately 1% reserved for households earning up to 50% of the MFI; and (ii) approximately 14% reserved for households earning up to

60% of the MFI. The Applicant's affordable housing proffer will help foster a mixed-income community on a site where no housing currently exists and that is in close proximity to public transit and numerous neighborhood amenities. In addition, the Project will include a mix of unit types, including three three-bedroom IZ units. (FF No. 94; Conclusion of Law 23.)

In addition, the Project reflects a superior architectural and landscape design compared to what would otherwise be developed as a matter-of-right. The Project includes high-quality building materials and utilizes unique architectural features, setbacks, and articulation that will create a visually interesting building at an underutilized site. The Project also incorporates superior urban design features such as new and engaging streetscape improvements, plaza spaces, seating areas, street trees and planting beds, special and permeable paving, bioretention areas, and other pedestrian-centric spaces that create better connections within the neighborhood. All of these spaces will be open to the public and will result in a significant upgrade compared to the existing fenced-off condition. Moreover, the Project represents economical land utilization as it will redevelop the existing vacant office building with a new higher-density residential building. (*Id.*)

The Applicant will incorporate public art into the design and program of the Project by designing and installing a publicly-accessible art piece within the property line located at the northeast corner of the PUD Site. The Applicant will contribute \$75,000 to MYLY Design, a local minority-owned, women-owned, certified business entity based in Washington, D.C., which will design, fabricate, and install public art on Maine Avenue, S.W., between 7th and 9th Streets, S.W. (*Id.*)

The Project will also provide environmental benefits, including that the Project will be designed to satisfy the LEED-H Multifamily Midrise v4 Gold rating standard. In doing so, the Applicant will implement a holistic and integrative approach to sustainable design, including the incorporation of innovative stormwater management techniques, high performance mechanical and ventilation systems, and high-performance building envelope systems. In addition, the Applicant will (i) provide 100% electric appliances within all residential units; (ii) provide eight EV charging spaces in the parking garage and ensure that an additional 16 vehicle parking spaces are EV-ready; and (iii) ensure that 10% of the bicycle parking spaces will have access to an electrical outlet for charging. The Applicant will also install a minimum of 925 square feet of solar on the roof of the building. (*Id.*)

Finally, the Project includes the donations to Jefferson, and Habitat for Humanity; (*Id.*)

(b) Development incentives.

The Commission concludes that the Applicant's proposed PUD-related Zoning Map amendment to rezone the Property from the MU-12 zone to the MU-10 zone is appropriate because:

- The proposed MU-10 zone is not inconsistent with the Comp Plan, including the GPM and FLUM designations for the PUD Site, or with the Comp Plan when taken as a whole; (Conclusions of Law 12-22.)
- The PUD Site is currently underutilized given that it is improved with an older office building, and can be better utilized given its close-proximity to transit and neighborhood-serving retail, services, and recreational opportunities; (FF Nos. 13, 15, 29, 66.)
- The greater permitted density allows for the development of additional housing and affordable housing; (FF Nos. 28, 49, 86-87, 94, 95-96, 98)
- The PUD allows the District to realize all of the other PUD benefits of the Project; (FF No. 94) and
- The proposed PUD related Zoning Map Amendment to the MU-10 zone will allow increased height and density on the PUD Site. The Project's proposed height of 110 feet, is a gain of 60 feet when compared to the height permitted in a matter-of-right IZ development under the existing MU-12 zoning (maximum 50 feet), and a gain of 50 feet when compared to the PUD height permitted under the existing MU-12 zone (maximum 60 feet). The Project's proposed density of 8.21 FAR, is a gain of 5.21 FAR when compared to matter-of-right density permitted under existing MU-12 zoning (maximum 3.0 FAR with IZ), and gain of 4.61 FAR when compared to the PUD density permitted under existing MU-12 zoning (maximum 3.6 FAR). (FF No. 34.)

The Commission concludes that the Project's proposed gains in density and height are appropriate for this location and compatible with the scale and context of the surrounding area. The Commission is persuaded that the PUD related Zoning Map Amendment to the MU-10 zone will allow the PUD Site to be developed as a residential building at a height and density that has more potential for substantial new housing, including affordable housing units, than other rezoning scenarios.

The Commission also concludes that the Applicant's requested zoning flexibility to the lot occupancy, side yard, and rear yard requirements are appropriate to overcome the irregular triangular shape of the PUD Site, and that the requested design flexibility is appropriate for the Project (FF Nos. 35-36); and that both are outweighed by the proffered benefits and amenities resulting from the Project.

(c) Potential adverse effects

The Project will create several potential adverse effects. These will include increased traffic and related pedestrian conflicts, increased demand for on-street parking spaces, construction noise and dust, reduction in light and air to neighboring properties, particularly the Jefferson school, potential gentrification, increased pet waste, and impacts on existing trees. (Conclusion of Law 24.)

The Commission concludes these potential adverse effects are outweighed by the proffered benefits and amenities resulting from the Project.

Great Weight to the Recommendations of OP

26. 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).)
27. The Commission finds OP’s analysis of the Application in its Reports, its conclusion that the Application satisfies the PUD evaluation requirements, and its recommendation to approve the Application persuasive and concurs with this judgement. (FF Nos. 95-99.)
28. The Commission found the following OP testimony particularly compelling:
 - The PUD would help the District towards attaining its affordable housing pipeline goals as identified in the Housing Equity Report and could help the Planning Area achieve its affordable housing production goal of 850 units by 2025; (FF No. 95.)
 - The additional height and GFA to be provided through the map amendment to the MU-10 zone would allow development of the PUD Site to the density anticipated by the FLUM and GPM and in character with new development along the Maine Avenue corridor. Flexibility would allow for additional height and GFA to support housing where none currently exists; (FF No. 96.)
 - Light and air to abutting Jefferson would not be substantially diminished and there are no residential or full classroom structures belonging to the school in the immediate vicinity of the rear and side yards. The Applicant provided a shadow study, and the results indicate that shadows would mainly affect the open basketball court area and enclosed gym on the school property, primarily during the winter. As such, OP supports the flexibility requests due to the PUD Site’s constraints and the minimal impact shadows would have overall; (*Id.*)
 - OP supports the revisions to the building design, including the decrease in density, lot occupancy, and unit count, and the conversion of the ground floor retail space to residential units. The revisions also include accessible on-site open space, which would create a visible sense of space and place typical of SW apartment buildings, and consistent with the SW Plan’s vision; (FF No. 98.)
 - The Project’s increase in affordable housing could not be realized with a building within a lower density zone or as currently exists; and (*Id.*)
 - The proposed MU-10 zone is not inconsistent with the Comp Plan’s designation for the site and the Project would provide housing, including affordable units where none currently exists on a high land value site/location. A lower building height would not provide comparable number of IZ units dedicated to households at 50% and 60% MFI, which represent very low-income households on the DHCD’s income scale of affordability. (*Id.*)

Great Weight to the Written Report of the ANC

29. 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).)
30. The Commission took steps to encourage the Applicant to develop the Project in such a way as to respond to the ANC’s issues and concerns. The Commission continued the first scheduled hearing in response to the ANC’s initial submission because it wanted to give the Applicant an opportunity to work with the community and ANC and to further develop the Project in response to the ANC’s stated concerns. (FF No. 5.) The Commission notes that the Applicant made several changes to the Project that addressed some of the concerns. (FF No. 41.) At the conclusion of the second public hearing, and again when it took proposed action to approve the Application, the Commission left the record open so the ANC could more completely comment on the issues raised by the Application and respond to the issues and the evidence presented by the Applicant. (FF Nos. 108, 110.)
31. The Commission considered all of the ANC’s issues and concerns expressed in the five reports and letters the ANC submitted into the record but does not find the ANC’s advice persuasive under the circumstances for the reasons discussed below. (FF Nos. 105, 106, 109, 111, 112.) The Commission considered the ANC’s final letter (FF No. 112.) listing six conditions of approval and a discussion of its final understanding of the Applicant’s position on each condition the most comprehensive and final statement of the ANC’s issues and concerns. The Commission’s responses to the ANC’s six conditions of approval are as follows:

(1) Sufficiency of the affordable housing proffer.

ANC advice:

“The Applicant should provide at least 21% of the residential units (no less than 42 units) as affordable housing at 60%-80% of the MFI, consistent with the recommendation of the Office of the Attorney General (“OAG”).”

Commission response:

The Commission finds that the public benefits and amenities proffered in connection with the PUD outweigh the development incentives and flexibility requested by the Applicant.

With respect to public benefits, the Commission specifically finds that the Applicant’s proffer of 15% of the residential gross floor area as affordable housing, and the

additional related affordable housing benefits described in FF No. 94, as appropriate in this case given the other public benefits and amenities being proffered. (FF Nos. 54-55.)

The Commission therefore disagrees with the ANC that the Applicant must increase the amount of affordable housing in the Project in order to justify approval of the Application.

This Order contains a more thorough discussion of this issue at Conclusion of Law 24.

(2) Reduction in FAR and Lot Occupancy.

ANC advice:

“The Applicant should continue to pare back the FAR so the project falls within the required limits.”

Commission response:

The Commission concludes that the public benefits and amenities proffered in connection with the PUD outweigh the development incentives and flexibility requested by the Applicant, including the FAR and lot occupancy. This Order contains a more thorough discussion of this issue at Conclusion of Law 25.

The Commission notes that the Project’s proposed FAR (8.21 FAR) is within maximum permitted FAR for a PUD in the MU-10 zone (8.64 FAR). The lot occupancy flexibility is relatively small, and its impact is lessened by the fact that every single floor, when viewed individually is within the 80% limit. (FF Nos. 54-55.)

The additional density created by the increased height and FAR allows for the creation of additional housing and affordable housing. (FF No. 94.)

The Commission further notes that the Applicant reduced the Project’s density as a result of community input, and pulled back the density from the northeast corner of the Site where the Project would have the greatest impact on surrounding properties. (FF Nos. 46, 49, 54-55.)

The Commission therefore disagrees with the ANC that the Applicant should pare back the FAR further in order to justify approval of the Application.

(3) Commitment to the Southwest Neighborhood Small Area Plan (“SW Plan”).

ANC advice:

“The ANC’s conditional support does not alter its commitment to the SW Plan.”

Commission response:

The Commission believes the Project is consistent with the SW Plan for the reasons discussed above. This Order contains a more thorough discussion of this issue at Conclusion of Law 18-19.

(4) Reallocation of Monetary Contributions.

ANC advice:

“Rather than providing \$100,000 to Habitat for Humanity (“Habitat”) as a public benefit, the Applicant should reallocate this contribution to the Parent Teacher Organizations of Amidon-Bowen Elementary School (“Amidon”) and the Richard Wright Public Charter School (“Richard Wright”), and the Applicant should make the contributions immediately upon recordation of the PUD.”

Commission response:

The Commission concludes the contribution to Habitat is a valuable public benefit of the Project and does not support a reallocation of the funds.

Habitat will apply the funds “towards the production of 2-3 new for-sale affordable housing units reserved for households earning between 50% and 60% of the MFI in Ward 6.” Thus, the contribution a concrete commitment to Habitat that will directly benefit households in Ward 6, and not a “generally unclear case for future investment” as alleged by the ANC. The Applicant will also contribute funds to Jefferson, which is the school located directly adjacent to the PUD Site and with whom the Applicant has engaged extensively. (FF No. 55.)

As to the timing for issuance of the contribution, the Commission believes the Applicant’s proposal is sufficient because it is consistent with the timing in other recently approved PUDs and with the Zoning Regulations. (FF No. 55.) Further, the timing of the contribution is a condition of this Order.

(5) Management of Contribution for Public Art.

ANC advice:

“If the Applicant’s contribution to MYLY for public art is directed through a management entity, any such involvement should be a pro-bono contribution by the Applicant with no additional fees extracted.”

Commission response:

The Commission notes that the Applicant will make the proffered contribution directly to MYLY, the artist for the design, fabrication, and installation of the public art. The contribution will not be directed through an entity for management purposes. (FF No. 55.)

The Commission therefore believes that this condition was met.

(6) Construction Management Plan (“CMP”).

ANC advice:

“The final order should include a Construction Management Plan (“CMP”) with Jefferson, Town Square Towers (“TST”), The Wharf, The Banks, and the Applicant, in addition to a dog waste management plan.”

Commission response:

The Commission notes that the Applicant will abide by the CMP submitted to the case record on August 26, 2022, although the Applicant and ANC could not agree on terms for the CMP that they found mutually acceptable. (Ex. 28E; FF No. 55.)

The Commission concludes the Applicant's proposed CMP is sufficient under the circumstances. It will establish a community advisory committee to oversee and coordinate community concerns during construction of the Project. The Applicant states it will work with ANC 6D to establish this committee and coordinate quarterly meetings (or on an as-needed basis) between the Applicant and community to discuss and resolve any concerns not already addressed in the CMP. The Applicant states it is also in the process of finalizing a separate CMP with the Jefferson school as it relates to the Project's specific interaction with and impact on the Jefferson property during construction, and it would not make sense to transfer those specific items to other property owners. (FF No. 54.)

The Commission believes these commitments are sufficient to justify approval of the Application.

All project residents will be expected to abide by all District regulations that require dog walkers to pick up dog waste. (FF No. 54.)

The Commission believes this is an adequate safeguard under the circumstances.

DECISION

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

- A consolidated PUD and a related Zoning Map amendment from the MU-12 zone to the MU-10 zone;
- Flexibility pursuant to Subtitle X § 303.1 from the minimum lot occupancy requirements of Subtitle G § 404, the minimum side yard requirements of Subtitle G § 406, and the minimum rear yard requirements of Subtitle G § 405; and
- Such other design flexibility as set forth in the Conditions hereof.

A. PROJECT DEVELOPMENT

1. The Project shall be developed and constructed in accordance with the Plans and Elevations prepared by SK+I Architects dated October 25, 2022, and included in the case record at Ex. 69A, as updated by the drawings and diagrams prepared by SKI+I Architects dated

November 28, 2022, and included in the case record at Ex. 86A (together, the “Approved Plans”) as modified by the guidelines, conditions, and standards herein.

2. In accordance with the Approved Plans, as modified by the guidelines, conditions, standards, and flexibility herein, the approved Project shall have:
 - A maximum building height of approximately 110 feet;
 - Approximately 194,839 square feet of total GFA (8.21 FAR);
 - Approximately 195 residential units;
 - Approximately 78 vehicle parking spaces; and
 - Approximately 84 long term and 12 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 10%;
 - (b) 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;
 - (c) Garage Configuration. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, so long as the number of parking spaces does not decrease below the minimum level required by the Zoning Regulations;
 - (d) Exterior Materials. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed by the Approved Plans;
 - (e) 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, and skylights;
 - (f) Signage. To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the Approved Plans;
 - (g) 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, so long as the total square footage reserved for inclusionary units (15% of the residential GFA as set forth in Decision No. E.3.) is not reduced; that no less than one percent shall be reserved for households at 50% MFI maximum, and that the remainder of the IZ units provided shall be reserved for households at 60% MFI maximum including at least three three-bedroom units; and provided that the location and proportionate mix of the inclusionary units will substantially conform to the layout shown on the Approved Plans; (Ex. 86A, pp. 5-6);
 - (h) Streetscape Design. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division; and

- (i) Sustainable Features. To vary the sustainable elements of the Project, provided the total number of LEED points achieved by the PUD does not decrease below the minimum number specified by this Order, and further provided that the Project meets the minimum 0.2 GAR requirement required under Subtitle G § 407.3.

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 meet the LEED-H Multifamily Midrise v4 Gold rating standard.
2. **Prior to the issuance of a building permit for the Project**, the Applicant shall submit and receive approval from DDOT's Urban Forestry Division of a TPP for the existing street trees located along Maine Avenue and 7th Street, S.W., which TPP shall be substantially similar to the TPP included at Exhibit 69A.

C. CONSTRUCTION REQUIREMENTS

1. **During construction of the Project**, the Applicant shall abide by the terms of the CMP included at Ex. 28E.

D. CERTIFICATE OF OCCUPANCY ("COO") REQUIREMENTS

1. **Prior to the issuance of the final COO for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has:
 - (a) Designed and installed a publicly-accessible art piece within the property line located at the northeast corner of the PUD Site; and
 - (b) Contributed \$75,000 to MYLY Design for the design, fabrication, and installation of public art on Maine Avenue, S.W., between 7th and 9th Streets, S.W.
2. **Prior to the issuance of the final COO for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has incorporated the following into the building's design and operation:
 - (a) Provided 100% electric appliances within all residential units;
 - (b) Installed eight EV charging spaces and installed conduit in the parking garage in an amount that would permit an additional 16 vehicle parking spaces to be EV-ready;
 - (c) Installed electrical outlets in the long-term bicycle storage room to provide electrical charging for at least 10% of the bicycle parking spaces;
 - (d) Installed a minimum of 925 square feet of solar on the roof of the building; and
 - (e) Incorporated the resilient design strategies identified in the Project Resiliency Checklist included at Ex. 28B.
3. **Prior to the issuance of the final COO for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has:

- (a) Installed the improvements shown on Sheets L02, L04, and L05 of Exhibit 69A and Sheet 2 of Exhibit 86A in the public and private spaces along Maine Avenue and 7th Street, S.W., subject to DDOT approval; and
 - (b) Installed the improvements shown on Sheets L02, L04, and L05 of Ex. 69A and Sheet 2 of Ex. 86A in the private space along Maine Avenue.
4. **Prior to the issuance of the final COO for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a protected bicycle lane on the west side of 7th Street, S.W., between I Street and Maine Avenue, S.W., as well as any infrastructure determined necessary by DDOT to manage the conflicts between buses and bicycles, subject to DDOT approval. The protected bicycle lane will be limited to pavement markings, concrete barriers, and/or flexipost bollards along the PUD Site's frontage and across the west leg of the intersection of 7th Street and Maine Avenue, all subject to any modifications required to obtain DDOT's final approval during public space permitting.
 5. **Prior to the issuance of the first COO for the Project that includes residential use**, the Applicant shall demonstrate to the Zoning Administrator that it has included a rider in all residential leases that restricts residents of the Project from obtaining an RPP.
 6. **Prior to the issuance of the first COO for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has made the following contributions, and that the contributions have been or are being used for the listed items or services:
 - (a) Contributed \$150,000 to Jefferson to be used for the following educational resources, as finally allocated at Jefferson's discretion: (i) supplementary curricular resources to support student learning, particularly for struggling readers and students furthest from academic success; and (ii) field trips and excursions, particularly because these opportunities were eliminated during the Covid-19 pandemic; and
 - (b) Contributed \$100,000 to Habitat to aid in the production of new for-sale affordable housing units in Ward 6, which will be reserved for households earning between 50% and 60% of the MFI. The Applicant's contribution may be used to help subsidize down payment assistance for the future homeowners and/or lower costs of construction.
 7. **Prior to the issuance of the first COO for the Project that includes residential use**, the Applicant shall demonstrate to the Zoning Administrator that it has installed blocking for installation of grab bars in all units should a resident request their installation.
 8. **Prior to the issuance of the first COO for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it implemented and abided by the approved TPP.

E. REQUIREMENTS FOR THE LIFE OF THE PROJECT

1. **For the life of the Project**, the Applicant shall dedicate approximately 194,839 square feet of GFA to residential use in the Project.
2. **For the life of the Project**, the Applicant shall provide nine three-bedroom units.

3. The Applicant shall provide affordable housing for the Project in accordance with this condition as follows:
 - (a) **For the life of the Project**, the affordable housing shall be administered by the D.C. Department of Housing and Community Development through the IZ program. The affordable housing shall comply with all development standards, tenancy regulations, and implementation requirements for IZ units as set forth in 11-C DCMR, Chapter 10 and 14 DCMR, Chapter 22;
 - (b) **For the life of the Project**, the Applicant shall provide the affordable housing as set forth in the following chart:

Residential Unit Type	Residential GFA (Includes Penthouse and Projections) % of Total	# of Units	Affordable Control Period	Affordable Unit Type
Total	203,034	195	Life of the Project	Rental
Market Rate	172,579 (85%)	168	Life of the Project	Rental
IZ	28,666 (14%)	24	Life of the Project	Rental
IZ	1,789 (1%)	3	Life of the Project	Rental
IZ Total	30,455 (15%)	27	Life of the Project	Rental

- (c) **For the life of the Project**, the Applicant shall provide three three-bedroom IZ units at 60% of the MFI;
 - (d) The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition; and
 - (e) **For the life of the Project**, the Applicant shall maintain a website that includes information directing potential tenants on how to apply for IZ units.
4. **For the life of the Project**, the Applicant shall abide by the terms of the LMP included at Exhibit 28C.
5. **For the life of the Project**, the Applicant shall not seek any RPP designations for the Project on streets that would allow residents of the Project to apply for or obtain RPPs.
6. **For the life of the Project**, the Applicant shall advertise the Project in traditional rental guides as well as in publications such as The AARP Magazine, Today's Senior Magazine, Inspired Magazine, and/or other similar publications to specifically target senior citizens as potential residents of the Project.

F. TRANSPORTATION DEMAND MANAGEMENT

1. **For the life of the Project unless otherwise noted**, the Applicant shall provide the following TDM measures:
 - (a) 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) Identify a Transportation Coordinator for the planning, construction, and operations phases of development. The Transportation Coordinator will (i) act as the point of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo; (ii) conduct an annual commuter survey of building employees and residents on-site and report TDM activities and data collection efforts to goDCgo once per year; (iii) develop, distribute, and market various transportation alternatives and options to residents, including promoting transportation events (e.g., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications; and (iv) subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this Project and available options for implementing the TDM Plan;
- (c) Provide welcome packets to all new residents that will, 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;
- (d) Provide residents who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or another comparable service if MWCOC does not offer this in the future;
- (e) Provide a copy of the LMP to the Transportation Coordinator so they are aware of this commitment;
- (f) Post all transportation and TDM commitments on the building website, publicize availability, and allow the public to see what has been promised;
- (g) Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident;
- (h) Provide at least 12 short- and 84 long-term bicycle parking spaces across the site;
- (i) Accommodate non-traditional sized bikes including cargo, tandem, and kids bikes in the long-term bicycle storage room, with a minimum of four spaces that will be designed for longer cargo/tandem bikes, a minimum of eight spaces that will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum of 42 spaces that will be placed horizontally on the floor.
- (j) Not charge a fee to building residents for the usage of the bicycle storage room;
- (k) Install a minimum of two electric vehicle charging stations, per DDOT recommendations of a minimum of one out of every 50 vehicle parking spaces being served by an EV charging station;
- (l) Direct the Transportation Coordinator to submit documentation summarizing compliance with the transportation and TDM conditions of the Order to the Office of Zoning for inclusion in the IZIS case record of the case following the issuance of a COO for the Project; and
- (m) Direct the Transportation Coordinator to submit a letter to the Zoning Administrator, DDOT, and goDCgo every five years (as measured from the final COO for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order following the issuance of a COO for the Project.

G. VALIDITY

1. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of 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 PUD 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.

Proposed Action

Vote (December 15, 2022): 4-0-1

(Joseph S. Imamura, Peter G. May, Anthony J. Hood, and Robert E. Miller to **APPROVE**; 3rd Mayoral Appointee seat vacant)

Final Action

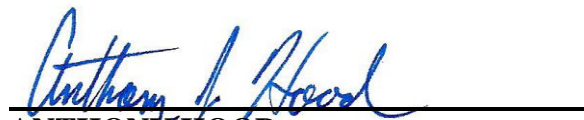
Vote (January 26, 2023): 4-0-1

(Peter G. May, Joseph S. Imamura, Anthony J. Hood, and Robert E. Miller, to **APPROVE**; 3rd Mayoral Appointee seat vacant)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 22-11 shall become final and effective upon publication in the *D.C. Register*; that is, on July 28, 2023.

BY 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 B. BARDIN
DIRECTOR
OFFICE OF ZONING

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (THE “ACT”). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE 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. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.