

PLANNED UNIT DEVELOPMENT COVENANT

**Z.C. Order No. 66-68A
Edgewood IV Limited Partnership
(Modification of Significance to Large Scale Planned Development @
Square 3630, Lot 812)**

THIS PLANNED UNIT DEVELOPMENT (“PUD”) COVENANT (“Covenant”), is made by Edgewood IV Limited Partnership, a District of Columbia limited partnership (the “Declarant”), for the benefit of the District of Columbia, a municipal corporation (the “District”), effective as of the date of the last signature executing this Covenant.

W I T N E S S E T H:

WHEREAS, in Zoning Commission Order No. 66-68, effective December 6, 1966, attached as Exhibit B (the “Original Order”), the Zoning Commission approved a Large Scale Planned Development (“LSPD”) and Zoning Map Amendment for what are now known as Lots 2, 5, 803, 805, 807, and 810-813 in Square 3630 (the “LSPD Site”). The LSPD Site is generally bounded by Edgewood Street, N.E., to the north, 7th Street, N.E. to the east, a large, mixed-use development to the south, and 4th Street, N.E., to the west, all in the Northeast quadrant of Washington, D.C.

WHEREAS, as required by Article 75 of the Zoning Regulations in effect at the time the LSPD was approved, that certain Agreement dated September 16, 1970, by St. Vincent’s Home and School, a corporation and the owner of the LSPD Site, and the District of Columbia, a municipal corporation, was recorded in the Land Records of the District of Columbia (the “Land Records”) at Page 14 in Book 13148 (the “LSPD Covenant”), attached as Exhibit C;

WHEREAS, the LSPD was the project type described in the Zoning Regulations in effect at the time that is analogous to a current PUD, and modifications to LSPDs are subject to Subtitle X and Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning

Regulations of 2016, the “**Zoning Regulations**,” to which all references herein are made unless otherwise specified);

WHEREAS, the Declarant is the owner in fee simple of certain real property and improvements located in the District of Columbia with an address 611 Edgewood Street, N.E., and known for assessment and taxation purposes as Lot 812 in Square 3630 (the “**PUD Site**”), which is on the south side of the LSPD Site, and as is more particularly described in Exhibit A;

WHEREAS, pursuant to Chapter 3 of Subtitle X of the Zoning Regulations, the Zoning Commission for the District of Columbia (the “**Commission**”) approved a Modification of Significance to the Original Order to modify the approved LSPD (the “**Modified PUD**”) for the PUD Site by Z.C. Order No. 66-68A, dated December 17, 2020, that became final and effective on June 4, 2021 (the “**Modification Order**,” and collectively with the Original Order, the “**Order**”);

WHEREAS, Subtitles X § 311.3 and Z § 702.10 require the Declarant to enter into this Covenant for the PUD Site binding the Declarant, and its successors and assigns, to construct on and use the PUD Site in accordance with the Order, including all modifications, alterations, or amendments thereto approved by the Commission;

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed between the parties hereto as follows:

1. Approved Plans, Terms and Conditions. The terms and conditions of the Commission’s approval of the Modified PUD for the PUD Site in the Order, as the same may be amended and/or modified from time to time by the Commission, are incorporated herein by reference and made a part hereof as Exhibit D and shall be considered a part of this Covenant. The Declarant shall construct on, and use, the PUD Site only in accordance with the plans approved by the Order, its conditions and restrictions, and the provisions of Subtitle X, Chapter 3, subject to

such changes as the Zoning Administrator of the District of Columbia may authorize pursuant to Subtitle A § 304.5, or as the Commission may authorize pursuant to Subtitle Z §§ 703 or 704.

2. Additional Time to Construct the Modified PUD. The Commission may consider, in accordance with and subject to the limitations of Subtitle Z § 705, an application filed by the Declarant demonstrating good cause to extend the validity period of the Order and the time period requirements of the Order and Subtitle Z § 702 to file a building permit application and to commence construction of the Modified PUD.

3. Default. In the event that the Declarant fails to file a building permit application to construct, or fails to commence construction of, the Modified PUD within the time specified in Decision No. E.2 of the Order as modified by any extension of time granted by the Commission for good cause shown pursuant to Subtitle Z § 705, the Order and all benefits granted thereby, shall terminate pursuant to Subtitle Z § 702.6 and this Covenant shall be deemed null and void.

4. Future Conveyance. The Declarant covenants that if any conveyance of all or any part of the PUD Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns, to develop and use the PUD Site, or a conveyed portion thereof, in accordance with the terms and conditions of this Covenant, and that the grantee, and its successors and assigns, shall be considered a declarant to this Covenant.

5. Covenants to Run with the Land. The covenants and restrictions contained herein shall be deemed real covenants running with the land and shall bind the Declarant, and its successors and assigns, and shall inure to the benefit of the Declarant, and its successors and assigns, and to the District as beneficiary of the Covenant. Such covenants are not binding upon the Declarant should it no longer have a property interest in the PUD Site. In the event that all or part of the PUD Site is sold or otherwise conveyed by the Declarant, the purchaser or transferee, and its successors and assigns, shall be considered the Declarant hereunder, and the District shall

continue to be deemed the beneficiary of the Covenant for the purposes of enforcing all covenants, conditions, and restrictions contained herein that apply to the PUD Site and the Declarant.

6. Recordation. The Declarant shall record this Covenant, as fully executed by the parties hereto, among the Land Records and shall file a certified copy of this Covenant with the Zoning Administrator and the Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of this Covenant. If the Commission modifies or amends the Order, no formal amendment of this Covenant shall be required, provided that the Declarant, or its successors or assigns, records a notice of modification in the Land Records together with a copy of the written order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the prior written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Commission.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Edgewood IV Limited Partnership a District of Columbia limited partnership, intending to be legally bound, has caused this Covenant to be executed by

Christine Madigan, its Executive Vice President

DECLARANT:

EDGEWOOD IV LIMITED PARTNERSHIP,
a District of Columbia limited partnership

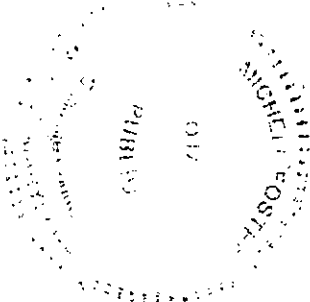
By: Christine Madigan
Name: Christine Madigan
Title: EVP + Chief Business Officer

DISTRICT OF COLUMBIA, ss:

I, MICHELL FOSTER a Notary Public in and for the jurisdiction aforesaid, do hereby certify that CHRISTINE MADIGAN as the EXECUTIVE VICE PRESIDENT for the Declarant personally appeared before me and, being personally well known to me, acknowledged said Covenant to be the act and deed of the Declarant and that they delivered the same as such.

GIVEN under my hand and seal this 9 day of AUGUST, 2021.

Michelle Foster
Notary Public, D.C.



[Notary Seal]

My commission expires: 06 July 2024

APPROVED AS TO TECHNICAL SUFFICIENCY:

Matthew Le Grant

8-16-2021

Matthew LeGrant
Zoning Administrator
Department of Consumer and Regulatory Affairs

Date

(PUD Covenant pursuant to Subtitles X § 311.3 and Z § 702.10 for Lot 812 in Square 3630 for a Modification of Significance to Large Scale Planned Development)

APPROVED AS TO LEGAL SUFFICIENCY:



Maximilian L.S. Tondro
Assistant Attorney General
Office of the Attorney General for the District of Columbia

August 16, 2021

Date

(PUD Covenant pursuant to Subtitles X § 311.3 and Z § 702.10 for Lot 812 in Square 3630 for a Modification of Significance to Large Scale Planned Development)

EXHIBIT A

LEGAL DESCRIPTION OF THE SUBJECT SITE

Lot 812 in Square 3630 as recorded in Book Assessment and Taxation, Page 3885-R in the Office of the Surveyor of the District of Columbia on November 20, 2019.

EXHIBIT B

ZONING COMMISSION ORDER NO. 66-68

[Appended]

Government of the District of Columbia
ZONING COMMISSION



20. 66-68

December 6, 1966

ORDERED:

That after public notice and hearing as prescribed by law, the following application under Article 75, Section 7501 has been approved subject to further processing by the Board of Zoning Adjustment as provided by Paragraph 7501.7 of the Zoning Regulations and the following district established by the Zoning Commission of the District of Columbia, as shown in the official Zoning Map and Atlases, is hereby modified and amended as follows:

The Zoning Commission hereby approves the Large-Scale Planned Development to be known as Edgewood Terrace Apartments to be erected on Parcels 131/183 and 131/184, located on the south side of Edgewood Street from 4th Street to 7th Street, N.E.

This application has been considered by the Commission in accordance with the provisions of Article 75, Section 7501 of the Zoning Regulations of the District of Columbia.

The approval of the Zoning Commission is given subject to continued compliance with the requirements of Article 75, Section 7501 and the following conditions:

1. The project shall be developed in accordance with the revised site plan dated October 26, 1966, received by the Commission on November 1, 1966, and on file as Exhibit 44-A, and the design concepts conveyed by the plans dated August 16, 1966 and on file as Exhibits 11-A through -E.
2. The number and distribution of dwelling units, lot occupancy, parking spaces and loading berths shall be in accordance with the tables included in Exhibit 44-A.
3. The F.A.R. shall not exceed 2.2.
4. The retail space around the Commercial Plaza may include retail and service uses as limited by the C-1 (neighborhood shopping) District provisions of the Zoning Regulations and shall not exceed an aggregate floor area of 35,000 square feet. A similar amount of space around the Commercial Plaza may be used for non-commercial community service facilities as they may be approved by the Board of Zoning Adjustment.

5. Not less than 500 dwelling units shall be available for low income tenants who are eligible for low-rent public housing in accordance with prevailing income standards established by the National Capital Housing Authority for qualifying tenants for low-rent public housing or for low-income families as defined by the National Capital Housing Authority who would be eligible for occupancy with the aid of a rent subsidy from either public or private sources. The location, composition, distribution and rent schedules for these dwelling units shall be reviewed by the Board of Zoning Adjustment following the receipt of a report and recommendation from the National Capital Housing Authority.

The five conditions stated are in addition to all other requirements of Section 7501 of the Zoning Regulations. (66-68)

Parcels 131/183 and 131/184, said property located on the south side of Edgewood Street from 4th to 7th Streets, N.E. are changed from R-4 to R-5-C. (66-47)

C. M. DUKE

Walter N. Torriner
WALTER N. TORRINER

J. GEORGE STEWART

John B. Duncan
JOHN B. DUNCAN

T. Sutton Jett
T. SUTTON JETT

ATTEST:

H. G. Ashton
H. G. ASHTON
Administrative Assistant

EXHIBIT C

LSPD Agreement

[Appended]

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AGREEMENT
(Regulation 75 Completion Covenant)

THIS AGREEMENT entered into this 16th day of September 1970, by and between the DISTRICT OF COLUMBIA, a Municipal Corporation, hereinafter referred to as the "DISTRICT", and ST. VINCENT'S HOME AND SCHOOL, a corporation, hereinafter referred to as the "OWNERS",

WITNESSETH

WHEREAS, the Owners have fee simple title to Lots 2, 3, 4 and 5 in Square 3630 in the District of Columbia; and

WHEREAS, the Owners plan to use such real property in accordance with the plans approved pursuant to Article 75 of the Zoning Regulations of the District of Columbia by the Zoning Commission of the District, hereinafter referred to as the "COMMISSION", in file No. 66-68; and

WHEREAS, said Article 75 requires the Owners to enter into an agreement with the District with respect to its obligations under the plans approved by the Commission aforesaid;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN CONTAINED, in relation to Lots 2, 3, 4 and 5 in Square 3630, it is agreed as follows:

1. Approved Plans. The terms and conditions of the Commission's approval in File No. 66-68 is incorporated herein by reference and shall be considered a part of this Agreement. The Owners covenant that they will use the aforementioned real property only in accordance with such approved plans.

2. Future Conveyance. The Owners do hereby covenant and agree that any conveyance of the aforementioned real property or any portion thereof shall contain a specific covenant binding the grantee, its successors or assigns to a use for, and improve-

RECORDED IN DISTRICT OF COLUMBIA
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ment of such land in accordance with approvals of the Zoning Commission and the Board of Zoning Adjustment of the District of Columbia or for such other purpose as permitted by the Zoning regulations in effect at that time and that no structural additions or alterations, except alterations permitted by right not regulated by F.A.R. or other zoning regulations, may be undertaken without first obtaining the approval of the Zoning Commission and the Board of Zoning Adjustment in accordance with the provisions of Section 7501 of the Zoning Regulations.

3. Successors and Assigns. The covenants contained herein shall be deemed real covenants, shall run with the land, shall bind the parties hereto and subsequent parties in interest, and shall inure to the benefit of the parties hereto and subsequent parties in interest.

4. Recordation. The Owners shall record this Agreement in the Land Records of the District of Columbia within six months of the Board of Zoning Adjustment's decision in Appeal No. 9516 and file a copy thereof with the Board.

IN TESTIMONY WHEREOF, ST. VINCENT'S HOME AND SCHOOL, a corporation, has caused these presents to be signed in its name by

Carson T. Aiello, its ^{vice} president, attested by
Anthony G. Palmer, its secretary, and its seal to
 be hereunto affixed and does hereby constitute and appoint said
Carson T. Aiello, its true and lawful attorney in
 fact for it and in its name to acknowledge and deliver this

act and deed, on this 10th day of September, 1970.



ST. VINCENT'S HOME AND SCHOOL
a corporation

BY: Caesario A. Cirullo
Vice-President

Richard K. Price
Secretary

IN TESTIMONY WHEREOF, the Commissioner of the District of Columbia, appointed and acting under Reorganization Plan No. 3 of 1967, having first considered and approved the foregoing Covenant has directed the execution thereof in the name of the said District of Columbia by its Executive Secretary to the Commissioner, D. C., who hereunto set his hand and affixed the Seal of the District of Columbia under the authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties", approved February 11, 1932.



DISTRICT OF COLUMBIA
(A Municipal Corporation)

Richard K. Schalles
Executive Secretary to the
Commissioner, D. C.

John E. Lewis
Assistant Commissioner General

DISTRICT OF COLUMBIA, SS:

I, Elizabeth Maynard, a Notary Public in and for the District of Columbia, do hereby certify that Ceasar L. Aiello, who is personally well known to me as the person named as the attorney in fact in the foregoing and annexed deed, bearing date the 16th day of September, 1970, personally appeared before me in said District of Columbia and as attorney in fact as aforesaid, and by virtue of the power vested in him by said deed, acknowledged the same to be the act and deed of the _____ the grantor therein, or one of the parties thereto.

Given under my hand and seal this 13th day of October, 1970.



Elizabeth Maynard
Notary Public

Commission expires:
September 1, 1973

18871

RECEIVED FOR RECORD on the
day of A. D. 19 at
M and recorded in Liber No. 13148
folio 14 at sec. one of the Land
Records of the District of Columbia
John S. Dudley
REGISTRAR

Mail To:
D. Davis
Hannan, Castie No. ...
637
Woodward Bldg
Wash. D.C. 20005

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EXHIBIT D

ZONING COMMISSION ORDER NO. 66-68A

[Appended]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 66-68A
Z.C. Case No. 66-68A
Enterprise Community Development, Inc.
(Modification of Significance to Large Scale Planned Development @ Square 3630)
December 17, 2020

Pursuant to notice, at its December 17, 2020, public meeting the Zoning Commission for the District of Columbia (the “Commission”) deliberated on the application (the “Application”) of Enterprise Community Development, Inc. (the “Applicant”) requesting approval of the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified):

- A Modification of Significance, pursuant to Subtitle Z § 704,¹ to the Large Scale Planned Development (“LSPD”) and related map amendment approved by the Commission in Z.C. Order No. 66-68 (the “Original Order”), as modified by the further processings in BZA Case Nos. 10335 and 11459, with
- The following development flexibility:
 - From Subtitle C § 802.1’s requirements of nine short-term and 51 long-term bicycle spaces to provide ten short-term and 28 long-term spaces;
 - From the loading requirements of Subtitle C §§ 901.1, 901.4, 901.10, and 908.1 to relocate the proposed internal loading facilities to a loading zone along the private drive to maintain outdoor dining space; and
 - To allow an adult daycare center pursuant to Subtitle U § 203.1(h) to accommodate more than the 25 individuals allowed pursuant to Subtitle U § 401.1(f),

for Lots 2, 5, 803, 805, 807, and 810–813 in Square 3630 (the “LSPD Site”) in the RA-4 zone. The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z, Chapter 4. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. The following were automatically parties to this proceeding pursuant to Subtitle Z § 403.5:

¹ The LSPD process (§ 7501 of the 1958 Zoning Regulations) was a prior iteration of the Planned Unit Development (“PUD”) process. Pursuant to Subtitle A § 102.4, the Approved LSPD is vested under the 1958 Zoning Regulations under which it was evaluated and approved, but modifications such as the Application are subject to the current Zoning Regulations to the extent of the modifications.

- The Applicant; and
- Advisory Neighborhood Commission (“ANC”) 5E, in which district the LSPD Site is located, and so an “affected ANC” pursuant to Subtitle Z § 101.8.

NOTICE

2. On September 16, 2020, the Office of Zoning (“OZ”) sent notice of the public hearing to:
 - ANC 5E;
 - ANC Single Member District 5E02, whose district includes the LSPD Site;
 - The Office of the ANCs;
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);
 - Department of Consumer and Regulatory Affairs (“DCRA”);
 - District Department of the Environment (“DOEE”);
 - District of Columbia Housing Authority (“DCHA”) Relocation Committee;
 - The Ward 5 Councilmember, whose district includes the LSPD Site;
 - The Chair and At-Large D.C. Councilmembers; and
 - All property owners owning property within 200 feet of the LSPD Site. (Exhibit [“Ex.”] 16 and 16A.)
3. OZ also published notice of the November 9, 2020, public hearing in the September 25, 2020, *D.C. Register* (67 DCR 11221), as well as through the calendar on OZ’s website.

PRIOR APPROVALS

4. Pursuant to the Original Order (Ex. 3B), effective December 6, 1966, the Zoning Commission approved a LSPD with:
 - A related map amendment rezoning the LSPD to the R-5-C zone (now the RA-4 zone);
 - A maximum 2.2 floor area ratio (“FAR”);
 - Up to 35,000 square feet of community service facilities; and
 - A minimum of 500 units dedicated for low-income residents.
5. Pursuant to BZA Case No. 10335, effective September 25, 1970, the Board of Zoning Adjustment (the “Board”) approved a further processing of the LSPD to authorize:
 - 1,257,690 square feet of gross floor area (“GFA”);
 - A 1.93 FAR;
 - A 25.4% lot occupancy;
 - A total of 1153 residential units; and
 - 554 parking spaces. (Ex. 3B at 3-6.)
6. Pursuant to BZA Case No. 11459 (collectively with the Original Order and BZA Case No. 10335, the “Approved LSPD”), effective November 26, 1974, the Board approved a subsequent further processing of the LSPD to authorize:
 - 24,533 square feet of commercial/community space in Section 1, including 4,000 square feet of daycare. (Ex. 3B at 7-8.)

7. As constructed in 1976, the Approved LSPD included seven buildings with:
 - Approximately 814,932 square feet of GFA;
 - A 1.25 FAR;
 - A 23.28% lot occupancy;
 - 792 residential units, all of which are affordable, with:
 - 200 units restricted to seniors at less than 50% of the Median Family Income (“MFI”), and
 - 592 units restricted to households with incomes restricted by LIHTC or Project-Based Rental Assistance programs; and
 - 423 parking spaces in an above-ground garage. (Ex. 3.)

THE PROPERTY

8. The LSPD Site is a triangular parcel with a land area of approximately 650,913 square feet (14.9 acres) and known as Edgewood Commons.
9. The LSPD Site is bounded:
 - To the north – by Edgewood Street, N.E.;
 - To the east – by 7th Street, N.E.;
 - To the south – by a large mixed-use development; and
 - To the west – by 4th Street, N.E.
10. The LSPD Site is approximately 0.4 miles from the Rhode Island Avenue Metro Station.
11. The portion of the LSPD Site that is the subject of the Application is Tax Lot 812 containing 43,774 square feet of land area and located on the south side of the LSPD Site (the “Project Site”).

CURRENT ZONING

12. The LSPD Site is located in the RA-4 zone, which is intended to provide “for areas developed with predominantly medium- to high-density residential.” (Subtitle F § 300.5.)

COMPREHENSIVE PLAN (Title 10A DCMR, the “CP”)

13. The CP’s Generalized Policy Map (“GPM”) designates the Project Site as a “Neighborhood Conservation Area,” for which the CP provides that:
 - New development should “consist primarily of infill housing, public facilities, and institutional uses” (CP § 225.4); and
 - The purpose of these areas is “to conserve and enhance established neighborhoods but not preclude development, particularly to address city-wide housing needs.” (CP § 225.5.)
14. The CP’s Future Land Use Map (“FLUM”) designates the Project Site for “High-Density Residential” uses, which the CP defines as for areas:
“suited for high-rise apartment buildings ... Density is typically greater than a FAR of 4.0, and greater density may be possible when complying with IZ or through a PUD. The RA-4 and RA-5 Zone Districts are consistent.” (CP § 227.8.)

15. The Project Site is subject to the CP's Upper Northeast Area Element, for which the planning priorities include providing long term affordable housing options that address displacement concerns of existing residents. (CP § 2407.)

II. THE APPLICATION

INITIAL APPLICATION

16. The Application proposed to modify the Approved LSPD to construct a new building on the Project Site (the "Building"), with the initial proposal (Ex. 1-3H) including:
- A 90-foot-tall building providing 151 all-affordable, age-restricted apartment units for seniors;
 - An approximately 7,000 square foot adult daycare center on the ground floor with a capacity for 60 seniors;
 - A 3.44 FAR based on the Project Site or a 0.23 FAR based on the overall LSPD Site;
 - A lot occupancy of 41% (based on the Project Site);
 - Locating five of the 13 required parking spaces provided on the Project Site and the remaining eight provided elsewhere on the LSPD Site;
 - Locating the required loading facilities within the Building;
 - Green roof features; and
 - 3,000 square feet of rooftop solar panels.
17. Access to the Building will be as follows:
- Vehicular access via the rear private drive for the LSPD Site that runs along the south side of the Project Site with a designated pick-up and drop-off area for residents and visitors; and
 - Pedestrian access via the following improvements:
 - A system of trails and pathways, including ones designed to be ADA accessible;
 - New sidewalks providing four feet clear access; and
 - Access to the Rhode Island Avenue Metrorail Station will be improved by two staircase connections from the rear private drive for the LSPD Site that are to be constructed by the adjacent Bryant Street development to the south.
18. With the Building, the resulting Approved LSPD will consist of:
- Eight buildings;
 - Approximately 943 residential units;
 - A total FAR of 1.48; and
 - A total lot occupancy of 26%.

APPLICANT'S REVISIONS/SUBMISSIONS

Prehearing Submissions

19. The Applicant submitted a May 28, 2020, filing (Ex. 10-10A, the "First Supplemental Submission") that included updated plans responding to OP's questions, including:

- Clarification about the yards, setbacks, building separations, and loading and vehicular parking locations;
 - Shadow studies for the Building; and
 - Additional information regarding the Building’s sustainability, including the proposed green roof features and the 750 square feet of solar panels.
20. The Applicant submitted a September 2, 2020, filing (Ex. 14-14B4, the “Prehearing Statement”) that responded to comments from the Commission, OP, and DOEE by:
- Providing additional information requested by the Commission and OP regarding the operation of the Building including details regarding communal outdoor spaces and laundry facilities;
 - Providing enhanced sustainability measures including increasing the amount of proposed solar panels from 775 to 3,000 square feet;
 - Confirming that the Building would be designed to meet or exceed Enterprise Green Communities 2020 requirements;
 - Updating the design of the Building façade to provide greater articulation;
 - Updating the proposed loading plan to provide loading facilities within the Building at the basement level on the western end; and
 - Providing additional details on the Building’s proposed benefits and amenities, including:
 - Clarifying that the Building would increase the total number of affordable units on the LSPD Site and would continue to meet the overall affordability requirements of the Approved LSPD;
 - Confirming that after the initial financing period ends, the Building will meet the IZ requirements by providing 8% of the total residential area of the Building at 60% of MFI;
 - Confirming that the Applicant was not proffering as part of the Building to construct connections to the nearby Metrorail station, which would instead be constructed by the property owner to the south; and
 - Committing to participate in the First Source and Certified Business Enterprise (“CBE”) programs.
21. The Applicant submitted a September 28, 2020, memo (Ex. 18-18B, the “Transportation Memo”) prepared by Gorove/Slade that:
- Concluded that the Project Site was well served by various transit, bicycle and pedestrian facilities;
 - The Building’s provision of pick-up, drop-off and loading facilities from a private drive would limit the impacts of these activities on public space;
 - Found that the LSPD Site’s existing parking facilities had a surplus of 103 spaces during peak periods which would be sufficient to accommodate 10 out of the required 15 parking spaces for the Building which the Applicant was not able to locate on the Building Site; and
 - Included the Applicant’s proposed Transportation Demand Management Plan (“TDMP”), which the Transportation Memo asserted would adequately address the Building’s transportation impacts.

22. The Applicant submitted an October 20, 2020, filing (Ex. 23-23C, the “Second Supplemental Submission”) that:
- Detailed the Applicant’s outreach to ANC 5E, OP, DDOT, and other District agencies;
 - Increased the Applicant’s IZ proffer to 25% of the residential floor area after the expiration of the initial all-affordable period;
 - Included design changes to the proposed communal laundry rooms to address the privacy concerns raised by OP;
 - Revised the Building’s sustainability proffer to provide 1,868 square feet of solar panels over the proposed green roof;
 - Noted that the Applicant was exploring revisions to the loading plan per the recommendations of OP and DDOT to provide curbside loading along the private drive in front of the Building in order to provide an outdoor dining area on the ground floor; and
 - Provided updated pedestrian circulation plans showing pedestrian connections to the Rhode Island Avenue Metrorail station and proposed pedestrian crosswalk striping improvements. (Ex. 23A-23B.)
23. The Applicant submitted a supplemental prehearing statement dated October 28, 2020 (Ex. 25-25B, the “Third Supplemental Submission”) that:
- Revised the Building’s plans to:
 - Relocate the loading area for the Building to a 30-foot, curbside loading zone along the private drive in front of the Building; and
 - Provide an outdoor dining terrace on the first floor;
 - Requested additional development flexibility from the loading requirements of Subtitle C §§ 901.1, 901.4, 901.10, and 908.1; and
 - Provided a Loading Management Plan (“LMP”) for the Building.

Public Hearing Testimony

24. At the November 9, 2020, public hearing the Applicant:
- Presented the following as expert witnesses:
 - Daniel Solomon as an expert in transportation; and
 - Scott Matties as an expert in architecture.
 - Testified that in response to concerns raised during its meetings with the ANC and the community, the Applicant had:
 - Commissioned a parking capacity analysis; and
 - Increased the amount of its IZ proffer from 8% to 25%.

Post Hearing Submissions

25. The Applicant submitted a December 3, 2020, filing (Ex. 33-33B, the “Post Hearing Submission”) that responded to the questions and clarifications requested by the Commission and OP during the hearing as follows:
- Modified the façade design and materials proposed for the Building to make it more uniform and darker in color;

- Provided additional information about the Building's use of cementitious panels to reduce construction costs; and
- Revised the proposed green wall along the west elevation to provide for an art wall or mural space.

RELIEF REQUESTED

Development Flexibility Requested (Subtitle X § 303.13)

26. The Application, as revised, requested a Modification of Significance to the Approved LSPD to construct the Building with the following additional development flexibility:
- From Subtitle C § 802.1's requirements of nine short-term and 51 long-term bicycle spaces to provide ten short-term and 28 long-term spaces;
 - From the loading requirements of Subtitle C §§ 901.1, 901.4, 901.10, and 908.1 to relocate the proposed internal loading facilities to a loading zone along the private drive to maintain outdoor dining space; and
 - To allow the adult daycare center pursuant to Subtitle U § 203.1(h) to accommodate more than the 25 individuals allowed pursuant to Subtitle U § 401.1(f).

Public Benefits

27. The Application proposed the following additional public benefits and amenities to balance the requested additional development flexibility:
- Superior architectural and urban design;
 - Affordable housing in two phases:
 - 151 all-affordable, age-restricted apartments for an initial 30-40 years based on development financing requirements, and
 - 25% of the total residential gross floor area for seniors earning up to 60% of MFI after the expiration of the initial affordability period;
 - Enhanced sustainable development features including:
 - The commitment that the Building would meet or exceed the Enterprise Green Communities 2020 requirements;
 - 1,868 square feet of rooftop solar panels; and
 - 9,131 square feet of green roof; and
 - The adult daytime care use for 60 seniors that benefits the surrounding community.
28. The Application requested the design flexibility for the Building to vary the specifics of the final plans as approved by the Commission that the Commission has typically adopted in recent cases and still comply with Subtitle Z § 702.8's requirement to construct the Building in complete compliance with the final plans approved by the Commission.

JUSTIFICATION FOR RELIEF

Consistent with the Approved LSPD

29. The Application asserted that the Building would be consistent with the Approved LSPD and would not materially impact the planning, amenities and benefits that formed the basis of the Commission's prior approval because the Application:

- Does not propose to significantly change the residential uses in the Approved LSPD, as the Building will be primarily residential in nature and the proposed adult daycare facility will serve seniors in the surrounding area;
- Will continue to comply with the affordability requirements of the Approved LSPD; and
- Will remain within the approved height and FAR limits of the Approved LSPD.

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

30. The Application asserted that the Application is not inconsistent with the CP, when reviewed as a whole, or with any other adopted public policies or active programs related to the site, for the reasons discussed below:

- **GPM** - The Application is not inconsistent with the GPM's Neighborhood Conservation Area designation for the LSPD Site because it would not be inconsistent with the scale or residential character of the Approved LSPD or neighboring residential areas;
- **FLUM** - The Application is not inconsistent with the FLUM's High Density Residential designation for the LSPD Site because the Building will provide a high-density residential development within the allowable maximums for FAR and height outlined in the FLUM;
- **Area Element** - The Application is not inconsistent with the Upper Northeast Area Element because it would provide compatible infill development that is compatible with the FLUM and would provide affordable housing for seniors; and
- **Citywide Elements** - The Application would also advance specific policies in the Land Use, Transportation, Housing, Environmental Protection, Urban Design, and Community Services and Facilities Elements.

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

31. The Application asserted that the Building would not create any unacceptable impacts on the surrounding area because:

- The Building will not add density, height, or traffic that will exceed what was approved for the Approved LSPD;
- The Building will continue to maintain a significant amount of open space between the proposed buildings and the existing buildings on the LSPD Site; and
- The Building's proximity to transit options and the surplus of parking on the LSPD Site will minimize transportation and parking impacts, which will be further mitigated by the Applicant's proposed TDMP and LMP.

Requested Development Flexibility (Subtitle X § 304.4(c))

32. The Application asserted that the three areas of flexibility from the development standards are necessary because:

- **Adult Day Care Use** – The increased cap will allow the adult daycare facility to provide needed services to a greater number of local seniors. The Application asserts that the majority of the users of the Adult Day Care use are expected to be residents of the Building and the Approved LSPD which will result in minimal impacts in terms of traffic, or pick-up and drop off conditions. The proximity of the potential users of the facility will also minimize impacts to any similar facilities in the surrounding area.

- ***Bicycle Parking*** – The residents of the Building will all be aged 60 or older and will therefore be less likely to rely on bicycles as a mode of transportation. By reducing the space dedicated to long-term bicycle parking the Building will be able to provide more space for programming designed to benefit the residents of the Building.
- ***Loading*** – The relocation of the loading facilities to a curbside area along the private drive as requested by OP and DDOT will allow the Building to provide an outdoor dining terrace on the ground floor. The Applicant’s proposed LMP will mitigate any potential adverse impacts resulting from the loading flexibility.

33. The Application asserted that the requested additional development flexibility would be balanced by the additional public benefits proffered by the Application including:

- Designing the Building to include superior architecture and urban design that allow it to fit into and complement the Approved LSPD (Subtitle X § 305.5(a));
- Providing 151 units of dedicated, all affordable senior housing for a minimum of 30-40 years, which is needed in the District as a whole and will provide an option for current residents of the Approved LSPD to age in place (Subtitle X § 305.5(f)(1)-(2));
- Dedicating 25% of the residential square footage to IZ units after the expiration of the initial affordability period, well in excess of the 8% required (Subtitle X § 305.5(g));
- Providing enhanced sustainability features including a substantial green roof, and 1,868 square feet of solar panels (Subtitle X § 305.5(k)); and
- Providing an adult day treatment facility for 60 seniors that will provide a needed neighborhood service by providing services to seniors living in the Approved LSPD and in the surrounding area. (Subtitle X § 305.5(q).)

III. RESPONSES TO THE APPLICATION

OP

34. OP submitted a June 19, 2020 report (Ex. 11, the “OP Setdown Report”) that:

- Concluded that the Application was not inconsistent with the Approved LSPD or with the CP because the Building would not increase the Approved LSPD’s maximum height and density;
- Recommended that the Commission set the Application down for a public hearing; and
- Requested that the Applicant:
 - Consider adding balconies and in-unit laundry facilities;
 - Consider OP’s design comments regarding the design of the western façade, landscaping along the private drive, and greater definition of the Building’s entrances;
 - Discuss the proposed loading location with DDOT and submit a TDMP;
 - Provide a final projected Green Area Ratio (“GAR”) score;
 - Clarify the version of Enterprise Green Communities being used;
 - Clarify the IZ proffer;
 - Clarify responsibility for constructing Metro connections through adjacent properties;
 - Commit to no reduction in affordable housing units in the Approved LSPD;
 - Clarify intended participation in CBE and First Source programs; and
 - Provide materials samples.

35. OP submitted an October 30, 2020 report (Ex. 26, the “OP Hearing Report”) that:
- Reiterated the OP Setdown Report’s determinations that the Building was consistent with the Approved LSPD and the CP;
 - Noted that the Applicant had revised its plans in response to questions and concerns of OP and the Commission at setdown;
 - Noted that OP did not object to the Application’s requests for additional development flexibility from the loading requirements for the Building;
 - Noted that the Applicant met with OP, DDOT, DOEE, DCRA, the Department of Housing and Community Development (“DHCD”), and the Department of Parks and Recreation regarding the Building and had received responses from two agencies:
 - DOEE found the Applicant’s sustainability commitments acceptable; and
 - DHCD worked with the Applicant regarding the IZ proffer;
 - Noted that OP identified only one potential adverse impact - the potential shadowing on the common area and buildings to the north – and that it would be difficult to relocate the Building to reduce the impacts and a reduction in the Building’s height would mean a reduction in the number of proposed residential units; and
 - Recommended approval of the Application on the condition that the Applicant implement the TDMP and LMP.
36. At the November 9, 2020, public hearing, OP testified in support of the Application and indicated that the Applicant had satisfactorily responded to the issues raised by OP, DDOT, and the Commission at setdown and in the subsequent agency reports. (Public Hearing Transcript of November 9, 2020 (“Nov. 9 Tr.”) at 63-65.)

DDOT

37. DDOT submitted an October 30, 2020 report (Ex. 27, the “DDOT Report”), stating that DDOT:
- Concluded that:
 - 103 of the 423 parking spaces on the LSPD Site are unused on a typical day and would be sufficient to accommodate 10 of the 15 parking spaces required for the Building;
 - The Applicant had complied with DDOT’s request to revise its loading plan to provide curbside loading on the private driveway in order to preserve the outdoor terrace;
 - The Building is projected to generate less than 25 vehicle trips during the peak evening hours and so is not required to provide a Comprehensive Transportation Report;
 - The Applicant’s TDMP and LMP are sufficiently robust for the Building and will offset any impacts from the proposed loading arrangement and requested reduction in long-term bicycle parking; and
 - Had no objection to approval of the Application, provided that any order approving the Building include the following conditions:
 - The Applicant implement the TDMP and LMP included in the Transportation Memo for the life of the Building;

- The Applicant ensure that all sidewalks are ADA accessible; and
- If not completed by others, that the Applicant stripe a high-visibility crosswalk and install curb ramps on the Project Site connecting the sidewalk adjacent to the Building to the new westernmost staircase to the Bryant Street project, no later than one year after the staircase is constructed; and

38. At the November 9, 2020 public hearing, DDOT testified that:
- The Building is projected to result in less than 25 new vehicle trips during the evening peak hours;
 - DDOT supported the Applicant’s proposed loading plan as revised in response to DDOT’s comments; and
 - It supported the Application with DDOT’s conditions. (Nov. 9 Tr. at 66-67.)

ANC 5E

39. ANC 5E submitted a November 5, 2020 report (Ex. 30, the “ANC Report”), stating that at its duly noticed October 20, 2020, public meeting at which a quorum was present, the ANC voted to:
- Express concerns that:
 - The Building might impact the parking available for residents of Edgewood Commons and the surrounding neighborhood, and
 - The Applicant’s initial IZ proffer of 8% was too low, but the ANC had successfully negotiated with the Applicant to increase the IZ proffer to 25%, which the ANC believed was acceptable; and
 - Support the Application.
40. The ANC did not testify at the November 9, 2020 public hearing.

CONCLUSIONS OF LAW

1. The Commission concludes that the Application is properly reviewed as a Modification of Significance of a PUD since the PUD process was the successor to the earlier LSPD process, which is no longer a valid process or entitlement.
2. Pursuant to the authority granted by the Zoning Act (June 20, 1938, 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a PUD and modifications to an approved PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 704.
 1. 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.

2. Pursuant to Subtitle X § 304.3, in evaluating a proposed PUD, 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.
3. Pursuant to Subtitle X § 304.4, to approve a proposed PUD, the Commission must determine 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. A PUD's proposed public benefits must comply with Subtitle X § 305.12:
A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.
5. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as:
 - (1) *to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
 - (2) *to guide executive and legislative decisions on matters affecting the District and its citizens;*
 - (3) *to promote economic growth and jobs for District residents;*
 - (4) *to guide private and public development in order to achieve District and community goals;*
 - (5) *to maintain and enhance the natural and architectural assets of the District; and*
 - (6) *to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*
6. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)):
"The 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) (internal quotation marks and references omitted).)

MODIFICATION OF SIGNIFICANCE - SCOPE OF REVIEW

3. Pursuant to Subtitle Z §§ 704.3 and 704.4, the Commission shall evaluate an application to modify a PUD based on the requirements for a new PUD, provided that the hearing “shall be limited to the impact of the modification on the subject of the original application and shall not permit the Commission to revisit its original decision.”
4. Pursuant to Subtitle A § 102, the Approved LSPD is vested under the 1958 Zoning Regulations under which it was approved and is subject to those rules except that any modification shall be subject to the current Zoning Regulations.
5. Since the Application does not propose to change the PUD-related map amendment approved as part of the Approved LSPD, it is vested and not subject to additional review by the Commission in this case.

CONSISTENCY WITH THE APPROVED LSPD

6. The Commission concludes that the Building is generally consistent with the Approved LSPD because:
 - The Building proposes a residential use that will serve the aging population of the Approved LSPD;
 - The overall development on the LSPD Site will remain within the approved limits for FAR, and height of the Approved LSPD; and
 - The Building continues to propose affordable residential housing consistent with the Approved LSPD.

NOT INCONSISTENT WITH THE CP (SUBTITLE X § 304.3(A))

7. The Commission concludes that the Building is not inconsistent with the Comprehensive Plan when taken as a whole, as follows:
 - The Building is not inconsistent with the FLUM designation for High Density Residential because the Building proposes to provide high-density residential development;

- The Building is also not inconsistent with the GPM’s designation for the Property as a Neighborhood Conservation Area because the Building fits within the scale and character of Approved LSPD and the surrounding community, as called for in a Neighborhood Conservation Area;
- The Building is not inconsistent with the Upper Northeast Area Element because it will provide housing and services for seniors, of which there is a large population in the surrounding area through compatible infill development as called for by the Area Element; and
- The Building will further several important Citywide Element policies, including the Land Use Element’s focus on high-density residential projects, the Housing Element, Transportation Element, Environmental Protection, Urban Design, and Community Services and Facilities Element, especially given the affordable senior housing and daycare facilities.

ADDITIONAL DEVELOPMENT FLEXIBILITY/INCENTIVES REQUESTED (Subtitle X §§ 304.3)

8. The Commission concludes that the development flexibility requested by the Application is relatively minor, will improve the Building’s overall design, and is properly outweighed by the overall public benefits approved by the Order, as follows:
- **Adult Day Care Facility** – The Commission concludes that the provision of the adult daycare use will provide a much-needed community benefit to the residents of the Building and the Approved LSPD and the increased cap will allow it to serve more seniors. The Commission also notes that the majority of the users are expected to be residents of the Building and the surrounding Approved LSPD, which will minimize the impacts to the surrounding area.
 - **Bicycle Parking** – The Commission concludes that the reduction in the required bike parking will allow for more space to be dedicated to senior programming. The Commission also concludes that the Application has sufficiently demonstrated that the Building’s use as dedicated senior housing will result in a reduction in the demand for bicycle parking facilities.
 - **Loading Requirements** – The Commission concludes that the Applicant’s relocation of the loading facilities to the proposed curbside location was done at the express request of OP and DDOT and will allow for the provision of a communal outdoor dining space, which the Commission concludes will benefit residents of the Building. The Commission also credits the conclusions of DDOT that the Applicant’s LMP will be sufficient to address any potential impacts of the loading area.

POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (Subtitle X § 304.4(b))

9. The Commission concludes that while the Building may create the following potentially adverse impacts beyond those analyzed in the Approved LSPD, the Building mitigates these new potential impacts, as asserted by the Applicant, OP, and DDOT, based on the following measures:
- The potential adverse impacts in terms of increased shadows to the north of the Project Site are outweighed by the Building’s provision of a significant amount of affordable residential units. The Commission credits the conclusions of OP that reducing the

shadow impact would necessitate reducing the scale of the Building would reduce the number of units; and

- The potential traffic and parking impacts will be sufficiently mitigated by:
 - The Applicant’s proposed parking, loading, and TDMP and LMP as detailed in the Transportation Report and approved by DDOT are sufficient to mitigate any potential adverse impacts; and
 - The Applicant’s agreement to all of DDOT’s suggested conditions.

PUBLIC BENEFITS AND PROJECT AMENITIES BALANCED AGAINST ADDITIONAL DEVELOPMENT FLEXIBILITY/INCENTIVES AND POTENTIAL ADVERSE EFFECTS (Subtitle X §§ 304.3 and 304.4(c))

10. The Commission concludes that the Building will provide the following significant public benefits that definitively outweigh the additional development flexibility requested and any unmitigated potential adverse impacts of the Building:
- The provision of 151 all-affordable, age-restricted apartments for a period of 30-40 years at a minimum;
 - The provision of 25% of the total residential gross floor area as affordable for the life of the Building after the expiration of the initial affordability period;
 - The adult daycare facility which will provide services for up to 60 seniors;
 - The commitment to design the Building to the Enterprise Green Communities standard for residential buildings; and
 - The 9,131 square feet of green roof features and 1,868 square feet of solar panels.

GREAT WEIGHT TO RECOMMENDATIONS OF OP

11. The Commission must give “great weight” to the recommendations of OP pursuant to § 13(d) 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 (2001)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
12. The Commission finds persuasive OP’s recommendation that the Commission approve the Application based on OP’s determination that the Building is not inconsistent with the Approved LSPD, or CP in its entirety, and concurs in that judgement.

GREAT WEIGHT TO WRITTEN REPORT OF AFFECTED ANC

13. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public 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).)

14. The Commission considered the ANC Report’s concerns regarding the Building’s potential parking impacts and the need for an increased IZ proffer and concludes:
- Parking impacts – The Commission concludes that there will be sufficient parking available on the LSPD Site to handle the demand of the Building because the LSPD Site provides 423 parking spaces, approximately 103 of which are available on a daily basis, as noted in the DDOT Report;
 - IZ - The Commission concurs with the ANC that the ANC’s negotiations with the Applicant to increase its IZ proffer from 8% to 25% successfully addressed this concern; and
 - The Commission therefore concludes that the ANC’s concerns have been addressed and concurs with the ANC Report’s support for the Application.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for:

- A Modification of Significance to revise Z.C. Order No. 66-68, as modified by the further processing approvals of BZA Order Nos. 10335 and 11459; with
- The following development flexibility:
 - From Subtitle C § 802.1’s requirements of nine short-term and 51 long-term bicycle spaces to provide ten short-term and 28 long-term spaces;
 - From the loading requirements of Subtitle C §§ 901.1, 901.4, 901.10, and 908.1 to relocate the proposed internal loading facilities to a loading zone along the private drive to maintain outdoor dining space; and
 - To allow an adult daycare center pursuant to Subtitle U § 203.1(h) to accommodate more than the 25 individuals allowed pursuant to Subtitle U § 401.1(f)

to authorize the construction of a new residential building (the “Building”) on Lot 812 in Square 3630 (the “Project Site”), subject to the conditions herein.

A. PROJECT DEVELOPMENT

1. The Building shall be built in accordance with:
 - The plans and elevations dated July 24, 2020, and marked as Exhibits 3H1-3H4;
 - As supplemented by the plans at Exhibits 10A, 14B1-14B4, 23A1-23A3, 25A1-25A9, and 33B of the record (collectively, the “Approved Plans”); and
 - As modified by the guidelines, conditions, and standards of this Order.
2. The Applicant shall have the following design flexibility from the Approved Plans:
 - To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical

rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building;

- To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials;
 - To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - To vary the number of residential units by plus or minus 10%;
 - To vary the number of parking spaces by plus or minus 10%, provided that no additional relief is required; and
 - To vary the roof plan as it relates to the configuration of solar panels and green roof areas, provided that the square footage of the solar panels and green roof are not reduced.
3. In accordance with the Approved Plans, the Building is an all-affordable, age restricted residential building for seniors with the following:
- A maximum height of 90 feet;
 - A floor area ratio of 3.44 (as measured against the Project Site);
 - A lot occupancy of 41% (as measured against the Project Site);
 - Approximately 150,601 square feet of GFA devoted to residential use encompassing approximately 151 units;
 - Approximately 7,000 square feet devoted to an adult daycare facility serving 60 people;
 - A dedicated loading space on the private drive serving the Building; and
 - Five parking spaces provided on the Project Site.

B. REQUIREMENTS – BUILDING PERMIT

1. **Prior to the Issuance of a Building Permit for the Building**, the Applicant shall provide the Zoning Administrator with:
- A copy of the executed First Source Employment Agreement with the Department of Employment Services; and
 - A copy of the executed Certified Business Enterprise Utilization Agreement with the D.C. Department of Small and Local Business Development.

C. REQUIREMENTS – CERTIFICATE OF OCCUPANCY

1. **Prior to the Issuance of a Certificate of Occupancy for the Building**, the Applicant shall furnish a copy of its preliminary Enterprise Green Communities certification application to the Zoning Administrator demonstrating that the building has been designed to meet the Enterprise Green Communities standard for residential buildings, as shown on the Enterprise Green Communities Checklist on Sheet 38 of the Approved Plans.
2. **Prior to the Issuance of a Certificate of Occupancy for the Building**, the Applicant shall demonstrate that it has designed and constructed a minimum of 9,131 square feet of green roof features and 1,868 square feet of solar arrays located on the roof of the Building.

3. **Prior to the Issuance of a Certificate of Occupancy for the Building**, the Applicant shall demonstrate that it has installed pedestrian striping along the private drive of the Property as shown on Sheet 9A of Exhibit 25A1 in the record.

D. REQUIREMENTS – LIFE OF THE BUILDING

1. **For the Life of the Building**, the Applicant shall provide affordable housing as set forth in this condition, which does not reduce the affordable housing requirements from the Z.C. Order No. 66-68:

- a. The Applicant shall provide the affordable housing set forth in the following chart:

Residential Unit Type	Floor Area / % of Total*	# of Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	143,643 / 100%	151	Mixed		
Affordable Non-IZ	107,732 / 75%	89	Up to 60% of MFI	30-40 years**	Rental
Affordable Non-IZ***	35,911 / 25%	62	Up to 60% of MFI	Life of the Building	Rental

* Refers to the residential gross floor area, but the floor area may be adjusted to subtract the Building core factor.

** Affordable control period will be determined by financing requirements

*** This chart assumes the Building will qualify for an IZ exemption under Subtitle C § 1001.6 (the Commission takes no position on the IZ exemption). If the IZ exemption is denied, these units shall be Inclusionary Zoning units instead of Affordable Non-IZ units.

- b. Each affordable control period shall commence upon the issuance of the first certificate of occupancy;
 - c. Should the IZ Exemption be granted, the affordable housing requirements of this condition shall be stated in the covenant required by Subtitle C § 1001.6(a)(4); and
 - d. Should the IZ Exemption be denied, the Applicant shall nevertheless provide affordable housing in accordance with this condition, unless the IZ Regulations impose more restrictive standards. The Applicant shall record the covenant required by the Inclusionary Zoning Act as to 25% of the residential gross floor of the Building, and shall execute the monitoring and enforcement documents required by Subtitle X § 311.6 as to the remaining residential gross floor area.
2. **For the Life of the Building**, the Applicant shall adhere to the following TDM plan measures:
 - a. The Applicant will identify a Transportation Coordinator for the planning, construction, and operations phases of development, who will act as points of contact with DDOT, goDCgo, and Zoning Enforcement;
 - b. The Applicant will provide the Transportation Coordinator’s contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;

- c. The Applicant will ensure the Transportation Coordinator develops, distributes, and markets various transportation alternatives and options to the residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications;
 - d. The Applicant will ensure the Transportation Coordinator receives TDM training from goDCgo to learn about the TDM conditions for the Building and available options for implementing the TDM Plan;
 - e. The Applicant will provide welcome packets to all new residents and staff that, 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;
 - f. The Applicant will ensure the Transportation Coordinator subscribes to goDCgo's residential newsletter;
 - g. The Applicant will post all TDM commitments on the development's website, publicize availability and allow the public to see what commitments have been promised;
 - h. The Applicant will install a Transportation Information Center Display within the lobby of the Building that contains information related to local transportation alternatives;
 - i. The Applicant will provide links to CommuterConnections.com and goDCgo.com on property websites;
 - j. The Applicant will distribute information to employees on the Commuter Connections Guaranteed Ride Home (GRH) program, which provides commuters who regularly carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency;
 - k. The Applicant will maintain a four (4) foot sidewalk width from 4th Street, N.E., to the Project Site; and
 - l. If not completed by others, the Applicant will stripe a high-visibility crosswalk and install curb ramps on their property connecting the sidewalk adjacent to the proposed building to the new westernmost staircase to the Bryant Street project, no later than one (1) year after the staircase is constructed.
3. **For the Life of the Building**, the Applicant shall adhere to the following Loading Management Plan measures:
- a. A loading zone manager will be designated by the building management who will be on duty during delivery hours. The loading zone manager will be responsible for

- coordinating with vendors and residential tenants to schedule deliveries and move-ins/move-outs;
- b. Deliveries and move-in/outs will be scheduled outside of peak hours;
 - c. Trash pick-up will occur curbside next to the trash room. Bins will be rolled to the truck, and trash trucks will not be permitted to block both lanes of travel;
 - d. The loading zone manager will instruct all move-ins/move-outs to use an available parking space or the pick-up/drop-off loop, to the extent possible;
 - e. The loading zone manager will monitor the loading area so that vehicles are only stopped in the loading area while actively loading or unloading;
 - f. The loading zone manager will schedule deliveries such that the loading zone's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the loading zone is full, that driver will be directed to return at a later time when the loading zone will be available;
 - g. Trucks using the loading zone will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight); and
 - h. The loading zone manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading zone. The loading zone manager will also distribute flyer materials, such as the Metropolitan Washington Council of Governments' Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The loading zone manager will also post these materials and other relevant notices in a prominent location within the loading area.

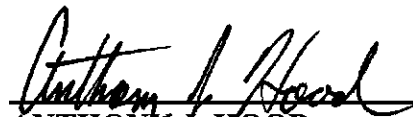
E. VALIDITY

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 the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. This approval shall be valid for a period of two years from the effective date of this Order, within such time, an application for building permit must be filed as specified in Subtitle Z § 702.2; and construction must begin within three years after the effective date of this Order as specified in Subtitle Z § 702.3.


3. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the applicable conditions of this Order (*i.e.*, only those conditions that are required to be satisfied for the particular entitlement the Applicant is seeking at the time) at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

VOTE (Dec. 17, 2020): 5-0-0 (Peter G. May, Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, and Michael G. Turnbull to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 66-68A shall become final and effective upon publication in the *DC Register*; that is, on June 4, 2021.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BYRDIN
DIRECTOR
OFFICE OF ZONING

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

Doc #: 2021129080
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09/28/2021 03:08 PM
IDA WILLIAMS
RECORDER OF DEEDS
WASH DC RECORDER OF DEEDS
RECORDING FEES \$25.00
SURCHARGE \$6.50
TOTAL: \$31.50