GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-08
Z.C. Case No. 13-08
Square 5914, LLC
(Consolidated Planned Unit Development and Related Map Amendment @ Square 5914, Parcels 229/161, 229/160, 229/153, 229/151, and 229/103 and Lots 6 and 7)
May 11, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on January 22, 2015 to consider an application from Square 5914, LLC ("Applicant") for consolidated review and approval of a planned unit development ("PUD") and related Zoning Map amendment. The Commission considered the application pursuant to Chapters 1, 24, and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, Motion, Public Hearing, and Post-Hearing submissions

1. The project site consists of Parcels 229/161, 229/160, 229/153, 229/151, and 229/103 and Lots 6 and 7 in Square 5914 ("Subject Property" or "Property"). The Subject Property includes approximately 88,486 square feet of land area, is currently zoned R-5-A, is located within the boundaries of Advisory Neighborhood Commission ("ANC") 8E. (Exhibit ["Ex."] 2, p. 1.)

2. The Applicant filed this application on May 2, 2013. The PUD application sought approval of a mixed-use, transit-oriented project consisting of two buildings with frontage along Alabama Avenue, S.E. and 13th Street, S.E. and a private alley for servicing both buildings. The PUD project maintains the entrance to the Congress Heights Metro Station and includes an enhanced plaza area around the entrance to the Metro Station. The PUD project initially was proposed to include approximately 205-215 apartment units and ground-floor retail in the building located at the intersection of Alabama Avenue and 13th Street ("residential building"). Initially, the residential building was proposed to have a measured building height of approximately 93 feet. The PUD project also included an office building ("office building") located along Alabama Avenue. The office building will include approximately 236,000 square feet and will also

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have ground-floor retail uses adjacent to the entrance to the Congress Heights Metro Station. Initially, the office building was proposed to have a measured building height of approximately 94 feet. The Zoning Map Amendment sought to rezone the Property to the C-3-B Zone District. (Ex. 2, p. 1-2.)

3. The Commission set the application down for a public hearing at its July 8, 2013 public meeting. The Applicant filed a pre-hearing statement on September 12, 2014, and a public hearing was timely scheduled for January 22, 2015. In response to the comments made at the July 8, 2013 public meeting, the Applicant made the following modifications to the project, as noted in the September 12, 2014 pre-hearing statement:

   - The height of both the office and residential buildings was lowered to a measured height of 90 feet;
   - The residential building included more red brick along Alabama Avenue, and the 13th Street façade was refined to add articulation and setbacks and convey more of a residential feel which better relates to the surrounding residential uses;
   - The height of the Belvedere (architectural embellishment) located on the roof of the residential building along Alabama Avenue was reduced and the design refined to be more articulated;
   - The upper two floors of the residential building along 13th Street were set back from the face of the building;
   - Perspectives and site sections were provided which depicted the relationship of the proposed buildings to the scale of development that was approved on the St. Elizabeths East Campus; and
   - The elevator penthouse structures were relocated to comply with the setback requirements from the public street facades and to reduce their visibility from the ground level, in particular their visibility from the Metro Plaza area.

   (Ex. 15-15A7.)

4. Prior to the public hearing, the Applicant supplemented its application with additional information on January 2, 2015. The additional information included resumes of the Applicant's proposed expert witnesses, a final Community Benefits Agreement, and an additional rendering of the project as seen from Savannah Street, S.E. (Ex. 25C.)

5. On January 6, 2015, the Alabama Avenue/13th Street Tenants Coalition ("Coalition") filed a timely request for party status in opposition to the application. (Ex. 27.)

6. On January 21, 2015, the Coalition filed a motion to postpone the public hearing. The motion to postpone claimed that the Applicant lacked authorization to include Lot 7 in Square 5914 in the PUD application, and site control and title to Lot 7 in Square 5914 is clouded in several ways which prohibit the Zoning Administrator from approving building permit applications if the proposed PUD application is approved and may make moot any considerations and decisions by the Commission. The Coalition's motion claimed that "proceeding forward on this matter risks terrible administrative inefficiencies and the unnecessary expenditure of time and City money in processing the instant PUD application." (Ex. 32.)

7. On January 22, 2015, the Applicant filed a response to the Coalition's motion to postpone the public hearing. The Applicant's response noted that Square 5914, LLC is the contract purchaser of Lot 7 in Square 5914 and included signature pages for the PUD and Zoning Map Amendment application forms from the owner of Lot 7 in Square 5914 when the application was filed and from the current representative of the owner of Lot 7 in Square 5914. The Applicant noted that the arguments the Coalition raised regarding any lien and title issues and the Zoning Administrator's ability to approve a building permit application are not pertinent to the Commission's review of whether the consolidated PUD and Zoning Map amendment applications satisfy the relevant requirements of 11 DCMR § 2400 *et seq*. The Applicant also argued that the postponement of the public hearing on January 22, 2015, would result in "terrible administrative inefficiencies" as the Office of Planning ("OP"), the Department of Transportation ("DDOT"), the Department of the Environment ("DDOE"), and ANC 8E all submitted reports or took votes on this application in anticipation of the public hearing occurring on January 22, 2015. (Ex. 33.)

8. A public hearing was held on January 22, 2015. At the public hearing, the Commission granted the Coalition's request for party status. The Commission addressed the Coalition's motion to postpone the public hearing as a preliminary matter. The Commission determined that the issues raised in the Coalition's motion to postpone are not germane to the Commission's review of the application and it was appropriate to move forward with the public hearing and denied the Coalition's motion to postpone the public hearing. (Transcript of January 22, 2015 Public Hearing ("Tr."), pp. 10-11.)

9. Testimony was presented by the Applicant's project team, including representatives of the Applicant, the project architect and the project's transportation engineer. The Commission admitted Amanda Coen, one of the project architects, as an expert in architecture, and Jami Milanovich, the project's transportation engineer, as an expert in traffic engineering. (Tr., pp. 12-13.)

10. The Chairman of ANC 8E presented testimony in support of the application at the January 22, 2015 public hearing.

11. At the conclusion of the public hearing, the Applicant was requested to provide additional information regarding the following issues:

- The Applicant's proposed tenant relocation plan and dialogue with the Coalition;
- Potential architectural revisions to address the appearance of the roof structures, the private alley, retaining wall and fencing, the round retail corner element marking the entrance to the Plaza, and the relationship of this building to the adjacent school building;
- Information from WMATA regarding its support for the project;
- A calculation of the affordable housing requirement for the existing zoning of the Property and the amount of affordable housing provided in this project;
- Transportation issues, including the ability of residents of the project to obtain residential permit parking ("RPP") stickers and the Applicant's potential financial contribution to making the intersection of 15th Street and Alabama Avenue, S.E. a signalized intersection; and
- Additional information regarding the Applicant.

The Applicant was required to file this information with the Commission by February 23, 2015, and the Applicant and the Coalition were required to file proposed Findings of Fact and Conclusions of Law with the Commission on February 23, 2015. Any response to the Applicant's submission was required to be filed with the Commission by March 2, 2015, and the Commission could take proposed action on the applications at the March 9, 2015 public meeting.

12. On February 18, 2015, the Applicant and the Coalition filed a joint motion to extend the time for filing the required post-hearing submissions. The Applicant and the Coalition proposed that the Applicant submit its required information by March 16, 2015 and that the Applicant and the Coalition submit their proposed Findings of Fact and Conclusions of Law on March 16, 2015. Any responses to the Applicant's submission were to be filed with the Commission by March 23, 2015, and the Commission would schedule the case for proposed action on March 30, 2015. The Commission granted this joint motion on February 18, 2015. (Ex. 49.)

13. On March 16, 2015, the Applicant submitted the requested information into the record in response to issues that were raised at the public hearing, (Ex. 52-52F), and its proposed Findings of Fact and Conclusions of Law. (Ex. 51.) On March 16, 2015, the Coalition filed its proposed Findings of Facts and Conclusions of Law. (Ex. 54.)

14. On March 23, 2015, the Commission received the Coalition's response to the Applicant's post-hearing submissions. (Ex. 55.) The Coalition's response detailed the reasons the Coalition did not support the relocation agreement offered by the Applicant. It also stated that the Applicant's updated proffers contained in its post-hearing statement were not the same as those previously submitted into the record. The response further stated that because the Applicant had not quantified the rent range at which the space reserved for local tenants would be leased, its value as a proffer could not be quantified.

15. On March 30, 2015, the Commission took proposed action to approve the applications. The Commission requested that the Applicant provide the following additional information prior to final action: (i) the status of the negotiations of the relocation plan; (ii) the time period in which existing tenants may be able to return to the property; and (iii) the Applicant's proposal to pay for the design and installation of a traffic signal at the intersection of Alabama Avenue, S.E. and 15th Street, S.E. The Commission also requested a formal letter from ANC 8E noting the official action the ANC took in this case.

16. On April 6, 2015, the Applicant submitted its final proffers and conditions, pursuant to 11 DCMR § 2403.16. (Ex. 60.) The Applicant's April 6, 2015 submission also responded to the Commission's request for additional information. The Applicant's submission stated that it had not reached an agreement with the Coalition on the relocation plan, but that they hoped to reach an agreement, and further stated that it would provide a full and final description of its Tenant Relocation Plan when it submitted its final list of proffers and conditions on April 20, 2015. The Applicant stated that it expected that the tenants would need to be relocated for approximately 22-36 months. The Applicant stated that it agreed to pay for the cost of the design and construction of the new traffic intersection of Alabama Avenue, S.E. and 15th Street, S.E., with the cost capped at $350,000 (the amount noted in DDOT's Supplemental Report), and requested that the Commission authorize the creation of an escrow account. The Applicant's letter also stated that it had encouraged the ANC 8E Chairman to submit a formal report, but stated that the Applicant had no control over whether such a report would be submitted.

17. On April 20, the Applicant submitted its revised list of final proffers and draft conditions, pursuant to 11 DCMR § 2403.20. (Ex. 61.) The Applicant's April 20, 2015 submission also stated that, while the Applicant remains committed to having a signed relocation agreement with the existing residents on the property, the Applicant did not believe that the parties will be able to come to mutually satisfactory terms on a tenant relocation plan. The Applicant proposed therefore that the Commission include the major components of the tenant relocation plan as a condition of this Order. The major components are as follows: (i) all existing tenants have the ability to return to the new residential building; (ii) the residents will continue to pay the amount of rent they pay in their current units, subject to annual rent increases equal to the amount of the "automatic" rent increase allowed by DC's rent control law (CPI or CPI +2% depending on whether a tenant is

senior or disabled), in both the temporary relocation unit and upon return to the new building; and (iii) the Applicant pays all costs of relocation for the existing tenants with the relocation units to be located within two miles of the Property.

18. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to the District of Columbia Home Rule Act. NCPC, by delegated action by NCPC's Executive Director dated April 1, 2015, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital. (Ex. 59.)

19. The Commission took final action to approve the application in Z.C. Case No. 13-08 on May 11, 2015.

The Subject Property and the Surrounding Area

20. The Subject Property is currently improved with an entrance to the Congress Heights Metro Station and four residential buildings. The Subject Property includes approximately 370 feet of linear frontage along Alabama Avenue and 145 feet of linear frontage along 13th Street. The Subject Property includes some contour changes with the low point of the site located at the intersection of 13th Street and Alabama Avenue and rises approximately four and one-half feet as one moves east along Alabama Avenue. The Alabama Avenue frontage is also approximately five to six feet higher than the rear of the Subject Property. (Ex. 2, p. 2.)

21. Directly across Alabama Avenue from the Subject Property is the Kiss and Ride Parking Lot for the Congress Heights Metro Station and the Alabama Avenue entrance to the St. Elizabeths Hospital East Campus property, specifically subdistrict StE-18 of the recently adopted St. Elizabeths East (StE) District. (See Z.C. Order No. 12-08, effective March 29, 2013.) Across Alabama Avenue and further to the east is the historic Washington Hebrew Congregation Cemetery. (Ex. 2, pp. 2-3.)

22. Directly to the east of the Subject Property is the campus of the Malcolm X Elementary School. The grounds of this public elementary school extend to the south of the Subject Property all the way to Savannah Street. A garden apartment complex is located directly to the south of the Subject Property along 13th Street. To the west of the Subject Property, along Alabama Avenue and 13th Street, residential row houses are the primary use. (Ex. 2, p. 3.)

Existing and Proposed Zoning

23. The Property is located in the R-5-A Zone District and the mixed-use Medium-Density Commercial and Medium-Density Residential land use categories on the District of Columbia's Future Land Use Map. The Zoning Map Amendment application sought to rezone the Property to the C-3-B Zone District. (Ex. 2, p. 2.)

Description of the PUD Project

Applicant's Development Vision for the Project

24. The Applicant's vision for the development of the Subject Property was guided by the following goals:

- Create a vibrant transit-oriented development with neighborhood-serving retail, office, and residential uses;
- Increase Metro ridership originating/terminating at the Congress Heights station with uninterrupted operation of the station entrance;
- Enhance pedestrian safety along Alabama Avenue; and
- Enliven the plaza surrounding the Metro Station entrance.

In furtherance of those goals, the Applicant stated that it created a truly transit-oriented project that helps achieve the District's vision of creating economic development opportunities in the Congress Heights neighborhood and Ward 8. The project will create new housing, office, and retail options for existing and new residents, and establish a high level of urban design and architectural quality that will guide future development in the area. (Ex. 2, p. 3.)

25. In written testimony, the Applicant noted that one of the focal points of the project's design process has been to create a truly special public space around the entrance to the Congress Heights Metro Station. The plaza area that is created by the location and architectural treatment of the proposed office and residential buildings will be a neighborhood center and focal point. A rotunda at the second level of the residential building provides a unique architectural marker for this building and helps pull pedestrians walking along Alabama Avenue into the plaza. Retail use is proposed along Alabama Avenue, at the corner of Alabama Avenue and 13th Street, as well as lining the proposed plaza that surrounds the Metro entrance. These retail uses will help animate the neighborhood and pedestrian realm as well as create a lively atmosphere for workers in the office building, tenants of the residential building, and patrons of the new stores and restaurants. (Ex. 2, pp. 3-4.)

26. The Applicant also noted that the buildings along Alabama Avenue have been pulled back from the property line in order to create a more lively and engaging public realm. The sidewalks along Alabama Avenue and 13th Street will include tree boxes of approximately six feet wide and pedestrian travel ways of between 10 and 20 feet wide. Planters with small trees and shrubs will help to define the plaza. All of the electrical vaults for both buildings will be placed on private property. (Ex. 2, p. 4.)

Residential Building

27. The 205-215 residential units will be located in the building at the intersection of 13th Street and Alabama Avenue, S.E. As noted above, this building will include ground-floor retail uses, a prominent lobby entrance on Alabama Avenue and small office users along 13th Street. The façade of this frontage on 13th Street is treated as a series of townhouse-like elements that step back at the fourth floor so as to better relate to the scale and rhythm of the neighboring buildings across 13th Street and further down 13th Street. Like the adjacent residential buildings, the main façade material is a warm red brick. A vertical band of sienna colored brick marks the corner while balconies farther up the façade break up the mass of the building, act as a cornice, and scale the new building to the existing context. (Ex. 2, p. 5.)

28. In order to help further animate the plaza, the residential building includes a gym (for use by the residents of the building) at the second level which includes a patio space that overlooks the plaza. A large courtyard, with significant plantings and vegetative treatment, is proposed at the rear of the building. Just as in the office building, the roof level for the residential building has been thoughtfully designed to take full advantage of the views to the North that the Subject Property provides. An open terrace area is proposed at the corner of 13th Street and Alabama Avenue and a large amount of the roof area will be covered with a vegetative green roof which will also reduce the urban heat island effect and treat storm water for both quality and quantity. (Ex. 2, p. 5.)

Commercial Building

29. The proposed office building will be eight stories tall, with the eighth level further set back from the building's edge along Alabama Avenue. The façade treatment for this building is intended to include mainly tan colored brick and sienna colored brick accents, precast trim, as well as painted aluminum windows and curtain wall elements. The entrance to the lobby at the plaza level, at the rear of the plaza, will be a double height atrium that is set back slightly from the main façade. The entrance will be framed with a stone surround and glass and metal accent elements. The roof level of the office building has been designed to highlight the truly special views that this project will have over the St. Elizabeths East and West Campuses and towards the Anacostia River. A large terrace area is proposed, as well as a significant vegetative green roof which will reduce the urban heat island effect and be used to treat storm water for both quality and quantity. (Ex. 2, p. 4.)

LEED Requirements

30. The Applicant has agreed to design the multi-family building so that it could achieve a LEED-Silver certification. The Applicant has agreed to design the office building so that it could achieve a LEED-Gold certification. The Applicant has also agreed to have both buildings go through the LEED certification process. (Ex. 2, p. 13; Ex. 52.)

Transportation Issues

31. The project will include approximately 218 car parking spaces, 148 bicycle parking spaces inside the building (78 for the office building and 71 for the residential), and 22 public bicycle parking spaces at grade as well as the DC Bikeshare station which includes 15 bicycle spaces. Vehicular access to the project will be provided through the creation of a private alley system that wraps the project. Access to this alley system will occur from an existing curb cut on Alabama Avenue at the eastern end of the site (expanded from its current 13 foot width to a minimum width of 20 feet throughout) and a relocated curb cut on 13th Street to the southern end of the Subject Property. One existing curb cut on Alabama Avenue will be closed as a result of this application. The private alley will operate as one-way for trucks, with a clockwise directional flow of trucks entering the Subject Property from Alabama Avenue and then exiting out of the project onto 13th Street. Passenger cars will be able to access the entrances to the parking spaces at grade as well as the two below-grade parking levels though the alley from either 13th Street or Alabama Avenue. (Ex. 2, pp. 5-6.)

32. The loading and parking facilities for each building will be separate. Access to the two below-grade levels of parking spaces for the office building (with approximately 132 spaces) will be from an entrance at the southeast corner of the Subject Property. Four 30-foot loading berths and associated platforms will be fully enclosed in the building and two 20-foot service/delivery Spaces are located in a wide portion of the alley. Access to the one below-grade level of parking for the residential building will be in the general center of the Subject Property. Two separate entrances allow access from the at-grade parking onto the private alley. A total of 72 parking spaces are provided for the residential use and 14 retail parking spaces for retail use on the residential lot. The residential building will have one 20-foot service/delivery space and one 30-foot loading berth. The Applicant is requesting flexibility from the requirement to provide a 55-foot loading berth. (Ex. 2, p. 6.)

33. The Subject Property includes a slope of approximately five to six feet from the northern edge along Alabama Avenue to the southern edge. The design of the private alley effectively utilizes this grade change to help buffer the visual and noise impacts of personal vehicles and trucks that will access the parking and loading facilities. A retaining wall along the eastern and southern edges of the Subject Property is proposed to separate the private alley from the adjoining properties. (Ex. 2, p. 6.)

34. The Applicant submitted a transportation impact study ("TIS") prepared by Wells & Associates. The TIS included a Transportation Demand Management ("TDM") Plan that included the following elements:

    (a) A member of the property management team will be designated as the Transportation Management Coordinator ("TMC"). The TMC will be

responsible for ensuring that information is disseminated to tenants of the buildings. The position may be part of other duties assigned to the individual;

(b) Information on and/or links to the following programs and services will be provided on the property management website:

- Capital Bikeshare;
- Car-sharing services;
- Uber;
- Ridescout;
- Commuter Connections Rideshare Program, which provides complimentary information on a variety of commuter programs to assist in determining which commuting options work best for commuters;
- Commuter Connections Guaranteed Ride Home, which provides commuters who regularly (twice a week) carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency; and
- Commuter Connections Pools Program, which incentivizes commuters who currently drive alone to carpool. Participants can earn money for carpooling to work and must complete surveys and log information about their experience;

(c) An electronic display will be provided in a common, shared space in each of the buildings and will provide public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital BikeShare locations indicating the number of bicycles available at each location; and

(d) Convenient and covered secure bike parking facilities will be provided with storage for a minimum of 76 bicycles for the entire development.

(Ex. 15C, pp. 37-38.)

35. DDOT requested that the Applicant fund the design and installation of a traffic signal at the intersection of Alabama Avenue, S.E. and 15th Street, S.E. In testimony at the public hearing, the Applicant's transportation engineer noted that the costs associated with the design and installation of a traffic signal are approximately $300,000-$350,000. The

Applicant offered to pay for 25% of the cost of the signal. In response, DDOT submitted a supplemental report dated March 26, 2015. (Ex. 57.) DDOT's Supplemental Report stated that it was DDOT's position that the Applicant should be required to fully fund the new signal, and requested that the Applicant create an escrow fund of $350,000 to fund the signal. The Supplemental Report further stated that the Applicant would be expected to complete a full warrant analysis as part of the public space permitting process, including existing conditions. In response to DDOT's Supplemental Report, the Applicant agreed to pay for the cost of design and construction of the new traffic signal at the intersection of Alabama Avenue, S.E. and 15th Street, S.E., with such costs capped at $350,000 (the amount noted in DDOT's Supplemental Report). The Applicant explicitly requested that the Commission approve the Applicant's ability to establish an escrow account in which the $350,000 will be placed. After the signal warrant analysis (noted by DDOT) is completed and if the signal is deemed to be warranted, the Applicant will agree that the signalized intersection will be operational prior to the issuance of a certificate of occupancy for the second building on the property. (Ex. 60.)

36. At the request of the Commission, the Applicant researched the ability of residents of this project to obtain residential permit parking ("RPP") stickers for their cars. The existing Alabama Avenue and 13th Street addresses associated with this property are not eligible for RPP parking. The Applicant agreed to add a condition to the Commission's approval of this application that prohibits any resident of this project from obtaining an RPP sticker. (Ex. 52, p. 6.)

Tenant Relocation Plan and Discussions/Dialogue with the Community

37. The Applicant's March 16, 2015 post-hearing submission included specific responses to questions that were raised by one of the Coalition members at the January 22, 2015 public hearing regarding the tenant relocation plan. The Applicant's tenant relocation plan consists of the following major components:

- All existing tenants have the ability to return to the new residential building;
- The residents will continue to pay the amount of rent they pay in their current units, subject to annual rent increases equal to the amount of the "automatic" rent increase allowed by DC's rent control law (CPI or CPI + 2% depending on whether a tenant is senior or disabled), in both the temporary relocation unit and upon return to the new building. This proposal means that tenants are paying no more than what they would pay if they continued living in their current buildings and they are protected from other forms of rent increases allowed under rent control, such as hardship petitions or capital improvement petitions; and
- The Applicant pays all costs of relocation for the existing tenants, the relocation units will be located within two miles of the property (the landlord has provided the tenants with the opportunity to visit the relocation units).

(Ex. 52, p. 2 and Tab B.)

38. At the request of the Commission at the conclusion of the January 22, 2015 public hearing, the owner of the existing residential properties ("Residential Property Owner") sought to engage in substantive discussions with the Coalition regarding the terms of the tenant relocation plan and the issues that were raised by the Coalition at the January 22, 2015 public hearing. Unfortunately, the Residential Property Owner's representatives found the Coalition to be unresponsive to these requests. The Applicant provided an outline of the correspondence between the Residential Property Owner's representatives and the Coalition's counsel which detailed the correspondence between the parties from September of 2014 (the tenant relocation plan was presented to the Coalition in July of 2014 to March 2015. (Ex. 52, p. 1.)

39. After the January 22, 2015 public hearing, the Residential Property Owner made a concession to the relocation plan offered to the tenants. The Residential Property Owner no longer asked that the tenants forego the exercise of their rights under the Tenant Opportunity to Purchase Act of 1980 ("TOPA"), D.C. Official Code §§ 42–3404.01 *et seq*. (2012 Repl.). The Residential Property Owner revised the draft agreement so that any decision that a tenant makes about returning to the new building after temporary relocation or accepting a buy-out would be made following the Residential Property Owner's receipt of a demolition permit (which is only issued after the TOPA process is complete). (Ex. 52, pp. 1-2.)

40. In its April 20, 2015 submission, the Applicant stated that while it remained committed to having a signed relocation agreement with the existing residents on the property, it believed the parties were not going to be able to come to mutually satisfactory terms on a tenant relocation plan. The Applicant proposed instead that the Commission include the major components of the tenant relocation plan listed in the Applicant's March 26, 2015 post-hearing submission as conditions of this Order. The Commission has adopted this approach, and this Order includes a condition requiring the Applicant to abide by the major components of the tenant relocation plan listed in the Applicant's March 26, 2015 post-hearing submission.

41. Prior to taking final action to approve the application, the Commission requested that the Applicant's attorney clarify the language of the first component of the tenant relocation plan. He stated that the Applicant will provide evidence to the Zoning Administrator that all existing tenants were provided the opportunity to return to the new residential building.

Affordable Housing

42. The Applicant's final proposal was to create 15,655 square feet ("sf") of workforce affordable housing, with 10,877 sf reserved for households making up to 80% of the area median income ("AMI") and 4,778 sf reserved for households earning up to 50% of AMI. (Ex. 52, p. 5.)

43. The Applicant's post-hearing submission also addressed the affordable housing component of the project. The Applicant provided information which calculated the Inclusionary Zoning ("IZ") requirement that would be applicable if the site was developed as a matter-of-right in the existing R-5-A Zone District at the maximum permitted floor area ratio ("FAR") plus the bonus 20% afforded IZ projects [9,556 sf (4,778 sf at 50% AMI and 4,778 sf at 80% AMI)], and the amount of affordable housing that is being provided in this PUD project [15,655 sf (10,877 sf square feet at 80% AMI and 4,778 sf at 50% AMI)]. The Applicant noted that it is providing 6,090 sf of affordable housing more than would be created on the property than if it was developed as a matter-of-right. The amount of affordable housing reserved for households at 50% in perpetuity is the same as what would be achieved on the property as a matter-of-right. The Applicant's post-hearing submission included a site plan which noted the number, size, and distribution of the IZ units in the residential building. (Ex. 52, pp. 4-5; Ex. 52D1-52D2.)

44. The Applicant also noted that one of the witnesses in opposition to the application questioned why was there no Housing Linkage payment required for the amount of office development that is being proposed in the project. The Applicant pointed to the fact that the residential and office components of this project have been designed to be one cohesive whole. These abutting buildings have been seamlessly designed to frame the Metro plaza and they share the private alley system which allows for an efficient and effective internal transportation system. The Applicant argued that it is entirely appropriate to include the total lot area in calculating the IZ requirement, and the applicability of the Housing Linkage requirement to this project. The Applicant concluded that this project does not trigger the Housing Linkage payment requirements, as the total amount of office gross floor area that is provided in this project is 226,695 sf, which results in a density of only 2.56 FAR, which is significantly less than the 4.0 non-residential FAR that is permitted in the C-3-B Zone District as a matter-of-right. (Ex. 52, p. 6.)

Applicant's Testimony

45. Amanda Coen, of Maurice Walters Architects, one of the project architects and admitted as an expert witness in the field of architecture, described the context of the area surrounding the Subject Property and how the massing and architectural details of the residential and office buildings (with the changes that were made to the buildings in

response to the Commission's set-down comments) responded to the residential uses along 13th Street, the future development of the St. Elizabeths campus across Alabama Avenue, and the adjacent Malcolm X School. Ms. Coen also described the architectural treatment of the plaza area and the potential for creating a well-lit, safe, and energized space with retail and restaurant uses (Tr., pp. 16-19.)

46. Ms. Coen discussed how the architectural detailing of the building was continued all the way around the building, and there was no "back" to the building. Ms. Coen also noted the private alley that sinks down approximately four to five feet in the rear of the building and is separated from the adjacent property by a retaining wall and fence atop the retaining wall. Ms. Coen noted that the private alley allows the separation of cars and delivery trucks from the pedestrians along 13th Street and Alabama Avenue creating very pedestrian-friendly spaces along those street frontages. (Tr., pp. 19-25,)

47. At the public hearing, Jami Milanovich, of Wells & Associates and admitted as an expert witness in transportation engineering, testified to the vehicular access to the site via the private alley, the proposed amount of parking provided, and the loading that is provided. Ms. Milanovich discussed the requested relief from the 55-foot loading berth requirement for the residential portion of the project and the appropriateness of the Applicant's Loading Management Plan to help ensure that no adverse impacts would result from loading activity on the property. (Tr. pp. 28-30.)

48. Ms. Milanovich also noted that the project is expected to generate approximately 250 vehicular trips during both the morning and evening peak hours and that seven intersections along the Alabama Avenue corridor were studied for this project. Ms. Milanovich noted that during the morning peak hour, site-generated traffic is expected to account for less than 10% of the total traffic at six of the intersections and 10.9% at the seventh intersection. During the evening peak hour, site-generated traffic is expected to account for less than 10% of the total traffic at five intersections, with the site generated traffic accounting for 11% and 10.5% at the two other intersections. (Tr., pp. 30-31.)

49. Ms. Milanovich also testified that from a transportation perspective, the site is ideally situated. Its location at the Congress Heights Metro Station will naturally encourage transit trips to and from the site and seven bus routes stop immediately adjacent to the site. To capitalize on those transportation options, Ms. Milanovich described the proposed TDM Plan that included all of DDOT's comments. (Tr., p. 31.)

50. Ms. Milanovich also presented testimony regarding DDOT's request that the Applicant design and install a traffic signal at the Alabama Avenue/15th Street intersection. Ms. Milanovich noted that since the traffic signal warrants are met at that intersection even without the proposed development, the Applicant was willing to provide a pro-rata contribution towards the design and construction of the traffic signal.[1] Ms. Milanovich

[1] The Applicant later agreed to pay the full cost of design and construction of the signal, capped at $350,000.

also noted that the Applicant accepted DDOT's proposed conditions regarding: the installation of 22 short-term bicycle spaces the unbundling of parking costs in all commercial and residential leases; continued coordination with DDOT on public space issues; and continued coordination with DDOT on the installation of electric car charging stations on the property. (Tr. pp. 32-33.)

51. At the public hearing, Geoffrey Griffis of City Partners testified on behalf of the Applicant. Mr. Griffis testified to the project's benefits to: Metro, the City, and the Congress Heights neighborhood; the community benefits agreement the Applicant entered into with ANC 8E and community organizations; and the dialogue process that occurred with the current residential tenants. Mr. Griffis noted that the project is a transit-oriented project on an under-utilized site that will create new housing and retail options (with local retail opportunities), new job opportunities, will establish a high level of urban design and architectural quality with an active and safe streetscape and plaza, and is a project that will guide future development in the area. (Tr., pp. 34-36.)

52. Mr. Griffis discussed the Community Benefits Agreement that was negotiated with the community. Mr. Griffis noted that this agreement included employment opportunities for local residents during construction and also with future employers in the project as well as internship opportunities, office space for ANC 8E, and retail or business space for local and small business enterprises at a discounted rent. (Tr., pp. 38-40.)

53. Mr. Griffis also testified to the tenant relocation plan that was offered to the residents of the existing buildings on the property. Mr. Griffis noted that the tenant relocation plan included four elements: (i) the right of all residents to return to the new project; (ii) relocation assistance during construction; (iii) helping tenants find temporary new units during construction; and (iv) for those residents that did not want to return, a buy-out payment. (Tr., pp., 40-41.)

Density Proposed and Flexibility Requested

54. The final total gross floor area included in the proposed PUD is approximately 447,588 sf for a total density of approximately 5.06 FAR. The proposed office building will include approximately 226,695 sf of office use, 9,138 sf of retail use and will have a measured building height of 90 feet. The proposed residential building will include approximately 205-215 residential units, 195,684 sf of residential use, 16,071 sf of retail use, and will have a measured building height of approximately 90 feet. The C-3-B Zone District permits a maximum FAR of 5.0 (4.0 commercial) as a matter-of-right and a maximum FAR of 5.5 (4.5 commercial) in a PUD project. The maximum height allowed as a matter-of-right in the C-3-B Zone District is 70 feet. A PUD project in the C-3-B Zone District is permitted a maximum building height of 90 feet. The Applicant requested flexibility from the following requirements of the Zoning Regulations:

- Roof structures – The Applicant is requesting the ability to create one roof structure on the office building. However, in order to mitigate its visual impact, the Applicant is requesting the ability to have this roof structure include varying heights. On the residential building the Applicant is similarly seeking to reduce the visual impact by creating three roof structures with varying heights. The Applicant is seeking set-back relief from the portion of the roof structure on the residential building that abuts the building's internal courtyard. This roof structure satisfies all required setbacks from the exterior walls of the residential building which face public streets;

- More than one structure on a single record lot – The residential and office buildings will be located on the same record lot and will not have an above-grade connection between the buildings. Each building's theoretical lot calculations were provided into the record. On the office building lot, the non-residential density will be 4.82 FAR, which is more than the permitted 4.5 FAR for non-residential use for a PUD in the C-3-B Zone District. However, the total amount of non-residential density provided on the entire site is only 2.85 FAR; and

- Loading – The project will include a 30-foot loading berth for the residential building rather than a 55-foot loading berth. The two service and delivery spaces required for the office building will be provided on the theoretical residential lot.

(Ex. 15.)

55. At the public hearing, an additional area of flexibility was noted. Due to the complexities of the site, including construction in and around an operating Metro station and Metro tunnels, the Applicant requested that it be provided three years to file a building permit for the construction of the first building and up to five years to file the building permit for the second building. (Tr., pp. 15-16.)

56. The Applicant, in its written submissions and testimony before the Commission, noted that the following benefits and amenities will be created as a result of the project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403:

(a) Housing and Affordable Housing: Pursuant to § 2403.9(f) of the Zoning Regulations, the PUD guidelines state that the production of housing and affordable housing is a public benefit that the PUD process is designed to encourage. This project will create approximately 205-215 residential units and approximately 15,655 sf of workforce affordable housing, with 10,877 sf reserved for households making up to 80% of AMI and 4,778 sf reserved for households earning up to 50% of AMI. In a post-hearing submission, the Applicant noted that the maximum matter-of-right development on the Property would create 9,565 sf of affordable housing (4,778 sf reserved for households making up to 50% of AMI and 4,778 sf reserved for households earning up to 80% of AMI), and the

Applicant's proposed amount of affordable housing was 6,090 sf more than would be provided on the Property if the Property was developed as a matter-of-right. The affordable housing units will be distributed throughout the residential building (except for the upper two stories of the building). (Ex. 2, p. 11.) In addition, the Applicant has proffered the following tenant relocation plan: (i) all existing tenants have the opportunity to return to the new residential building; (ii) the residents will continue to pay the amount of rent they pay in their current units, subject to annual rent increases equal to the amount of the "automatic" rent increase allowed by DC's rent control law (CPI or CPI + 2% depending on whether a tenant is senior or disabled), in both the temporary relocation unit and upon return to the new building; and (iii) the Applicant pays all costs of relocation for the existing tenants with the relocation units to be located within two miles of the Property;

(b) Urban Design, Architecture, Landscaping, or Creation of Open Spaces: § 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. The project exhibits all of the characteristics of exemplary urban design and architecture. The massing, height, and articulation of the buildings have been carefully studied in order to create a project that provides new housing, office, and retail opportunities for the District, yet also respects the nearby lower density residential and educational uses. The public spaces along Alabama Avenue and 13th Street and the public plaza have been designed to provide for an engaging and active street level experience; (Ex. 2, p. 12.)

(c) Site Planning, and Efficient and Economical Land Uses: Pursuant to § 2403.9(b) of the Zoning Regulations, "site planning, and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Commission. The creation of a truly transit-oriented project on the Subject Property, with housing, office and retail uses, is an example of appropriate site planning and efficient and economical land use as a project amenity. Given the Subject Property's adjacency to the Congress Heights Metro station, it is appropriate to have this level of density and building height on this site as proposed in this PUD project; (Ex. 2, p. 12.)

(d) Effective and Safe Vehicular and Pedestrian Access: The Zoning Regulations, pursuant to § 2403.9(c), state that "effective and safe vehicular and pedestrian access" can be considered public benefits and project amenities. Vehicular access to the site has been carefully studied and designed to minimize the potential for pedestrian and vehicular conflicts. The private alley system will allow for vehicles and trucks to safely and efficiently access the parking and loading facilities without impeding pedestrian traffic flow along both Alabama Avenue and 13th Street. A total of approximately 148 dedicated bicycle parking spaces will also be provided in the three parking levels of the office and residential

buildings. An additional 22 bicycle parking spaces will be provided in the adjacent public space and a DC BikeShare station provides an additional 15 bike parking spaces; (Ex. 2, pp. 12-13.)

(e) Uses of Special Value: According to § 2403.9(i), "uses of special value to the neighborhood or the District of Columbia as a whole" are deemed to be public benefits and project amenities. The Applicant noted that it engaged in significant negotiations with representatives of ANC 8E, the Congress Heights Community Association, the Community Training and Development Corporation, Lead the Way Foundation and Higher Hopes, Inc., and the Ward Eight Council Against Domestic Violence. The Applicant and ANC 8E agreed upon a Community Benefits Agreement which included the following components:

- The Applicant will provide 1,600 sf feet of retail space to local tenants who will receive a rent discount of 25% for the life of the project;

- Creation of job training, employment and internship programs specifically tailored to Ward 8 residents;

- Creation of a revolving working capital fund, in an amount no less than $200,000, for contracts directly with the Applicant. This fund will allow smaller contractors access to funds to pay employees. The fund shall be used to allow small contractors, including those located in the Ward 8 Community, retained during the construction phases of the development, to cover payroll and other fixed costs on a weekly basis;

- The Applicant will provide approximately 500 sf of office space for ANC 8E for a term of at least five years, with possible extensions, at a cost of $12 per year;

- The Applicant will provide the Lead the Way Foundation and Higher Hopes, Inc. ("LTWFHHI") with a payment of $5,000 annually for a period of 15 years. These funds shall be used for facilitation of comprehensive, social reconstruction programs for the residents of the Ward 8 Community. These programs will include comprehensive resident and youth case management, engagement, and outreach services featuring an adolescent clubhouse and including, but not limited to, the arts and cultural services, health fitness and nutrition, financial management, and annual community social events, as well as development opportunities for the neighboring community;

- The Applicant will help the Congress Heights Community Association ("CHCA") fund the Annual Congress Heights Health and Community Day

by providing a payment in the amount of $5,000 annually for a period of 15 years;

- The Applicant will provide the Ward Eight Council Against Domestic Violence ("WECADV") with a payment of $5,000 annually for a period of 15 years; and

- The Applicant will provide the Congress Heights Community Training and Development Corporation ("CHCTDC") with a payment of $5,000.00 annually for a period of 15 years. These funds shall be used solely to pay for the costs of conducting training for targeted businesses in Ward 8, to develop management and business capability to perform contracts for the Applicant, its general contractor, and subcontractors;

(Ex. 25, Tab B.)

(f) Revenue for the District: § 2403.9(i) states that "uses of special value to the neighborhood or the District of Columbia as a whole" are deemed to be public benefits and project amenities. The creation of approximately 205-215 new households, approximately 25,209 sf of retail space, and approximately 226,000 sf of new commercial office space will result in the generation of significant additional tax revenues in the form of real estate, income, sales, use, and employment taxes for the District; (Ex. 2, p. 14.)

(g) Job Training Programs: § 2403.9(e) lists employment and training opportunities as a public benefit and project amenity. As part of the Community Benefits Agreement, the Applicant has agreed to the creation of job training, employment and internship programs specifically tailored to Ward 8 residents; (Ex. 25, Tab B.)

(h) Environmental Benefits: According to § 2403.9(h), "environmental benefits" are representative public benefits and project amenities. The Applicant has agreed to design the multi-family building so that it could achieve a LEED-Silver certification. The Applicant has agreed to design the office building so that it could achieve a LEED-Gold certification. The Applicant has also agreed to have both buildings go through the LEED certification process; (Ex. 2, p. 13.)

(i) Comprehensive Plan: According to § 2403.9(j), public benefits and project amenities include "other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan." The Applicant noted that the proposed PUD is consistent with and furthers many elements and goals of the Comprehensive Plan. The project's consistency with the Comprehensive Plan is described in greater detail below; and (Ex. 2, p. 14.)

(j) Public Benefits of the Project: §§ 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. This PUD project will include many, if not all, of the attributes of PUD projects that have been recently approved by the Commission, including:

- Exemplary/superior architecture;
- Affordable housing;
- Transit-oriented development; and
- Ground-floor retail establishments.

Comprehensive Plan

57. The Applicant noted that the Comprehensive Plan's Housing Element includes the following policies that are supported by this project:

- Policy H-1.1 - Expanding Housing Supply: Expanding the housing supply is a key part of the District's vision to create successful neighborhoods. Along with improved transportation and shopping, better neighborhood schools and parks, preservation of historic resources, and improved design and identity, the production of housing is essential to the future of our neighborhoods. It is also a key to improving the city's fiscal health. The District will work to facilitate housing construction and rehabilitation through its planning, building and housing programs, recognizing and responding to the needs of all segments of the community. The first step toward meeting this goal is to ensure that an adequate supply of appropriately zoned land is available to meet expected housing needs;
- Policy H-1.1.3 - Balanced Growth: Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low-and moderate-density single family homes as well as the need for higher-density housing;

As noted by the Applicant and OP, the proposed development would better utilize the property around the Metro station, increasing workforce housing to complement other housing types, existing and planned, for the Congress Heights area. The required level of IZ units would be provided at eight percent or 15,565 gross square feet of the residential space of its affordable units (10,877 sf for households making up to 80% of AMI and 4,778 sf for households making up to 50% of AMI). These affordable units would also accommodate returning residents at various levels of AMI's, well below 80%.

- Policy H-1.1.4 – Mixed-Use Development: Promote mixed-use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations;

- Policy H-1.2.2 - Production Targets: Consistent with the Comprehensive Housing Strategy, work toward a goal that one-third of the new housing built in the city over the next 20 years should be affordable to persons earning 80 percent or less of the area-wide median income (AMI). Newly produced affordable units should be targeted towards low-income household; and

The Property is recommended for mixed-use development with residential, commercial and retail uses and is within an area designated to be a neighborhood commercial center at a Metro Station. The Applicant noted that the project's provision of 205-215 residential units, including approximately 15,655 sf of workforce affordable housing (at various levels at and below 80% AMI), is consistent with this policy of encouraging mixed-use development in close proximity to Metro Stations.

- Policy FSS-1.1.10 - Minority/Small Disadvantaged Business Development: Provide technical assistance to minority-owned and small businesses in the Far Southeast/Southwest to improve the range of goods and services available to the community. Joint venture opportunities, minority business set-asides, business incubator centers, and assistance to community-based development organizations should all be used to jumpstart local business and provide jobs in the community.

The Applicant is providing: commercial space at reduced rents for neighborhood businesses for the life of the project; assistance to small, sub-contractors; and monetary donations to neighborhood organizations to fund their programs.

58. The Applicant noted that the Comprehensive Plan's Far Southeast/Southwest Area Element includes the following policies that are supported by this project:

- Policy FSS-2.4.1 - Congress Heights Metro Station Mixed-Use: "Encourage reuse of the Congress Heights Metro station site and its vicinity with mixed use medium density residential and commercial development through the use of planned unit developments that promote new economic development. Development on the site should be cognizant of the adjacent lower density neighborhood to the west and south, provide a connection to the future development on the St. Elizabeths Campus, and create a stronger sense of identity and gateway for the Congress Heights neighborhood. Medium density development on the portions of the northwest quadrant of Square 5814 [sic.] would be compatible with the adjacent lower density neighborhood to the west and south with appropriate design review through a Planned Unit Development process. Strongly encourage WMATA to

make its land available for joint development around the Congress Heights Metro Station"; and

The Applicant states that the proposed PUD project and Zoning Map amendment application are the embodiment of these policies. The proposed project is a medium-density commercial (office and retail) and residential development directly above and adjacent to the Congress Heights Metro Station. The proposed project helps create a gateway between the development that will occur on the St. Elizabeths East Campus and the Congress Heights community. The massing and height of the buildings is respectful to the nearby lower-scale residential uses and also creates an attractive and engaging street level experience along Alabama Avenue, 13th Street, and the new public plaza. The buildings are located and designed so as not to affect the light and air of adjacent uses. Loading and parking areas are to the rear of the buildings and are set back from the property line to minimize noise to residents to the south. Retail uses are concentrated along Alabama Avenue and around the Metro plaza area. The façade of the residential building along 13th Street will be of red brick, similar to the homes along 13th Street and with articulations to mimic townhouse units

- Policy FSS-1.1.1 - Directing Growth (in pertinent part): Additional opportunities for future housing development and employment growth in the Far Southeast/Southwest should be directed to the area around the Congress Heights Metro Stations [sic.] and along the Great Streets corridors of South Capitol Street. Provide improved transit and automobile access to these areas and improve their visual and urban design qualities.

The Applicant noted that this project is being reviewed as a PUD and promotes new and affordable housing, improves transit access and promotes quality in the design of the buildings and adjacent public spaces, including the Metro plaza area. The Applicant worked with community representatives to identify specific benefits needed in the neighborhood.

59. The Applicant noted that the Comprehensive Plan's Urban Design Element includes the following policies which are furthered by the PUD project:

- Policy UD-2.2.5 - Creating Attractive Facades: Create visual interest through well-designed building facades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street;

- Policy UD-3.1.7 - Improving the Street Environment: Create attractive and interesting commercial streetscapes by promoting ground level retail and desirable street activities, making walking more comfortable and convenient, ensuring that sidewalks are wide enough to accommodate pedestrian traffic,

minimizing curb cuts and driveways, and avoiding windowless facades and gaps in the street wall; and

- Policy UD-3.1.8 - Neighborhood Public Space: Provide urban squares, public plazas, and similar areas that stimulate vibrant pedestrian street life and provide a focus for community activities. Encourage the "activation" of such spaces through the design of adjacent structures: for example, through the location of shop entrances, window displays, awnings, and outdoor dining areas.

The Applicant notes the high levels of architectural design and quality of materials used in this project will serve as the standard for future development in the area. The proposed buildings are set back from the property line to provide additional space for pedestrian ways and landscaping. The creation of ground-floor retail uses and the treatment of the public space along Alabama Avenue and 13th Street and the public space will encourage and foster pedestrian activity and outdoor seating areas. Small office uses along 13th Street frontage would activate the street while respecting the residential street.

60. The Applicant noted that the Comprehensive Plan's Land Use Element includes the following policies which are furthered by the PUD project:

- Policy LU-1.3.1 - Station Areas as Neighborhood Centers: Encourage the development of Metro stations as anchors for economic and civic development in locations that currently lack adequate neighborhood shopping opportunities and employment. The establishment and growth of mixed use centers at Metrorail stations should be supported as a way to reduce automobile congestion, improve air quality, increase jobs, provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide;

- Policy LU-2.4.5 - Encouraging Nodal Development: Discourage auto-oriented commercial "strip" development and instead encourage pedestrian-oriented "nodes" of commercial development at key locations along major corridors. Zoning and design standards should ensure that the height, mass, and scale of development within nodes respects the integrity and character of surrounding residential areas and does not unreasonably impact them;

The Applicant proposed that the PUD project will serve as an anchor for further economic and civic development of the Congress Heights neighborhood. The creation of a significant amount of office space, on top of the Congress Heights Metro Station, is an important economic generator that also has the opportunity to minimize adverse impacts on the surrounding community. The creation of 25,209 sf of new retail uses surrounded by active and accessible pedestrian travel routes provides both economic and civic benefits. The creation of approximately 205-215 new residential units provides the

opportunity for new residents to come to the neighborhood or for existing residents to remain in their neighborhood. Finally, the creation of a lively and animated plaza around the Congress Heights Metro Station canopy and entrance creates a public place and new cultural focal point for the Congress Heights community.

- Policy LU-1.3.2 - Development Around Metrorail Stations: Concentrate redevelopment efforts on those Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with weak market demand or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. Ensure that development above and around such stations emphasizes land uses and building forms which minimize the necessity of automobile use and maximize transit ridership while reflecting the design capacity of each station and respecting the character and needs of the surrounding areas;

The Applicant stated that the proposed development at the Congress Heights Metro Station would replace underutilized property around the station. The transit-oriented development would maximize transit ridership while providing additional bike space and encouraging other transportation demand management measures. The proposed development would help to catalyze other developments in close proximity to the Congress Heights Metro Station and St. Elizabeths.

- Policy LU-1.3.4 - Design To Encourage Transit Use: Require architectural and site planning improvements around Metrorail stations that support pedestrian and bicycle access to the stations and enhance the safety, comfort, and convenience of passengers walking to the station or transferring to and from local buses. These improvements should include lighting, signage, landscaping, and security measures. Discourage the development of station areas with conventional suburban building forms, such as shopping centers surrounded by surface parking lots;

The Applicant stated that the proposal to increase the pedestrian ways along Alabama Avenue and 13th Street and activate the plaza area with retail uses would enhance the safety, comfort, and convenience for those who would use the metro station. Additional bicycle racks and the existing Capital Bikeshare station would provide facilities for users of the Metro station.

- Policy LU-2.1.11 - Residential Parking Requirements: Ensure that parking requirements for residential buildings are responsive to the varying levels of demand associated with different unit types, unit sizes, and unit locations (including proximity to transit). Parking should be accommodated in a manner that maintains an attractive environment at the street level and minimizes interference with traffic flow. Reductions in parking may be considered where

transportation demand management measures are implemented and a reduction in demand can be clearly demonstrated; and

The project provides below-grade parking and ingress and egress should not inhibit traffic and pedestrian movements. The proposed location would not interrupt the building facades and would provide an attractive street level for each building. The Applicant agreed to a condition that residents of the project will be prohibited from obtaining an RPP sticker.

- Policy LU-2.4.6 - Scale and Design of New Commercial Uses: Ensure that new uses within commercial districts are developed at a height, mass, scale, and design that is appropriate and compatible with surrounding areas.

The Applicant presented testimony and information that the proposed use-mix, height, massing, scale, and design are appropriate for this transit location and are not inconsistent with the Comprehensive Plan. The shadow studies show that the light and air to the adjacent residences and school should not be negatively impacted. Along the 13th Street frontage, office uses instead of retail uses are proposed to minimize the level of activity closest to the residential use.

61. The Applicant stated that the Comprehensive Plan's Transportation Element includes the following policies which are furthered by the PUD project:

- Policy T-1.1.5 - Joint Development: Attract new riders to the transit system by fostering transit-supportive commercial and residential joint development projects on Washington Metropolitan Area Transit Authority ("WMATA") owned or controlled land and on private properties adjacent to Metrorail stations.

WMATA is a partner in the proposed transit oriented development, which would bring new businesses and residents to the area. WMATA would retain a permanent access easement for public station access and service operations and would monitor design and construction of the development. WMATA submitted a letter into the record of this case which described its support of this project.

62. The Applicant noted that the Comprehensive Plan's Environment Element includes the following policies which are furthered by the PUD project:

- Environment Element Policy E-3.2.1: Support for Green Building: Encourage the use of green building methods in new construction and rehabilitation projects, and develop green building methods for operation and maintenance activities; and

The Applicant proposes LEED-Silver certification for the residential building and LEED-Gold for the office building. The Applicant has agreed to go through the LEED certification process for both buildings.

- Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff: Promote an increase in tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction and adaptive reuse, and the application of tree and landscaping standards for parking lots and other paved surfaces.

The proposal would increase tree planting along the public right-of-way. Additionally, 28,340 sf of green roof would be provided to reduce runoff.

Government Agency Reports

63. By report dated January 12, 2015, OP recommended that the proposed PUD and related Zoning Map amendment should be approved. In its report, OP stated:

> This PUD and PUD-related Zoning Map Amendment application conforms to the Comprehensive Plan's Generalized Land Use and Policy Map designations. The proposal would result in a vibrant transit-oriented development at the Congress Heights Metro Station (Metro). It would bring new residences, retail, and office uses to the area and would be a precursor to, and lead the way for the planned development of the St. Elizabeths East Campus. It would offer existing residents the opportunity to return to the neighborhood, and would offer commercial space for neighborhood businesses at reduced lease rates.

In response to OP and Commission requests during the set down meeting on June 28, 2013, the Applicant submitted the following: information pertaining to the height of the buildings; details regarding the residential look and feel of the building along 13th Street; perspectives showing the scale of the buildings in relationship to that approved on the St. Elizabeths East Campus; additional street-level renderings, plans, and drawings; and a more detailed amenities package. (Ex. 28, p. 1.)

64. The OP report also addressed the project's consistency with the Comprehensive Plan. The OP report noted that the Future Land Use Map designates the Subject Property for a mix of medium-density residential and medium-density commercial uses. The OP report noted that the proposed C-3-B Zone District[2] is not inconsistent with this land use designation. In regard to the Comprehensive Plan's Generalized Policy Map, OP concluded:

[2] The text of the OP report appears to include a typographical error on p.10, referring to the C-3-A Zone District rather than the proposed C-3-B Zone District. Based on the entirety of OP's report and the testimony presented at the public hearing, it is clear that OP understood that the Applicant is seeking to establish the C-3-B Zone District on the Property.

> The Generalized Policy Map designates the site as a Neighborhood Enhancement Area, where the guiding philosophy is to "ensure that new development "fits-in" and responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood and must be consistent with the land use designation on the Future Land Use Map." Further, the "unique and special qualities of each area should be maintained and conserved, and overall neighborhood character should be protected as development takes place." and "New development in these areas should improve the real estate market, reduce crime and blight, and attract complementary new uses and services that better serve the needs of existing and future residents." The property is also within an area designated a New Neighborhood Center. The proposal is consistent with these recommendations as the development would provide housing opportunities for existing residents as well as bring new residents to the area. Architectural elements such as red brick and the building's articulation would enhance neighborhood character and set a standard for others to follow. The commercial portion of the development, with its office and retail uses, would bring new services and opportunities to the neighborhood to serve existing and new residents.

(Ex. 28, pp. 10-11.)

65. OP also addressed the application's consistency with the Land Use, Transportation, Housing, Environment, Urban Design, and Far Southwest/Southeast Elements. (Ex. 28, pp. 11-15.)

66. OP reviewed the project's satisfaction of the PUD standards and noted the following:

- *Urban Design, Architecture, Landscaping or Creation or Preservation of Open Space.* The project exhibits characteristics of exemplary urban design and architecture through the massing, height, and articulation of the buildings. Extensive landscaping around the building frontage would be provided with the buildings pulled back from the property line to provide additional space and additional landscaping and pedestrian ways of approximately 19-feet along Alabama Avenue and approximately 22-feet along 13th Street;

- *Site Planning, and Efficient and Economical Land Utilization.* The subject property is an underutilized site located at a Metro station also served by several Metrobus lines, and along a major arterial roadway. It would be developed with a mix of residential, office, and ground-floor retail uses to activate Alabama Avenue and the Metro plaza;

- *Transportation Features.* The proposal provides only one curb cut along Alabama Avenue and one along 13th Street. Vehicles would access the parking and loading facilities though a private alley on the eastern and southern portions of the site and exit onto 13th Street;

- *Employment and Training Opportunities.* The Community Benefits Agreement addresses training and employment opportunities, which include: 30% of construction jobs to be filled by Ward 8 residents; two paid interns throughout the course of the construction with preference given to former residents of the site and then second preference to residents of Ward 8; graduates of training programs would be given first preference for positions that match their skills when available prior to construction and during each phase of the development; and a revolving working capital fund for subcontractors;

- *Housing and Affordable Housing.* The project would create 206 new residential units on site, with eight percent of the residential gross square footage, or 15,655 sf of its units, devoted to affordable households. 10,877 sf of this housing will be reserved for people earning 80% of AMI and 4,778 sf of this housing will be reserved for people making 50% of AMI; and

- *Uses of Special Value to the Neighborhood or the District of Columbia as a Whole.* The proposed development would be one of the first of its type in Ward 8 and its location at the Metro station would support the neighborhood. It would accommodate new retail offerings and affordable retail space for local businesses. The Applicant would provide 1,600 sf of retail space for local retailers at a 25% discounted rent for the life of the project. The Applicant has fully engaged the community and has finalized a Community Benefits Agreement with the ANC and four other community organizations. (Ex. 28, pp. 8-10.)

67. OP's report requested additional information from the Applicant, including a plan that showed the number, size, and distribution of the IZ units throughout the residential building and confirmation that the 1,600 sf feet of retail space for local retailers at a 25% discounted rental rate should be for the life of the project. At the public hearing, the OP representative testified that the information provided by the Applicant was sufficient to address OP's request for the additional information. (Ex. 28; Tr., p. 118.)

68. By its report dated January 12, 2015, DDOT recommended conditional support of the PUD and related Zoning Map amendment. The DDOT report noted that after an extensive, multi-administration review of the case materials, DDOT determined that it has no objection to the project provided that:

- The Applicant design and install a signal at Alabama Avenue and 15th Street, S.E., subject to DDOT approval;

- Install 22 short-term bicycle parking spaces in public space; and

- In addition to the TDM measures proposed, the Applicant should unbundle all parking costs from the price of all commercial and residential leases.

(Ex. 29, p. 2.)

69. The DDOT report noted that all loading facilities for the project are designed to accommodate front-in/front-out movements in compliance with DDOT standards. DDOT also found "that the Loading Management Plan as proposed [by the Applicant] sufficiently addresses loading impacts." The DDOT report also noted that, given the complexity and size of the application, the Applicant is expected to continue to work with DDOT on additional public space matters. (Ex. 29, pp. 2, 4.)

70. In testimony at the public hearing, the DDOT representative noted that while the project only accounts for four percent of the total volume in the peak hour, the traffic created by this project makes the traffic at the Alabama Avenue/15th Street intersection reach a tipping point that creates a problem. DDOT also noted that it does not currently have a mechanism to receive or reserve partial payments for traffic signals. (Tr., pp. 119-121.)

71. In a Supplemental Report dated March 26, 2015, DDOT restated its position that the Applicant should be required to fund a new signal at Alabama Avenue, S.E. and 15th Street, S.E. and requested that the Applicant create an escrow fund of $350,000 to fund a full signal installation. DDOT also noted that in order to determine if a signal is necessary, the Applicant will be expected to complete a full warrant analysis as part of the public space permitting process including existing conditions. If a signal is warranted, the Applicant will be required to install a full signal. If it is not warranted, DDOT may waive this condition and release the funds of the escrow. (Ex. 57.) In response, the Applicant agreed to pay for the cost of design and construction of the new traffic signal at the intersection of Alabama Avenue, S.E. and 15th Street, S.E., with such costs capped at $350,000 (the amount noted in DDOT's Supplemental Report). The Applicant explicitly requested that the Commission approve the Applicant's ability to establish an escrow account in which the $350,000 will be placed. After the signal warrant analysis (noted by DDOT) is completed and if the signal is deemed to be warranted, the Applicant will agree that the signalized intersection will be operational prior to the issuance of a certificate of occupancy for the second building on the property. (Ex. 60.) The Commission agrees that the establishment of an escrow account for the purpose of paying for the design and construction of a traffic signal is appropriate and agrees to the establishment of such an escrow account in this case.

72. DDOE filed a report dated January 9, 2015 and provided testimony at the January 22, 2015 public hearing. The DDOE report noted that the Property sits in the center of the St. Elizabeths-Congress Heights EcoDistrict, and the project should serve as an example of sustainable, energy efficient development. DDOE encouraged the Applicant to fulfill or

exceed LEED certification at the Gold level for both the office and residential portions of the project. (Ex. 30.)

ANC 8E Report

73. At the public hearing, ANC 8E Chairperson Anthony Muhammad represented ANC 8E and testified on its behalf. Mr. Muhammad testified that ANC 8E voted to approve the project at their duly noticed January 5, 2015 Public Meeting with a quorum present. Mr. Muhammad noted that the ANC has been negotiating with the Applicant for two years on this project and that all of the parties noted in the Community Benefits Agreement will be affected by the project. (Tr., pp. 136-137.) However, no written report was submitted by ANC 8E.

Parties and Persons in Support

74. There were no parties in support of the application.

75. The former Ward 8 Councilmember, Marion Barry, submitted a letter in support of the application. (Ex. 12.)

76. At the public hearing the Applicant submitted letters supportive of Sanford Capital from the Community Partnership for the Prevention of Homelessness, Pathways to Housing, D.C., and residents in other Sanford Capital buildings. (Tr., pp. 248; Ex. 46)

Party in Opposition

77. The Coalition presented testimony from Will Merrifield, a staff attorney with the Washington Legal Clinic for the Homeless and the authorized representative of the Coalition, members of the Coalition who live in the existing residential buildings on the property, and Eugene Puryear. Mr. Merrifield noted the Coalition's concerns with giving up their TOPA rights. Mr. Merrifield stated that the Coalition's greatest fear is that they will enter into an agreement with the Residential Property Owner, the project will be delayed because the Zoning Administrator will not be able to approve the permits, and the tenants will have given up their TOPA rights for a right-to-return that is essentially meaningless. Mr. Merrifield also noted concerns of the Coalition residents regarding past housing code violations and security issues in the existing buildings. (Tr., pp. 148-153.)

78. Ruth Barnwell, a resident of the building located at 1309 Alabama Avenue, noted that she had lived in her current residence for over 45 years and her goal was that this revitalization project will rebuild a distressed property, will improve the quality of life for existing residents, and the project will be a great opportunity to create a mixed-income community that will have a constructive influence on the environment and the economic and social impacts on her household. Ms. Barnwell raised a number of questions regarding the Applicant's tenant relocation plan. (Tr., pp. 153-156.)

79. Michelle Mitchell, a tenant at 3210 13th Street, S.E., noted that she was opposed to the project due to the property owner's poor record in maintaining the buildings, responding to maintenance requests, and provision of security for the residents. (Tr., pp. 156-160.)

80. Louise Meacham, a tenant for 10 years in one of the buildings, testified to poor conditions in the existing buildings and her desire to be able to return to the new project. (Tr., pp. 160-162.)

81. Robert Green, a resident of 1331 Alabama Avenue, testified in opposition to the project because of the hardship that he would face with being displaced from his home and the property owner's poor track record with the existing buildings. Mr. Green noted that he did not trust the existing Residential Property Owner and did not want to give up his TOPA rights. (Tr., pp. 162-168.)

82. Eugene Puryear, a resident of 539 Mellon Street, S.E., presented testimony regarding the application's failure to satisfy the standards enumerated in 11 DCMR § 2403, paragraph 3. Mr. Puryear argued that the housing element of the project did not mitigate the adverse effects of the project with regard to the amount of affordable housing provided. Mr Puryear testified that the Applicant was not providing housing at the 50% of AMI level and therefore the project was not exceeding the matter-of-right requirements of the Inclusionary Zoning Regulations. Mr. Puryear also testified that the Applicant should remove the requirement in the tenant relocation plan that requires the tenants to give up their TOPA rights. (Tr., pp. 168-176.)

Persons in Opposition

83. ANC 8E06 Commissioner Karlene Armstead testified in opposition to the application. Commissioner Armstead questioned whether proper notice of the ANC's vote was provided to the community and to the tenants of these buildings regarding this project. (Tr., pp. 208-211.) She submitted a letter dated February 9, 2015 listing her reservations. (Ex. 48.)

84. Chris Otten, on behalf of DC for Reasonable Development, testified in opposition to the application. Mr. Otten claimed that the project was inconsistent with the Comprehensive Plan due to the failure to take into account the project's greater height and density and its impact on the adjacent lower density neighborhood. Mr. Otten also asked the Commission to look into whether the office component requires a housing linkage contribution. (Tr., pp. 243-247.)

85. Eight additional witnesses testified in opposition to the project citing the Residential Property Owner's poor record of building maintenance and inadequate provision of security for residents, the need for the tenants to maintain their TOPA rights, and the need for more affordable housing units to be provided in the City. (Tr., pp. 207-243.)

Satisfaction of the PUD and Zoning Map Amendment Approval Standards

86. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." (11 DCMR § 2403.8.) The Commission finds that the mix of uses provided in this application (residential, retail, and office) creates a truly transit-oriented development in a project which is currently an underutilized site on top of a Metro station. The urban design, the architectural details and quality of the buildings, the amount of affordable housing provided and economic development opportunities created by the project are significant project amenities and public benefits. Given the significant amount and quality of the project amenities and public benefits included in this PUD and related Zoning Map amendment application, the Commission finds that the development incentives to be granted for the project and the related rezoning are appropriate. The Commission also finds that the requested areas of flexibility from the requirements are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this project. In particular, the Commission notes the Applicant's request that it be allowed an additional year in which it is required to file for a building permit for the first building in order to vest the approval of this application. Given the complexities of the site, including construction in and around an operating Metro station and Metro tunnels, the Commission finds that granting the request to extend the period of the Order's approval for an additional year is appropriate.

87. The Commission finds that the project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to urban design, site planning, architectural quality, and the provision of affordable housing. The massing and height of the buildings is respectful to the nearby lower-scale residential uses and also creates an attractive and engaging street-level experience along Alabama Avenue, 13th Street, and the new public plaza. The buildings are located and designed so as not to affect the light and air of adjacent uses. Loading and parking areas are to the rear of the buildings and are set back from the property line to minimize noise to residents to the south and allow for a vibrant and inviting pedestrian experience along Alabama Avenue and 13th Street. Retail uses are concentrated along Alabama Avenue and around the Metro plaza area.

88. The Commission credits the written submissions and testimony of the Applicant and OP that the proposed PUD and rezoning to the C-3-B Zone District is appropriate and that the proffered amenities and benefits are acceptable. The Commission also credits the testimony of the Applicant and OP that the proposed PUD project and rezoning of the Property are not inconsistent with the Comprehensive Plan. In this case, the Commission finds that the proposed PUD and related map amendment of the Property to the C-3-B Zone District is appropriate given the Future Land Use Map designation of the Property (mixed-use medium-density commercial and medium-density residential) and the

project's satisfaction of numerous policies enumerated in the Comprehensive Plan. The Commission's conclusion is consistent with OP's recommendations to approve the project and the PUD-related Zoning Map amendment.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces-and other amenities" (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience" (11 DCMR § 2400.2.)

2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405.)

3. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.

4. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The application meets the contiguity requirements of § 2401.3.

6. The Commission notes the materials submitted by the Applicant which depict the project in the context of the surrounding neighborhood, including the post-hearing submission of the Applicant which showed the relationship of the office building to the adjacent school building and the relationship of the entire project to the existing and future uses in the immediate area. Based on these materials, the testimony of the project architect, and OP's conclusions on this subject, the Commission finds that the proposed height and density of the buildings in the project will not cause a significant adverse effect on any nearby properties.

7. The benefits and amenities provided by the project are significant and appropriate. The Commission agrees with the Applicant's conclusion that the maximum matter-of-right

development on the Property would create 9,565 sf of affordable housing (4,778 sf reserved for households making up to 50% of AMI and 4,778 sf reserved for households earning up to 80% of AMI), and the Applicant's proposed amount of affordable housing was 6,090 sf more than would be provided on the Property if the Property was developed as a matter-of-right. The Commission also agrees with the Applicant's arguments that this project is not subject to the Housing Linkage requirements of 11 DCMR § 2404.

8. The application seeks a PUD-related zoning map amendment to the C-3-B Zone District. The application also seeks limited flexibility from the Zoning Regulations regarding roof structures for the office and residential buildings; loading relief for the residential building; relief from the non-residential FAR limitations on the theoretical office building lot; and relief from the two-year time period in which a building permit application must be filed to vest the order. The Commission finds the requested relief to be minimal and allows for the creation of a project that has numerous benefits and amenities.

9. The Commission finds that rezoning the site is consistent with the Comprehensive Plan. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The project is consistent with the major themes and city-wide elements of the Comprehensive Plan, including the Housing, Urban Design, Land Use, Environmental, and Transportation Elements. The PUD is also consistent with the more specific goals and policies of the Far Southeast/Southwest Area, in particular the policies (Policy FSS-2.4.1 and Policy FSS-1.1.1.) related to the development of the Congress Heights Metro Station as a Mixed-Use project.

10. The Commission takes note of the Applicant's proposed tenant relocation plan and the major elements of that plan; the existing tenants have the right to return to the new project, the Applicant will provide relocation assistance and payments for moving expenses, and the residents will continue to pay the amount of rent that they pay in their current units subject to annual rent increases equal to the amount of the automatic rent increase allowed by DC's rent control law. The Commission finds that the proposed tenant relocation plan appropriately addresses the concerns raised by the Coalition and protects the rights of the existing residents of the Subject Property. The Commission notes that arguments that were made by the Coalition's counsel regarding the TOPA rights of the existing tenants. While the Commission finds that it is entirely appropriate to take into account the tenant relocation plan as part of this consolidated PUD and Zoning Map amendment application, the specific issues related to the TOPA rights of the tenants are outside of the scope of this zoning case.

11. The Commission finds that the Applicant's proposed TDM measures are adequate to mitigate any potential adverse effects on the surrounding area from the development that relate to traffic. The Applicant finds that the Applicant's proposal to pay for the design and installation of the traffic signal at the intersection of Alabama Avenue and 15th Street is appropriate. The Applicant's proposed TDM measures and financial commitment for

the design and installation of the traffic signal have been incorporated into the conditions of this Order.

12. The Commission concludes that the Applicant's commitment to a LEED-Silver certification for the residential building and a LEED-Gold certification for the office building (with both buildings going through the LEED certification process) are an appropriate response to the issues raised by DDOE and can be considered project amenities.

13. The Commission is required under § 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)) to give great weight to issues and concerns raised in the affected ANC's written recommendation. As is reflected in the Findings of Fact, ANC 8E voted to support the application, but did not submit a written report. Thus, the Commission could not give great weight to its recommendation. The Commission nonetheless carefully considered its recommendation in its deliberations.

14. The Commission is also required to give great weight to the recommendations of OP by § 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). The Commission gives OP's recommendation to approve the application great weight, and concurs with OP's conclusions.

15. The PUD project and the rezoning of the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

16. The applications for a PUD, related Zoning Map amendment and amendment to an approved Campus Plan are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this application for consolidated review of a planned unit development and related Zoning Map amendment to the C-3-B Zone District for the Subject Property (Parcels 229/161, 229/160, 229/153, 229/151 and 229/103 and Lots 6 and 7 in Square 5914). The approval of this PUD is subject to the following guidelines, conditions, and standards.

A. PROJECT DEVELOPMENT

1. The PUD project shall be developed in accordance with the plans prepared by Maurice Walters Architects marked as Exhibits 15A1-15A7, as modified by

Exhibits 52D1-52D2 of the record ("Approved Plans"), as modified by guidelines, conditions, and standards herein. The final total gross floor area included in the proposed PUD is approximately 447,588 sf for a total floor area ratio ("FAR") of approximately 5.06. The proposed office building will include approximately 226,695 sf of office use, 9,138 sf of retail use and will have a measured building height of 90 feet. The proposed residential building will include approximately 205-215 residential units, 195,684 sf of residential use, 16,071 sf of retail use, and will have a measured building height of approximately 90 feet.

B. PUBLIC BENEFITS

1. The residential building shall include a range of 205-215 residential units, units and approximately 15,655 sf of workforce affordable housing, with 10,877 sf reserved for households making up to 80% of area median income ("AMI") and 4,778 sf reserved for households earning up to 50% of AMI. The affordable housing units will be distributed throughout the residential building (except for the upper two stories of the building).

2. Prior to applying for a Certificate of Occupancy for the residential building, the Applicant will provide evidence to the Zoning Administrator that the residential building has gone through the LEED certification process and has achieved a LEED-Silver certification. Prior to applying for a Certificate of Occupancy for the office building, the Applicant will provide evidence that the office building has gone through the LEED certification process and has achieved a LEED-Gold certification.

3. The Applicant will provide the Lead the Way Foundation and Higher Hopes, Inc. ("LTWFHHI") with a payment of $5,000 annually for a period of 15 years. These funds shall be used for facilitation of comprehensive, social reconstruction programs for the residents of the Ward Eight Community. These programs will include comprehensive resident and youth case management, engagement, and outreach services featuring an adolescent clubhouse and including, but not limited to, the arts and cultural services; health, fitness, and nutrition; financial management, and annual community social events, as well as development opportunities for the neighboring community. LWFHHI will provide an annual accounting of what the financial contribution was used for and the Applicant will be required to file that information with the Office of Zoning. The first annual payment will occur prior to the issuance of a building permit/certificate of occupancy for the first building on the property. No certificate of occupancy for either building will be issued unless the Applicant provides proof to the Zoning Administrator that the services are being provided by LWFHHI and that all payments that are due have been made.

4. The Applicant will help the Congress Heights Community Association ("CHCA") fund the Annual Congress Heights Health and Community Day by providing a payment in the amount of $5,000 annually for a period of 15 years. CHCA will provide an annual accounting of what the financial contribution was used for and the Applicant will be required to file that information with the Office of Zoning. The first annual payment will occur prior to the issuance of a building permit/certificate of occupancy for the first building on the property. No certificate of occupancy for either building will be issued unless the Applicant provides proof to the Zoning Administrator that the services are being provided by CHCA and that all payments that are due have been made.

5. The Applicant will provide the Ward Eight Council Against Domestic Violence (WECADV) with a payment of $5,000 annually for a period of 15 years. WECADV will provide an annual accounting of what the financial contribution was used for and the Applicant will be required to file that information with the Office of Zoning. The first annual payment will occur prior to the issuance of a building permit/certificate of occupancy for the first building on the property. No certificate of occupancy for either building will be issued unless the Applicant provides proof to the Zoning Administrator that the services are being provided by WECADV and that all payments that are due have been made.

6. The Applicant will provide the Congress Heights Community Training and Development Corporation ("CHCTDC") with a payment of $5,000 annually for a period of 15 years. These funds shall be used solely to pay for the costs of: (a) conducting training for targeted businesses in Ward 8, to develop management and business capability to perform contracts for the Applicant, its general contractor, and subcontractors. CHCTDC will provide an annual accounting of what the financial contribution was used for and the Applicant will be required to file that information with the Office of Zoning. The first annual payment will occur prior to the issuance of a building permit/certificate of occupancy for the first building on the property. No certificate of occupancy for either building will be issued unless the Applicant provides proof to the Zoning Administrator that the services are being provided by CHCTDC and that all payments that are due have been made.

7. Prior to applying for a Certificate of Occupancy for the residential or the office building (whichever contains the discounted retail or business space provided per this condition), the Applicant will provide evidence to the Zoning Administrator that 1,600 sf of retail or business space has been reserved for local tenants who will receive a rent discount of 25%. This rent discount will be applicable for the life of the project.

8. Prior to applying for a Certificate of Occupancy for the office building, the Applicant will provide evidence to the Zoning Administrator that the Applicant has provided approximately 500 square feet of office space for ANC 8E for a term of at least five years, with possible extensions, at a cost of $12 per year.

9. Prior to the issuance of a building permit for the first building on the property, the Applicant will create a job training, employment, and internship programs specifically tailored to Ward 8 residents.

10. Prior to the issuance of a building permit for the first building on the property, the Applicant will create a revolving working capital fund, in an amount no less than $200,000, for contracts directly with the Applicant. The fund shall be used to allow small contractors, including those located in the Ward 8 Community, retained during the construction phases of the development, to cover payroll and other fixed costs on a weekly basis.

11. Prior to the issuance of a certificate of occupancy for the residential building on the property, the Applicant will provide evidence to the Zoning Administrator that all existing tenants were provided with the opportunity to return to the new residential building; that all of the residents of the existing residential buildings (deemed to be the people who were residents at the time that the Applicant filed a demolition permit for the existing residential buildings) will continue to pay the amount of rent they pay in their current units, subject to annual rent increases equal to the amount of the "automatic" rent increase allowed by DC's rent control law (CPI or CPI + 2% depending on whether a tenant is senior or disabled), in both the temporary relocation unit and upon return to the new building; and the Applicant pays all costs of relocation for the existing tenants with the relocation units located within two miles of the property.

C. MISCELLANEOUS

1. The Commission grants the requested flexibility from the Zoning Regulations with regard to:

   (a) Roof structures – The office building will include one roof structure of varying heights. The residential building will include three roof structures with varying heights and set-back relief from the portion of the roof structure on the residential building that abuts the building's internal courtyard;

   (b) More than one structure on a single record lot – Commercial FAR on the Office Building theoretical lot – The residential and office buildings will be located on the same record lot and will not have an above-grade connection between the buildings. On the office building lot, the non-

residential density will be 4.82 FAR, which is more than the permitted 4.5 FAR for non-residential use for a PUD in the C-3-B Zone District. However, the total amount of non-residential density provided on the entire site is only 2.85 FAR; and

(c) Loading – The project will include a 30-foot loading berth for the residential building rather than a 55-foot loading berth. The two service and delivery spaces required for the office building will be provided on the theoretical residential lot.

2. The Applicant shall have flexibility with the design of the PUD in the following areas:

(a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;

(b) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction; and

(c) To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;

3. No building permit shall be issued for the PUD 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 of the Department of Consumer and Regulatory Affairs ("DCRA"). 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.

4. The change of zoning from the R-5-A Zone District to the C-3-B Zone District shall be effective upon the recordation of the covenant discussed in Condition No. C.3, pursuant to 11 DCMR § 3028.9.

5. The PUD shall remain valid for three years from the effective date of this Order, during which the Applicant must file for a building permit for the construction of the first building, and construction must begin within four years after the effective date of this Order for the PUD to remain valid. The PUD shall be vested as to any

building or buildings for which construction has timely begun. Thereafter, for the PUD to remain valid, the Applicant must file for a building permit for the second building within five years after the effective date of this Order, and construction must begin within six years after the effective date of this Order.

6. 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 also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

D. **TRANSPORTATION ISSUES**

1. Residents of the residential building shall be prohibited from obtaining Residential Permit Parking ("RPP") stickers. The Applicant shall take the following steps to ensure that residents do not receive an RPP sticker, including without limitation: (i) placing a clause in emphasized typeface in all leases for residential units prohibiting any resident from applying for or obtaining a RPP sticker, or using a RPP guest pass within one mile of the PUD, with the penalty for violation of this lease term being termination of the lease; and (ii) ensuring that DDOT continues to classify the property as ineligible for RPP, by obtaining written confirmation of such action by DDOT prior to applying for a certificate of occupancy for the residential building.

2. Prior to applying for a certificate of occupancy for either the residential building or the office building, the Applicant will implement the following Transportation Demand Management Plan:

   (a) A member of the property management team will be designated as the Transportation Management Coordinator ("TMC"). The TMC will be responsible for ensuring that information is disseminated to tenants of the buildings. The position may be part of other duties assigned to the individual;

   (b) Information on and/or links to the following programs and services will be provided on the property management website:

      - Capital Bikeshare;

- Car-sharing services;
- Uber;
- Ridescout;
- Commuter Connections Rideshare Program, which provides complimentary information on a variety of commuter programs to assist in determining which commuting options work best for commuters;
- Commuter Connections Guaranteed Ride Home, which provides commuters who regularly (twice a week) carpool, vanpool, bike, walk or take transit to work with a free and reliable ride home in an emergency; and
- Commuter Connections Pools Program, which incentivizes commuters who currently drive alone to carpool. Participants can earn money for carpooling to work and must complete surveys and log information about their experience;

(c) An electronic display will be provided in a common, shared space in each of the buildings and will provide public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital BikeShare locations indicating the number of bicycles available at each location;

(d) Convenient and covered secure bike parking facilities will be provided with storage for a minimum of 76 bicycles for the entire development and 22 short-term bicycle parking spaces in public space; and

(e) The Applicant will unbundle all parking costs from the price of all commercial and residential leases.

3. Prior to the issuance of a building permit for the second building on the property, the Applicant will provide evidence to the Zoning Administrator it has deposited $350,000 in an escrow account which will be used for the design and construction of a new traffic signal at the intersection of Alabama Avenue, S.E. and 15th Street, S.E. In the event that the signal warrant analysis, requested by DDOT, determines that a signal is not warranted, the Applicant will not be required to construct the signalized intersection and the remaining funds in the escrow account will be returned to the Applicant.

4. Prior to the issuance of a certificate of occupancy for the second building on the property, and if DDOT determines that the signal is warranted, the Applicant will provide evidence to the Zoning Administrator that the new traffic signal at the intersection of Alabama Avenue, S.E. and 15th Street, S.E. is operational.

On March 30, 2015, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner May, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **4-1-0** (Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Anthony J. Hood to oppose).

On May 11, 2015, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on June 5, 2015.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING