

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council schedules a public oversight roundtable on “Interagency Council on Homelessness Youth Strategic Plan: Comprehensive Plan to End Youth Homelessness”
- Department of Energy and Environment seeks entities to identify tree planting opportunities in the District
- Department of Health Care Finance solicits input from interested parties on the development of Medicaid Accountable Care Organizations (ACOs) within the District
- Executive Office of the Mayor establishes a comprehensive data policy for the District government (Mayor’s Order 2017-115)
- Executive Office of the Mayor releases a memorandum on the Rules Governing Approval of International Travel by District of Columbia Employees and Receipt of Gifts and Donations from Foreign Governments and Organizations
- Public Service Commission updates regulations for solar energy systems and increases the solar energy compliance fee for 2017
- Department of Small and Local Business Development announces funding availability for the Clean Team grants

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances publishes the *District of Columbia Register* (ISSN 0419-439X) every Friday under the authority of the *District of Columbia Documents Act*, D.C. Law 2-153, effective March 6, 1979, D.C. Official Code § 611 *et seq.* (2012 Repl.). The policies which govern the publication of the *Register* are set forth in the Rules of the Office of Documents and Administrative Issuances (1 DCMR §§300, *et seq.*). The Rules of the Office of Documents and Administrative Issuances are available online at dcregs.dc.gov. Rulemaking documents are also subject to the requirements of the *D.C. Administrative Procedure Act*, D.C. Official Code §§2-501 *et seq.* (2012 Repl.).

All documents published in the *District of Columbia Register* (*Register*) must be submitted in accordance with the applicable provisions of the Rules of the Office of Documents and Administrative Issuances. Documents which are published in the *Register* include (1) Acts and resolutions of the Council of the District of Columbia; (2) Notices of proposed Council legislation, Council hearings, and other Council actions; (3) Notices of public hearings; (4) Notices of final, proposed, and emergency rulemaking; (5) Mayor's Orders and information on changes in the structure of the D.C. government (6) Notices, Opinions, and Orders of D.C. Boards, Commissions and Agencies; (7) Documents having general applicability and notices and information of general public interest.

Deadlines for Submission of Documents for Publication

The Office of Documents and Administrative Issuances accepts electronic documents for publication using a Web-based portal. To submit documents for publication, agency heads, or their representatives, may obtain a username and password by email at dcdocuments@dc.gov. For guidelines on how to format and submit documents for publication, email dcdocuments@dc.gov.

The deadline for filing documents for publication for District of Columbia Agencies, Boards, Commissions, and Public Charter schools is THURSDAY, NOON of the previous week before publication. The deadline for filing documents for publication for the Council of the District of Columbia is WEDNESDAY, NOON of the week of publication. If an official District of Columbia government holiday falls on Thursday, the deadline for filing documents is Wednesday. Email the Office of Documents and Administrative Issuances at dcdocuments@dc.gov to request the *District of Columbia Register* publication schedule.

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Legal Effect of Publication - Certification

Except in the case of emergency rules, no rule or document of general applicability and legal effect shall become effective until it is published in the *Register*. Publication creates a rebuttable legal presumption that a document has been duly issued, prescribed, adopted, or enacted and that the document complies with the requirements of the *District of Columbia Documents Act* and the *District of Columbia Administrative Procedure Act*. The Administrator of the Office of Documents and Administrative Issuances hereby certifies that this issue of the *Register* contains all documents required to be published under the provisions of the *District of Columbia Documents Act*.

DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

RM 520 – 441 4th ST, ONE JUDICIARY SQ. - WASHINGTON, D.C. 20001 - (202) 727-5090

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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ENROLLED ORIGINAL

A RESOLUTION

21-706

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the appointment of Dr. Esther Barazzone as a member of the Board of Trustees of the University of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Board of Trustees of the University of the District of Columbia Esther Barazzone Confirmation Resolution of 2016”.

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Dr. Esther Barazzone
2951 Albermarle Street, N.W.
Washington, D.C. 20008
(Ward 3)

as a member of the Board of Trustees of the University of the District of Columbia, established by section 201 of the District of Columbia Public Postsecondary Education Reorganization Act, approved October 26, 1974 (88 Stat. 1424; D.C. Official Code § 38-1202.01), for a term to end May 15, 2019.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee, the University of the District of Columbia Board of Trustees, and the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

- B22-266 Victim Services Omnibus Amendment Act of 2017
- Intro. 4-28-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety
-
- B22-267 Department of Motor Vehicles Transfer of Title Simplification Amendment Act of 2017
- Intro. 4-28-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment
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- B22-268 Returning Citizens Opportunity to Succeed Amendment Act of 2017
- Intro. 4-4-17 by Councilmembers R. White, Cheh, Nadeau, Todd, Allen, Bonds, McDuffie, Silverman, and T. White and referred to the Committee on Judiciary and Public Safety with comments from the Committee on Health, the Committee on Housing and Neighborhood Revitalization, and the Committee on Transportation and the Environment
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- B22-272 Richard Rausch Way Designation Act of 2017
- Intro. 5-2-17 by Councilmember Bonds and referred to the Committee of the Whole
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- B22-273 Common Interest Communities Remedial Funding Act of 2017
- Intro. 5-2-17 by Councilmembers Bonds, Nadeau, T. White, R. White, and Silverman and referred to the Committee on Housing and Neighborhood Revitalization
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- B22-274 Dedicated Funding for the Arts and Humanities Amendment Act of 2017
- Intro. 5-2-17 by Councilmembers Evans, Grosso, Cheh, Gray, Nadeau, Todd, R. White, and Allen and referred sequentially to the Committee on Finance and Revenue and the Committee of the Whole
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- B22-275 Making Rodent Syndicates Flee Restaurants, Interior Settings, Basements and Yards Amendment Act of 2017
- Intro. 5-2-17 by Councilmembers Allen, Nadeau, Todd, and Cheh and referred sequentially to the Committee on Health and the Committee of the Whole
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- B22-276 Principal-Based Reserves Amendment Act of 2017
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- B22-278 Department of Motor Vehicles New Resident Amendment Act of 2017
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- B22-279 Capitol Riverfront Business Improvement District Amendment Act of 2017
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PROPOSED RESOLUTIONS

- PR22-275 Board of Professional Engineering Roland Carter Confirmation Resolution of 2017
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- PR22-278 Zoning Commission for the District of Columbia Robert Miller Confirmation Resolution of 2017
Intro. 4-24-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole
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- PR22-279 Contract Appeals Board Monica Parchment Confirmation Resolution of 2017
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- PR22-280 District of Columbia Housing Finance Agency Board of Directors Sheila Miller Confirmation Resolution of 2017
Intro. 4-24-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization
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- PR22-281 District of Columbia Housing Finance Agency Board of Directors Buwa Binitie Confirmation Resolution of 2017
Intro. 4-24-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization
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- PR22-282 District of Columbia Housing Finance Agency Board of Directors Bryan Scottie Irving Confirmation Resolution of 2017
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- PR22-290 Board of Nursing Laverne Plater Confirmation Resolution of 2017
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- PR22-291 Board of Optometry Lisa Johnson Confirmation Resolution of 2017
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- PR22-295 Not-For-Profit Hospital Corporation Board of Directors Wayne Turnage Confirmation Resolution of 2017
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- PR22-296 Director of the Alcoholic Beverage Regulation Administration Frederick P. Moosally Confirmation Resolution of 2017
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COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARINGS
FISCAL YEAR 2018 PROPOSED BUDGET AND FINANCIAL PLAN,
FISCAL YEAR 2018 BUDGET SUPPORT ACT OF 2017,
FISCAL YEAR 2018 LOCAL BUDGET ACT OF 2017, AND
COMMITTEE MARK-UP SCHEDULE
 5/3/2017

SUMMARY

April 4, 2017	Mayor Transmits the Fiscal Year 2018 Proposed Budget and Financial Plan
April 6, 2017	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2018 Proposed Budget and Financial Plan
April 7, 2017 to May 11, 2017	Committee Public Hearings on the "Fiscal Year 2018 Local Budget Act of 2017." (The Committees may also simultaneously receive testimony on the sections of the Fiscal Year 2018 Budget Support Act that affect the agencies under each Committee's purview)
May 12, 2017	Committee of the Whole Public Hearing on the "Fiscal Year 2018 Local Budget Act of 2017", "Fiscal Year 2018 Federal Budget Act of 2017" and "Fiscal Year 2018 Budget Support Act of 2017."
May 16-18, 2017	Committee Mark-ups and Reporting on Agency Budgets for Fiscal Year 2018
May 25, 2017	Budget Work Session 11:00 a.m.
May 30, 2017	Committee of the Whole and Council consideration of the "Fiscal Year 2018 Local Budget Act of 2017", "Fiscal Year 2018 Federal Portion Budget Request Act of 2017" and the "Fiscal Year 2018 Budget Support Act of 2017"
June 13, 2017	Council consideration of the "Fiscal Year 2018 Local Budget Act of 2017" and the "Fiscal Year 2018 Federal Portion Budget Request Act of 2017"
June TBD	Council consideration of the "Fiscal Year 2018 Budget Support Act of 2017"

The Council of the District of Columbia hereby gives notice of its intention to hold public hearings on the FY 2018 Proposed Budget and Financial Plan, the "Fiscal Year 2018 Local Budget Act of 2017", "Fiscal Year 2018 Federal Portion Budget Request Act of 2017" and the "Fiscal Year 2018 Budget Support Act of 2017". The hearings will begin Friday, April 7, 2017 and conclude on Thursday, May 11, 2017 and will take place in the Council Chamber (Room 500), Room 412, Room 120, or Room 123 of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

The Committee mark-ups will begin Tuesday, May 16, 2017 and conclude on Thursday, May 18, 2017 and will take place in the Council Chamber (Room 500) of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

Persons wishing to testify are encouraged, but not required, to submit written testimony in advance of each hearing to the corresponding committee office. If a written statement cannot be provided prior to the day of the hearing, please have at least 15 copies of your written statement available on the day of the hearing for immediate distribution to the Council. The hearing record will close two business days following the conclusion of each respective hearing. Persons submitting written statements for the record should observe this deadline. For more information about the Council's budget oversight hearings and mark-up schedule please contact the committee of interest.

ADDENDUM OF CHANGES TO THE PUBLIC HEARING SCHEDULE

<u>New Date</u>	<u>Original Date</u>	<u>Hearing</u>
April 6, 2017	April 7, 2017	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2018 Proposed Budget and Financial Plan - Room 500; 10:00 a.m.
April 7, 2017	April 11, 2017	Office of Asian & Pacific Islander Affairs, Office of Veteran Affairs & Office of Latino Affairs (Government Operations - Room 500; 10:00 a.m.)
April 11, 2017	April 10, 2017	Committee of Government Operations - Room 412; 11:00 a.m.
No Budget Hearing Needed	April 13, 2017	Public Access Corporation (Government Operations)
April 13, 2017	April 10, 2017	Office of Zoning (COW - Room 500; 10:00 a.m.)
April 13, 2017	April 11, 2017	Office of Administrative Hearings, Office of the Inspector General & Public Access Corporation (Government Operations - Room 123; 10:00 a.m.)
April 12, 2017	April 26, 2017	Committee on Finance & Revenue - Room 123; 10:00 a.m.
April 24, 2017	May 9, 2017	Office of Chief Medical Examiner (Judiciary - Room 412; 10:30 a.m.)
April 26, 2017	April 26, 2017	Committee on Transportation and the Environment - HEARING TIME CHANGE FROM 10:00 a.m. to 11:00 a.m.
April 28, 2017	April 12, 2017	Office of the Chief Technology Officer (Government Operations - Room 123; 10:00 a.m.)
April 28, 2017	May 10, 2017	Department of Behavioral Health (Health - Room 500; 11:00 a.m.)
May 1, 2017	April 25, 2017	Office on Returning Citizen Affairs & Advisory Neighborhood Commission (Housing & Neighborhood Revitalization - Room 500; 10:00 a.m.)
May 3, 2017	May 3, 2017	Deputy Mayor for Planning and Economic Development (Business & Economic - Room 120; TIME CHANGE FROM 10:00 a.m. to 9:00 a.m.)
May 3, 2017	May 4, 2017	DC Lottery & Real Property Tax Appeals Commission (Finance & Revenue - Room 123; 9:00 a.m. - 10:45 a.m.)
May 3, 2017	May 11, 2017	Deputy Mayor for Planning and Economic Development (Business & Economic - Room 120; 10:00 a.m.)
May 9, 2017	April 24, 2017	Office of Human Rights - (Judiciary - Room 120; 11:00 a.m.)
May 9, 2017	April 27, 2017	Department of Youth Rehabilitation Services (Human Services - Room 123; 11:00 a.m.)
May 9, 2017	April 28, 2017	Office of Chief Technology Officer (Government Operations - Room 500; 11:00 a.m.)
May 10, 2017	April 28, 2017	DC Health Benefit Exchange Authority & Dept. of Health Care Finance (Health - Room 412; 11:00 a.m.)
May 11, 2017	May 3, 2017	Public Service Commission & Office of People's Counsel (Business & Economic Development - Room 500; 10:00 a.m.)
May 25, 2017	May 24, 2017	Council Budget Work Session - Room 504; 11:00 a.m.
June 13, 2017		Council consideration of the "Fiscal Year 2018 Local Budget Act of 2017" and the "Fiscal Year 2018 Federal Portion Budget Request Act of 2017" - Room 500; 10:00 a.m.

PUBLIC HEARING SCHEDULE

COMMITTEE OF THE WHOLE		Chairman Phil Mendelson
THURSDAY, APRIL 6, 2017; COUNCIL CHAMBER (Room 500)		
Time	Subject	
10:00 a.m. - End	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2018 Proposed Budget and Financial Plan	

COMMITTEE ON GOVERNMENT OPERATIONS		Chairman Brandon Todd
FRIDAY, APRIL 7, 2017; COUNCIL CHAMBER (Room 500)		
Time	Agency	
10:00 a.m. - End	Office of Asian and Pacific Islander Affairs	
	Office of Veterans' Affairs	
	Office of Latino Affairs	

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COMMITTEE OF THE WHOLE		Chairman Phil Mendelson
MONDAY, APRIL 10, 2017; Room 412		
Time	Agency	
10:00 a.m. - 2:00 p.m.	Metropolitan Washington Council of Governments	
	Office of Planning	

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION		Chairperson Anita Bonds
TUESDAY, APRIL 11, 2017; COUNCIL CHAMBER (Room 500)		
Time	Agency	
11:00 a.m. - End	Office of the Tenant Advocate	
	Department of Housing and Community Development	
	Housing Production Trust Fund	
	Rental Housing Commission	

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON GOVERNMENT OPERATIONS		Chairman Brandon Todd
TUESDAY, APRIL 11, 2017; Room 412		
Time	Agency	
11:00 a.m. - End	Executive Office of the Mayor	
	Office of the City Administrator	
	Office of the Senior Advisor	
	Mayor's Office of Legal Counsel	
	Secretary of the District of Columbia	

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COMMITTEE OF THE WHOLE		Chairman Phil Mendelson
TUESDAY APRIL 11, 2017; Room 123		
Time	Agency	
11:00 a.m. - 2:00 p.m.	University of the District of Columbia	
	District of Columbia Retirement Board/Funds	
	District Retiree Health Contribution	

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY		Chairperson Charles Allen
WEDNESDAY, APRIL 12, 2017; COUNCIL CHAMBER (Room 500)		
Time	Agency	
9:30 a.m. - 5:00 p.m.	Deputy Mayor for Public Safety and Justice	
	Criminal Justice Coordinating Council	
	Metropolitan Police Department	
	Office of Police Complaints	
	Office of Victim Services and Justice Grants	

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

WEDNESDAY, APRIL 12, 2017; Room 412	
Time	Agency
11:00 a.m. - End	Deputy Mayor for Health and Human Services United Medical Center

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Osa Imadojemu (oimadojemu@dccouncil.us) or by calling 202-727-7774.

COMMITTEE ON FINANCE & REVENUE

Chairperson Jack Evans

WEDNESDAY, APRIL 12, 2017; Room 123	
Time	Agency
10:00 a.m. - End	Commission on the Arts and Humanities Washington Metropolitan Area Transit Authority

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy (sloy@dccouncil.us) or by calling 202-724-8058.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

THURSDAY, APRIL 13, 2017; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - 4:00 p.m.	Office of Budget and Planning Office of Zoning Department of Consumer and Regulatory Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may email: cw@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

THURSDAY, APRIL 13, 2017; Room 412	
Time	Agency
11:00 a.m. - End	Department of General Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Chairperson Kenyan McDuffie

THURSDAY, APRIL 13, 2017; Room 120	
Time	Agency
10:00 a.m. - End	Department of Small and Local Business Development Department of Insurance, Securities and Banking Department of For-Hire Vehicles For-Hire Vehicle Advisory Council

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Demetris Cheatham (dcheatham@dccouncil.us) or by calling 202-297-0152.

COMMITTEE ON GOVERNMENT OPERATIONS

Chairman Brandon Todd

THURSDAY, APRIL 13, 2017; Room 123	
Time	Agency
10:00 a.m. - End	Office of Administrative Hearings Office of the Inspector General

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

MONDAY, APRIL 24, 2017; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	District Department of Transportation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

MONDAY, APRIL 24, 2017; Room 412	
Time	Agency
10:30 a.m. - 5:00 p.m.	Office of Chief Medical Examiner
	Department of Corrections
	Office of the Attorney General
	Corrections Information Council

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HUMAN SERVICES

Chairperson Brianne Nadeau

TUESDAY, APRIL 25, 2017; COUNCIL CHAMBER (Room 500)	
Time	Agency
12:00 p.m. - End	Department of Disability Services
	Office of Disability Rights

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

TUESDAY, APRIL 25, 2017; Room 412	
Time	Agency
10:00 a.m. - End	Office on Aging

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

TUESDAY, APRIL 25, 2017; Room 120	
Time	Agency
10:00 a.m. - 2:00 p.m.	Council of the District of Columbia
	District of Columbia Auditor
	New Columbia Statehood Commission
	Contract Appeals Board
	Office of Contracting and Procurement

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON EDUCATION

Chairperson David Grosso

TUESDAY, APRIL 25, 2017; Room 123	
Time	Agency
10:00 a.m. - End	Deputy Mayor for Education

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

WEDNESDAY, APRIL 26, 2017; Room 412	
Time	Agency
11:00 a.m. - End	Department of Parks and Recreation
	Department of Public Works

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON EDUCATION

Chairperson David Grosso

WEDNESDAY, APRIL 26, 2017; Room 120	
Time	Agency
11:00 a.m. - End	Office of the State Superintendent of Education

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON EDUCATION

Chairperson David Grosso

THURSDAY, APRIL 27, 2017; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. (this hearing will end after the last witness and reconvene at 5:00pm)	District of Columbia Public Schools (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON HUMAN SERVICES

Chairperson Brianne Nadeau

THURSDAY, APRIL 27, 2017; Room 412	
Time	Agency
10:00 a.m. - End	Child and Family Services Agency

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Chairperson Elissa Silverman

THURSDAY, APRIL 27, 2017; Room 120	
Time	Agency
10:00 a.m. - End	Office of Employee Appeals
	Office of Labor Relations and Collective Bargaining
	Public Employees Relations Board

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Charnisa Royster (croyster@dccouncil.us) or by calling 202-724-7772.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

THURSDAY, APRIL 27, 2017; Room 123	
Time	Agency
9:30 a.m. - 5:00 p.m.	Fire and Emergency Medical Services Department
	Office of Unified Communications
	Board of Ethics and Government Accountability
	District of Columbia Board of Elections
	Office of Campaign Finance

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

FRIDAY, APRIL 28, 2017; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	Department of Behavioral Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Osa Imadojemu (oimadojemu@dccouncil.us) or by calling 202-727-7774.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

FRIDAY, APRIL 28, 2017; Room 412	
Time	Agency
11:00 a.m. - End	Department of Motor Vehicles
	Department of Energy and Environment

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

MONDAY, MAY 1, 2017; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Office on Returning Citizen Affairs
	Advisory Neighborhood Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON EDUCATION

Chairperson David Grosso

MONDAY, MAY 1, 2017; Room 412	
Time	Agency
11:00 a.m. - End	District of Columbia Public Library System

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON HUMAN SERVICES

Chairperson Brianne Nadeau

WEDNESDAY, MAY 3, 2017; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON EDUCATION

Chairperson David Grosso

WEDNESDAY, MAY 3, 2017; Room 412	
Time	Agency
10:00 a.m. - End	District of Columbia Public Schools (Government Witnesses)

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Chairperson Kenyan McDuffie

WEDNESDAY, MAY 3, 2017; Room 120	
Time	Agency
9:00 a.m. - End	Deputy Mayor for Planning and Economic Development Alcoholic Beverage Regulation Administration Office of Cable Television, Film, Music and Entertainment

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Demetris Cheatham (dcheatham@dccouncil.us) or by calling 202-297-0152.

COMMITTEE ON FINANCE & REVENUE

Chairperson Jack Evans

WEDNESDAY, MAY 3, 2017; Room 123	
Time	Agency
9:00 a.m. - 10:45 a.m.	District of Columbia Lottery and Charitable Games Real Property Tax Appeals Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy (sloy@dccouncil.us) or by calling 202-724-8058.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Chairperson Elissa Silverman

THURSDAY, MAY 4, 2017; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Employment Services Deputy Mayor for Greater Economic Opportunity Workforce Investment Council

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Charnisa Royster (croyster@dccouncil.us) or by calling 202-724-7772.

COMMITTEE ON EDUCATION

Chairperson David Grosso

THURSDAY, MAY 4, 2017; Room 412	
Time	Agency
10:00 a.m.	District of Columbia Public Charter School Board State Board of Education

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

THURSDAY, MAY 4, 2017; Room 120	
Time	Agency
11:00 a.m. - End	Housing Finance Agency District of Columbia Housing Authority

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON FINANCE & REVENUE

Chairperson Jack Evans

THURSDAY, MAY 4, 2017; Room 123	
Time	Agency
10:00 a.m. - End	Office of the Chief Financial Officer Events DC Destination DC

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy (sloy@dccouncil.us) or by calling 202-724-8058.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

FRIDAY, MAY 5, 2017; COUNCIL CHAMBER (Room 500)	
Time	Agency

11:00 a.m. Department of Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Osa Imadojemu (osimadojemu@dccouncil.us) or by calling 202-727-7774.

COMMITTEE ON GOVERNMENT OPERATIONS

Chairperson Brandon Todd

TUESDAY, MAY 9, 2017; COUNCIL CHAMBER (Room 500)	
Time	Agency

11:00 a.m. - End Office of the Chief Technology Officer

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Chairperson Elissa Silverman

TUESDAY, MAY 9, 2017; Room 412	
Time	Agency

1:00 p.m. - End Office of Risk Management
Department of Human Resources

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Charnisa Royster (croyster@dccouncil.us) or by calling 202-724-7772.

COMMITTEE ON HUMAN SERVICES

Chairperson Brianne Nadeau

TUESDAY, MAY 9, 2017; Room 123	
Time	Agency

11:00 a.m. - End Department of Youth Rehabilitation Services

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

TUESDAY, MAY 9, 2017; Room 120	
Time	Agency

11:00 a.m. - 4:00 p.m. Homeland Security and Emergency Management Agency
Department of Forensic Sciences
District of Columbia National Guard
Office of Human Rights

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

WEDNESDAY, MAY 10, 2017; Room 412	
Time	Agency

11:00 a.m. - End District of Columbia Health Benefits Exchange Authority
Department of Health Care Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Osa Imadojemu (osimadojemu@dccouncil.us) or by calling 202-727-7774.

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Chairperson Kenyan McDuffie

THURSDAY, MAY 11, 2017; COUNCIL CHAMBER (Room 500)	
Time	Agency

10:00 a.m. - End District of Columbia Boxing and Wrestling Commission
Walter Reed Army Medical Center Site Reuse Advisory Committee
Public Service Commission
Office of People's Counsel

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Demetris Cheatham (dcheatham@dccouncil.us) or by calling 202-297-0152.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

FRIDAY, MAY 12, 2017; COUNCIL CHAMBER (Room 500)	
Time	Agency

10:00 a.m. - End Committee of the Whole Hearing on the "Fiscal Year 2018 Local Budget Act of 2017," "Fiscal Year 2018 Federal Portion Budget Request Act of 2017" and the "Fiscal Year 2018 Budget Support Act of 2017"

COMMITTEE MARK-UP SCHEDULE**TUESDAY, MAY 16, 2017; COUNCIL CHAMBER (Room 500)**

Time	Committee
12:00 p.m. - 2:00 p.m.	Committee on Government Operations
2:00 p.m. - 4:00 p.m.	Committee on Finance and Revenue
4:00 p.m. - 6:00 p.m.	Committee on Business and Economic Development

WEDNESDAY, MAY 17, 2017; COUNCIL CHAMBER (Room 500)

Time	Committee
10:00 a.m. - 12:00 p.m.	Committee on Health
12:00 p.m. - 2:00 p.m.	Committee on Labor and Workforce Development
2:00 p.m. - 4:00 p.m.	Committee on Human Services
4:00 p.m. - 6:00 p.m.	Committee on Transportation and the Environment

THURSDAY, MAY 18, 2017; COUNCIL CHAMBER (Room 500)

Time	Committee
10:00 a.m. - 12:00 p.m.	Committee on Housing and Neighborhood Revitalization
12:00 p.m. - 2:00 p.m.	Committee on the Judiciary and Public Safety
2:00 p.m. - 4:00 p.m.	Committee on Education
4:00 p.m. - 6:00 p.m.	Committee of the Whole

**Council of the District of Columbia
COMMITTEE ON HUMAN SERVICES AND THE
COMMITTEE ON HOUSING AND NEIGHBORHOOD
REVITALIZATION
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER BRIANNE K. NADEAU, CHAIRPERSON
COMMITTEE ON HUMAN SERVICES**

AND

**COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION**

ANNOUNCE A PUBLIC OVERSIGHT ROUNDTABLE

ON

**THE INTERAGENCY COUNCIL ON HOMELESSNESS YOUTH STRATEGIC PLAN:
*COMPREHENSIVE PLAN TO END YOUTH HOMELESSNESS***

**Wednesday, May 24, 2017, 12:00 p.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Wednesday, May 24, 2017, Councilmember Brianne K. Nadeau, Chairperson of the Committee on Human Services and Councilmember Anita Bonds, Chairperson of the Committee on Housing and Neighborhood Revitalization, will hold a public oversight roundtable on the Interagency Council on Homelessness (ICH) Youth Strategic Plan. The hearing will take place in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, at 12:00 p.m.

In response to the *End Youth Homelessness Act of 2014*, the ICH has led the development of the Comprehensive Plan to End Youth Homelessness (CPEYH). The CPEYH is the District's first ever strategic plan focused on unaccompanied minors and Transition Age Youth between ages 18 and 24. The plan was unanimously approved by the members of the ICH this past winter, and is scheduled for a public release in May. The purpose of this roundtable is to discuss the issue of youth homelessness in DC, including what the ICH learned during the plan development process, as well as strategies the District must implement in the coming years to ensure the community is positioned to address the housing needs of vulnerable youth and support their successful transition to adulthood.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee on Human Services via email at humanservices@dccouncil.us or at (202) 724-8170, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Monday, May 22.** Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted either to the Committee on Human Services at humanservices@dccouncil.us or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on June 7.**

**Council of the District of Columbia
Committee on Finance and Revenue
Notice of Public Roundtable**

John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

**COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE**

ANNOUNCES A PUBLIC ROUNDTABLE ON:

PR 22-231, the “The Ingleside Presbyterian Retirement Community, Inc. Revenue Bonds Project Approval Resolution of 2017”

PR 22-255, the “Real Property Tax Appeals Commission Mr. Alvin Lee Jackson Confirmation Resolution of 2017”

PR 22-256, the “Real Property Tax Appeals Commission Mr. Frank Sanders Confirmation Resolution of 2017”

PR 22-257, the “Real Property Tax Appeals Commission Ms. Wendy Gadson Confirmation Resolution of 2017”

PR 22-265, the “Paul Public Charter School, Inc. Revenue Bonds Project Approval Resolution of 2017”

Wednesday, May 10, 2017

10:00 a.m.

Room 120 - John A. Wilson Building

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Wednesday, May 10, 2016 at 10:00 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 22-231, the “The Ingleside Presbyterian Retirement Community, Inc. Revenue Bonds Project Approval Resolution of 2017”, would authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$225 million of District of Columbia revenue to assist The Ingleside Presbyterian Retirement Community Inc. in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. This project is located at 3050 Military Rd., NW, in Ward 4

PR 22-255, the “Real Property Tax Appeals Commission Mr. Alvin Lee Jackson Confirmation Resolution of 2017”, would confirm the reappointment of Mr. Alvin Lee Jackson as a part-time commissioner of the Real Property Tax Appeals Commissioner for a term to end April 30, 2021.

PR 22-256, the “Real Property Tax Appeals Commission Mr. Frank Sanders Confirmation Resolution of 2017”, would confirm the reappointment of Mr. Frank Sanders as a full-time commissioner of the Real Property Tax Appeals Commission for a term to end April 30, 2021.

PR 22-257, the “Real Property Tax Appeals Commission Ms. Wendy Gadson Confirmation Resolution of 2017”, would confirm the appointment of Ms. Wendy Gadson as a part-time commissioner of the Real Property Tax Appeals Commission for a term to end April 30, 2021.

PR 22-265, the “Paul Public Charter School, Inc. Revenue Bonds Project Approval Resolution of 2017”, would authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$22 million of District of Columbia revenue bonds to assist Paul Public Charter School, Inc. in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. The project is located at 5800 8th Street NW, in Ward 4.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Tuesday, May 9, 2017. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC ROUNDTABLE**
1350 Pennsylvania Avenue, NW, Washington, DC 20004

**CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE**

on

PR 22-243, Commission on Health Equity R. Daniel Okonkwo Appointment Resolution of 2017

PR 22-244, Commission on Health Equity Alicia Wilson Appointment Resolution of 2017

PR 22-245, Commission on Health Equity Christopher Selhorst Appointment Resolution of 2017

PR 22-246, Commission on Health Equity M. Jermane Bond Appointment Resolution of 2017

on

**Tuesday, May 16, 2017
2:00 p.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Council Chairman Phil Mendelson announces the scheduling of a public roundtable of the Committee of Whole on PR 22-243 through PR 22-246, appointment resolutions for council appointments to the Commission on Health Equity ("Commission") for: R. Daniel Okonkwo; Alicia Wilson; Christopher Selhorst; and M. Jermane Bond. The roundtable will be held Tuesday, May 16, 2017 at 2:00 p.m. in Hearing Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of PRs 22-243 through PR 22-245 is to appoint Mr. Okonkwo, Ms. Wilson, and Dr. Selhorst to the Commission as voting members for a 1-year term. The stated purpose of PR22-246 is to appoint Mr. Bond as a non-voting member to the Commission as a Ward 5 resident. The purpose of the Commission is to examine health equity issues in the District and to advise the Department of Health, the Council, and the Mayor on the best way forward to address health inequities that exist in the District. The purpose of this roundtable is to receive testimony from public witnesses as to the fitness of these nominees to the Commission.

Those who wish to testify are asked to email the Committee of the Whole at cw@dccouncil.us, or call Peter Johnson, Special Counsel at (202) 724-8083, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Friday, May 12, 2017. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on May 12, 2017 the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. Copies of the

legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on <http://lims.dccouncil.us>.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on May 30, 2017.

COUNCIL OF THE DISTRICT OF COLUMBIA
CONSIDERATION OF TEMPORARY LEGISLATION

B22-270, Grocery Store Restrictive Covenant Prohibition Temporary Act of 2017, and **B22-254**, Child Neglect and Sex Trafficking Temporary Amendment Act of 2017 were adopted on first reading on May 2, 2017. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on June 6, 2017.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s).

A reprogramming will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a reprogramming will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 5 Washington, D.C. 20004. Copies of reprogrammings are available in Legislative Services, Room 10.
Telephone: 724-8050

Reprog. 22-37: Request to reprogram \$2,450,000 of Fiscal Year 2017 Special Purpose Revenue funds budget authority from the Office of the Chief Financial Officer (OCFO) to the Office of the Deputy Mayor for Planning and Economic Development (DMPED) was filed in the Office of the Secretary on April 26, 2017. This reprogramming ensures that DMPED will be able to support contractual services and grants for various agency activities.

RECEIVED: 14 day review begins April 27, 2017

Reprog. 22-38: Request to reprogram \$2,450,000 of Fiscal Year 2017 Special Purpose Revenue funds budget authority from the Office of the Chief Financial Officer (OCFO) to the Office of the Deputy Mayor for Planning and Economic Development (DMPED) was filed in the Office of the Secretary on April 26, 2017. This reprogramming ensures that DMPED will be able to support contractual services and grants for various agency activities.

RECEIVED: 14 day review begins April 27, 2017

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: May 5, 2017
Protest Petition Deadline: June 19, 2017
Roll Call Hearing Date: July 3, 2017
Protest Hearing Date: August 16, 2017

License No.: ABRA-106181
Licensee: B & B DC DuPont, LLC
Trade Name: B & B
License Class: Retailer's Class "C" Restaurant
Address: 1351 Connecticut Avenue N.W.
Contact: Stephen J. O'Brien: (202) 625-7700

WARD 2

ANC 2B

SMD 2B07

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 3, 2017 at 10 a.m., 4th Floor, 2000 14th Street N.W., Washington, DC 20009.** Petition and/or request to appear before the Board must be filed on or before the Petition Date. **The Protest Hearing date** is scheduled on **August 16, 2017 at 4:30 p.m.**

NATURE OF OPERATION

New Class "C" Restaurant with 155 seats and a Total Occupancy Load of 250. A Sidewalk Café, with 25 seats. A full-service sports-themed restaurant serving breakfast, lunch, and dinner with a full bar. Requesting an Entertainment Endorsement.

HOURS OF OPERATION INSIDE PREMISES

Sunday- Saturday 8:00 am- 2:00 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES

Sunday 8:00 am- 12:00 am, Monday- Thursday 10:00 am- 12:00 am, Friday 10:00 am-2:00 am, Saturday 8:00 am-2:00 am

HOURS OF OPERATION FOR SIDEWALK CAFÉ

Sunday- Saturday 8:00 am- 12:00 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFÉ

Sunday 8:00 am-12:00 am, Monday- Saturday 10:00 am-12:00 am

HOURS OF LIVE ENTERTAINMENT

Sunday-Thursday 11:00 am-1:00 am, Friday-Saturday 11:00 am-2:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: May 5, 2017
Protest Petition Deadline: June 19, 2017
Roll Call Hearing Date: July 3, 2017
Protest Hearing Date: August 16, 2017

License No.: ABRA-106051
Licensee: Buredo 625 H St, LLC
Trade Name: Buredo
License Class: Retailer's Class "C" Restaurant
Address: 625 H Street, N.E.
Contact: Andrew Kline: (202) 686-7600

WARD 6

ANC 6C

SMD 6C05

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 3, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **August 16, 2017 at 4:30 p.m.**

NATURE OF OPERATION

A Retailer's Class "C" Restaurant that will be serving burrito-sized sushi rolls and alcoholic beverages. Total Occupancy Load of 38 seats.

HOURS OF OPERATION

Sunday through Thursday 7:00 am- 2:00 am, Friday and Saturday 7:00 am – 3:00 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 8:00 am- 2:00 am, Friday and Saturday 8:00 am – 3:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: May 5, 2017
Protest Petition Deadline: June 19, 2017
Roll Call Hearing Date: July 3, 2017
Protest Hearing Date: August 16, 2017

License No.: ABRA-106083
Licensee: Wharf 5 Hotel East TRS Leaseholder, LLC
Trade Name: Canopy Washington DC/The Wharf
License Class: Retailer's Class "C" Hotel
Address: 975 7th Street, S.W.
Contact: Stephen J O'Brien: (202) 625-7700

WARD 6

ANC 6D

SMD 6D04

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 3, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009.** Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **August 16, 2017 at 4:30 p.m.**

NATURE OF OPERATION

New Class C Hotel with two restaurants, one on the second floor and one on the penthouse level. The hotel has two Summer Gardens, one on the second floor with 550 seats and one on the penthouse level with 125 seats. The hotel has a total of 175 rooms. Applicant has also applied for an Entertainment Endorsement.

HOURS OF OPERATION FOR INSIDE PREMISES

Sunday through Saturday 12am - 12am (24 hour operations)

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR INSIDE PREMISES AND SUMMER GARDEN

Sunday through Thursday 8:00 am - 2:00 am, Friday and Saturday 8:00 am – 3:00 am

HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES

Sunday through Thursday 8:00 am - 2:00 am, Friday and Saturday 8:00 am – 3:00 am

HOURS OF LIVE ENTERTAINMENT OUTDOORS IN SUMMER GARDEN

Sunday through Saturday 8:00 am through 12:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: May 5, 2017
Protest Petition Deadline: June 19, 2017
Roll Call Hearing Date: July 3, 2017
Protest Hearing Date: August 16, 2017

License No.: ABRA-105719
Licensee: DBG2, LLC
Trade Name: Dacha Beer Garden
License Class: Retailer's Class "C" Tavern
Address: 1740 14th Street, N.W.
Contact: Andrew J. Kline: (202) 686-7600

WARD 2

ANC 2F

SMD 2F01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing date on July 3, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The Protest Hearing date is scheduled on August 16, 2017 at 1:30 p.m.

NATURE OF OPERATION

New Class C Tavern serving American fare. Sidewalk café with 150 seats and a Summer Garden with 450 seats. Total Occupancy Load of 600.

HOURS OF OPERATION FOR PREMISES

Sunday through Thursday 7:00 am - 2:00 am, Friday and Saturday 7:00 am - 3:00 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES

Sunday through Thursday 8:00 am - 2:00 am, Friday and Saturday 8:00 am - 3:00 am

HOURS OF OPERATION FOR SUMMER GARDEN AND SIDEWALK CAFE

Sunday through Tuesday 7:00 am - 11:00 pm, Wednesday and Thursday 7:00 am - 12:00 am, Friday and Saturday 7:00 am - 2:00 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN AND SIDEWALK CAFE

Sunday through Tuesday 8:00 am - 11:00 pm, Wednesday and Thursday 8:00 am - 12:00 am, Friday and Saturday 8:00 am - 2:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: May 5, 2017
Protest Petition Deadline: June 19, 2017
Roll Call Hearing Date: July 3, 2017
Protest Hearing Date: August 16, 2017

License No.: ABRA-106040
Licensee: DBGA, LLC
Trade Name: Dacha Beer Garden
License Class: Retailer's Class "C" Tavern
Address: 79 Potomac Avenue, S.E.
Contact: Andrew J. Kline: (202) 686-7600

WARD 6

ANC 6D

SMD 6D07

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 3, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009.** Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **August 16, 2017 at 1:30 p.m.**

NATURE OF OPERATION

New Class C Tavern serving American fare with 350 indoor seats. Sidewalk Café with 250 seats and a Summer Garden with 550 seats. Total Occupancy Load is 900.

HOURS OF OPERATION FOR PREMISES

Sunday through Thursday 7:00 am - 2:00 am, Friday and Saturday 7:00 am – 3:00 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES

Sunday through Thursday 8:00 am - 2:00 am, Friday and Saturday 8:00 am – 3:00 am

HOURS OF OPERATION FOR SUMMER GARDEN AND SIDEWALK CAFE

Sunday through Tuesday 7:00 am - 11:00 pm, Wednesday and Thursday 7:00 am – 12:00 am, Friday and Saturday 7:00 am – 2:00 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN AND SIDEWALK CAFÉ

Sunday through Tuesday 8:00 am - 11:00 pm, Wednesday and Thursday 8:00 am – 12:00 am, Friday and Saturday 8:00 am – 2:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: May 5, 2017
Protest Petition Deadline: June 19, 2017
Roll Call Hearing Date: July 3, 2017
Protest Hearing Date: August 16, 2017

License No.: ABRA-105994
Licensee: Farmbird Restaurant Group, LLC
Trade Name: Farmbird
License Class: Retailer's Class "C" Restaurant
Address: 625 H Street, N.E.
Contact: Andrew Kline, Esq.: (202) 686-7600

WARD 6

ANC 6C

SMD 6C05

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 3, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **August 16, 2017 at 1:30 p.m.**

NATURE OF OPERATION

New Class "C" Restaurant serving American fare with 37 seats and a Total Occupancy Load of 45. A Sidewalk Café with an occupancy of 7 seats.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE PREMISES AND OUTSIDE FOR SIDEWALK CAFÉ

Sunday through Saturday 8:00 am – 12:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: May 5, 2017
Protest Petition Deadline: June 19, 2017
Roll Call Hearing Date: July 3 2017
Protest Hearing Date: August 16, 2017

License No.: ABRA-106176
Licensee: ReqWharf LLC
Trade Name: Requin
License Class: Retailer's Class "C" Restaurant
Address: 100 District Square, S.W.
Contact: Jeff Jackson: (301) 251-1566

WARD 6

ANC 6D

SMD 6D04

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 3 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009.** Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **August 16, 2017 at 4:30 p.m.**

NATURE OF OPERATION

New Restaurant serving American and French cuisine. Total Occupancy Load of 300. Sidewalk Café with 60 Seats.

HOURS OF OPERATION INSIDE PREMISES

Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES

Sunday through Thursday 11 am – 2 am, Friday and Saturday 11 am – 3 am

HOURS OF OPERATION FOR SIDWALK CAFÉ

Sunday through Thursday 8 am – 11 pm, Friday and Saturday 8 am – 1 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDWALK CAFÉ

Sunday through Thursday 11 am – 11 pm, Friday and Saturday 11 am – 1 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**NOTICE OF PUBLIC HEARING******CORRECTION**

Placard Posting Date: April 21, 2017
 Protest Petition Deadline: June 5, 2017
 Roll Call Hearing Date: June 19, 2017
 Protest Hearing Date: August 9, 2017

License No.: ABRA-106038
 Licensee: Shillings' Cannery, LLC
 Trade Name: **Shilling Canning Company
 License Class: Retailer's Class "C" Restaurant
 Address: 1331 4th Street, S.E.
 Contact: Stephen J. O'Brien, Esq.: 202-625-7700

WARD 6

ANC 6D

SMD 6D07

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on June 19, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **August 9, 2017 at 1:30 p.m.**

NATURE OF OPERATION

A full-service restaurant serving brunch, lunch and dinner with a focus on Mid-Atlantic cuisine. Seating Capacity of 100, Total Occupancy Load of 150, and a Summer Garden with 45 seats. Will include Entertainment.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION ON PREMISE

Sunday through Thursday 8 am – 2 am, and Friday through Saturday 8 am – 3 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION ON THE OUTDOOR SUMMER GARDEN

Sunday through Saturday 8 am – 2 am

HOURS OF LIVE ENTERTAINMENT ON PREMISE

Sunday through Thursday 8 am – 2 am, and Friday through Saturday 8 am – 3 am

HOURS OF LIVE ENTERTAINMENT ON THE OUTDOOR SUMMER GARDEN

Sunday through Thursday 8 am – 10 pm, and Friday through Saturday 8 am – 11 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**NOTICE OF PUBLIC HEARING**

Placard Posting Date: May 5, 2017
Protest Petition Deadline: June 19, 2017
Roll Call Hearing Date: July 3, 2017
Protest Hearing Date: August 16, 2017

License No.: ABRA-105767
Licensee: 46 Hospitality, LLC
Trade Name: TBD
License Class: Retailer's Class "C" Restaurant
Address: 116 Kennedy Street, N.W.
Contact: Andrew Kline: (202) 686-7600

WARD 4

ANC 4B

SMD 4B08

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 3, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **August 16, 2017 at 1:30 p.m.**

NATURE OF OPERATION

A Retailer's Class "C" Restaurant that will be serving American foods along with alcoholic beverages with a Total Occupancy Load of 99 seats. Offering Live Entertainment. Sidewalk Café with a seating capacity of 40.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR INSIDE PREMISES

Sunday 11:00 am - 2:00 am, Monday through Thursday 5:00 pm- 2:00 am, Friday 5:00 pm – 3:00 am, Saturday 11:00 am – 3:00 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE

Sunday 11:00 am - 12:00 am, Monday through Friday 5:00 pm – 12:00 am, Saturday 11:00 am – 12:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date: April 21, 2017
 Protest Petition Deadline: June 5, 2017
 Roll Call Hearing Date: June 19, 2017
 Protest Hearing Date: August 9, 2017

License No.: ABRA-106038
 Licensee: Shillings' Cannery, LLC
 Trade Name: **TBD
 License Class: Retailer's Class "C" Restaurant
 Address: 1331 4th Street, S.E.
 Contact: Stephen J. O'Brien, Esq.: 202-625-7700

WARD 6

ANC 6D

SMD 6D07

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on June 19, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **August 9, 2017 at 1:30 p.m.**

NATURE OF OPERATION

A full-service restaurant serving brunch, lunch and dinner with a focus on Mid-Atlantic cuisine. Seating Capacity of 100, Total Occupancy Load of 150, and a Summer Garden with 45 seats. Will include Entertainment.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION ON PREMISE

Sunday through Thursday 8 am – 2 am, and Friday through Saturday 8 am – 3 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION ON THE OUTDOOR SUMMER GARDEN

Sunday through Saturday 8 am – 2 am

HOURS OF LIVE ENTERTAINMENT ON PREMISE

Sunday through Thursday 8 am – 2 am, and Friday through Saturday 8 am – 3 am

HOURS OF LIVE ENTERTAINMENT ON THE OUTDOOR SUMMER GARDEN

Sunday through Thursday 8 am – 10 pm, and Friday through Saturday 8 am – 11 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date: March 31, 2017
Protest Petition Deadline: May 15, 2017
Roll Call Hearing Date: May 30, 2017
Protest Hearing Date: July 26, 2017

License No.: ABRA-105808
Licensee: Squash on Fire Restaurant, LLC
Trade Name: TBD
License Class: Retailer's Class "C" Restaurant
Address: 2233 M Street, N.W.
Contact: Michael D. Fonseca, Esq.: (202) 625-7700

WARD 2

ANC 2A

SMD 2A06

Notice is hereby given that this licensee has requested to transfer this license to a new location under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on May 30, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **July 26, 2017 at 1:30 p.m.**

NATURE OF OPERATION

**Licensee requests a change of ownership and to transfer location of liquor license from 3033 M Street, N.W., to 2233 M Street, N.W. Total Occupancy Load of 292 and a Summer Garden with 22 seats. No Dancing, Entertainment or Cover Charge.

HOURS OF OPERATION INSIDE PREMISES AND FOR SUMMER GARDEN

Sunday through Saturday 5 am – 12 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES AND FOR SUMMER GARDEN

Sunday through Saturday 8 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date: March 31, 2017
Protest Petition Deadline: May 15, 2017
Roll Call Hearing Date: May 30, 2017
Protest Hearing Date: July 26, 2017

License No.: ABRA-105808
Licensee: Squash on Fire Restaurant, LLC
Trade Name: TBD
License Class: Retailer’s Class “C” Restaurant
Address: 2233 M Street, N.W.
Contact: Michael D. Fonseca, Esq.: (202) 625-7700

WARD 2

ANC 2A

SMD 2A06

Notice is hereby given that this licensee has requested to transfer this license to a new location under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on May 30, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **July 26, 2017 at 1:30 p.m.**

NATURE OF OPERATION

**Licensee requests to transfer location of liquor license from 3033 M Street, N.W., to 2233 M Street, N.W. Total Occupancy Load of 292 and a Summer Garden with 22 seats. No Dancing, Entertainment or Cover Charge.

HOURS OF OPERATION INSIDE PREMISES AND FOR SUMMER GARDEN

Sunday through Saturday 5 am – 12 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES AND FOR SUMMER GARDEN

Sunday through Saturday 8 am – 12 am

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, JUNE 21, 2017
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

TIME: 9:30 A.M.

WARD FIVE

19512 **Application of 1262 Holbrook Terr, LLC**, pursuant to 11 DCMR Subtitle X, ANC 5D Chapter 9, for a special exception under Subtitle U § 320.2, to construct a rear addition and third-story addition to convert a one-family dwelling into a 3-unit apartment house in the RF-1 Zone at premises 1262 Holbrook Terrace N.E. (Square 4055, Lot 48).

WARD SIX

19513 **Application of Michael and Ashley Perry**, pursuant to 11 DCMR Subtitle X, ANC 6A Chapter 10 for variances from the nonconforming structure requirements of Subtitle C § 202.2 and the lot occupancy requirements of Subtitle E § 304.1, to construct a rear addition on the first floor of a one-family dwelling in the RF-1 zone at premises 520 12th Street N.E. (Square 984, Lot 41).

WARD TWO

19515 **Application of 2125 N ST, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10, ANC 2B for a variance from the minimum court dimensions of Subtitle F § 202.1, to construct a partial third-story addition and roof deck on an existing three-story apartment house in the RA-8 Zone at premises 2125 N Street, N.W. (Square 69, Lot 178).

WARD FIVE

THIS CASE WAS POSTPONED FROM FEBRUARY 22, 2017, MARCH 8, 2017 AND APRIL 19, 2017 TO THE HEARING OF JUNE 21, 2017 AT THE APPLICANT'S REQUEST:

19440 **Application of 311 P Street LLC**, pursuant to 11 DCMR Subtitle X, Chapter ANC-5E 10, for variances from the lot frontage requirements of Subtitle C § 303.2, the lot dimension requirements of Subtitle E § 201.1, the front setback requirements of Subtitle E § 305.1, and the rear yard requirements of Subtitle E § 306.1, to permit the construction of a new one-family dwelling on a vacant lot in the RF-1 Zone at premises 1502 3rd Street N.W. (Square 521, Lot 833).

BZA PUBLIC HEARING NOTICE

JUNE 21, 2017

PAGE NO. 2

WARD FIVE

THIS CASE WAS POSTPONED FROM FEBRUARY 22, 2017, MARCH 8, 2017 AND APRIL 19, 2017 TO THE HEARING OF JUNE 21, 2017 AT THE APPLICANT'S REQUEST:

19439 **Application of 311 P Street LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RF-use requirements of Subtitle U § 320.2, to convert an existing two-story, one-family dwelling into a three-story, three-unit apartment house in the RF-1 Zone at premises 311 P Street N.W. (Square 521, Lot 834).
ANC 5E

WARD TWO

THIS CASE HAS BEEN POSTPONED FROM THE HEARING OF MAY 3, 2017 TO THE HEARING OF JUNE 21, 2017 AT THE APPLICANT'S REQUEST:

19486 **Application of 1500 17th Street LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the penthouse requirements of Subtitle C § 1500.4, to construct a three-story flat with penthouse space in the RA-8 Zone at premises 500 17th Street, N.W. (Square 156, Lot 372).
ANC 2B

WARD SIX

THIS CASE HAS BEEN POSTPONED FROM THE HEARING OF JUNE 14, 2017 TO THE HEARING OF JUNE 21, 2017 AT THE APPLICANT'S REQUEST:

19507 **Application of 1005 First, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle I § 602.2 for garage and loading entrances, Subtitle C §904.2 for loading access, and Subtitle C §1500.3(c) for penthouse use, and pursuant to Subtitle X, Chapter 10, for a variance from the closed court area requirement of Subtitle I §207.1, to construct a mixed-used project consisting of hotel, residential and retail uses in the D-5 Zone at premises 1005 First Street N.E. (Square 0713, Lot 53).
ANC 6C

PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant

BZA PUBLIC HEARING NOTICE

JUNE 21, 2017

PAGE NO. 3

to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person’s interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.*** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning’s website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

**Note that party status is not permitted in Foreign Missions cases.*

Do you need assistance to participate?

Amharic

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የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም)

ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-

0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኚህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

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French

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Korean

참여하시는데 도움이 필요하세요?

특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

BZA PUBLIC HEARING NOTICE

JUNE 21, 2017

PAGE NO. 4

Spanish

¿Necesita ayuda para participar?

Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese

Quý vị có cần trợ giúp gì để tham gia không?

Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

**FREDERICK L. HILL, CHAIRPERSON
LESYLLEÉ M. WHITE, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
ONE BOARD SEAT VACANT
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Monday, June 19, 2017, @ 6:30 p.m.**
Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 05-28Q (Parkside Residential, LLC - First-Stage PUD Modification of Significance and Second-Stage PUD @ Square 5041, Lot 806; Square 5056, Lots 809, 813 and former Grant Place and Burnham Place rights of way closed by DC Emergency Act 18-92 – Parkside Parcel 9)

THIS CASE IS OF INTEREST TO ANC 7D

On January 17, 2017 the Office of Zoning received an application from Parkside Residential, LLC (“Applicant”). The Applicant is requesting review and approval of a second-stage planned unit development and modification of significance of the first-stage order in Zoning Commission Case No. 05-28Q pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 3 for the construction of a multi-family building and office building, both containing ground floor retail.

The property that is the subject of this Application consists of approximately 54,423 square feet, and comprises a portion of what was referred to as “Block F” in the First Stage PUD approval. The property is currently vacant and is generally bounded by Kenilworth Terrace, NE to the southeast and Parkside Place, NE to the northwest. A portion of both Burnham Place and Grant Place have both been formally closed and incorporated into the property. The subject property is in the underlying R-5-A zone district, and a Zoning Map amendment to the C-3-A zone district was approved for the property as part of the first-stage order in Z.C. Case No. 05-28.

This Application proposes to develop Parcel 9 with a multi-family residential building measuring approximately 85 feet tall and stepping down to a height of approximately 74 feet along Parkside Place. The residential building consists of approximately 73,000 square feet of gross floor area of residential use and 6,000 square feet of ground floor retail. The southwestern portion of Parcel 9 will be improved with an office building measuring approximately 90 feet tall in height and stepping down to approximately 78 feet along Parkside Place. The office building will consist of approximately 113,000 square feet of office use and 11,000 square feet of ground floor retail. The residential and office buildings will share a below grade garage with approximately 140 parking spaces (the “Project”). In total, the Project will consist of approximately 202,175 square feet of Gross Floor Area (“GFA”), a maximum height of 90 feet, and an FAR of approximately 3.71. The Project seeks modification of the first stage order with respect to the proposed use, building height, gross floor area, lot occupancy and proposed parking. The Project includes office use where residential use was previously approved, provides approximately 50,000 square feet of additional density than initially approved, modestly increases the lot occupancy, and increases the amount of parking provided.

On March 17, 2017, the District Office of Planning filed a report recommending that the Zoning Commission set the Application down for public hearing. On March 27, 2017 at a regular public

meeting, the Zoning Commission requested additional information about the Project and set the Application down for public hearing. The Applicant filed a pre-hearing statement on April 25, 2017.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, Subtitle Z, Chapter 4.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

Except for an affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, or 14 days prior to a scheduled public meeting if seeking advanced party status consideration, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning's website at: <http://dcoz.dc.gov/services/app.shtm>.** This form may also be obtained from the Office of Zoning at the address stated below.

Subtitle Z § 406.2 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to Subtitle Z § 406.3, if an ANC wishes to participate in the hearing, it must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- 1. Applicant and parties in support 60 minutes collectively
- 2. Parties in opposition 60 minutes collectively
- 3. Organizations 5 minutes each
- 4. Individuals 3 minutes each

Pursuant to Subtitle Z § 408.4, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, ROBERT E. MILLER, PETER A. SHAPIRO, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

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OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

ERRATA NOTICE

The Administrator of the Office of Documents and Administrative Issuances (ODAI), pursuant to the authority set forth in Section 309 of the District of Columbia Administrative Procedure Act, approved October 21, 1968, as amended (82 Stat. 1203; D.C. Official Code § 2-559 (2016 Repl.)), hereby gives notice of corrections to the Notice of Final Rulemaking issued by the Public Service Commission and published in the *D.C. Register* on July 8, 2016 at 63 DCR 9405.

The final rulemaking amended Sections 1301 and 1302 of Chapter 13 (Rules Implementing the Public Utilities Reimbursement Fee Act of 1980) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR). The amendment to Section 1301 (Determination of Reimbursements) amended Subsections 1301.1 and 1301.2 to create an exemption from assessment for those alternative providers that would be assessed less than twelve dollars a year. The rulemaking did not intend to delete Subsections 1301.3-1301.6, as it was codified.

Section 1301 as intended is published below in full. Section 1302 (Public Notice of Reimbursements) was published correctly in the July 8, 2016 final rulemaking and does not require any corrections.

Chapter 13, RULES IMPLEMENTING THE PUBLIC UTILITIES REIMBURSEMENT FEE ACT OF 1980, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

1301 DETERMINATION OF REIMBURSEMENTS

1301.1 Each public utility, competitive electric supplier, competitive natural gas supplier, and competitive local exchange carrier (“CLEC”) shall be assessed according to D.C. Official Code § 34-912(b) (2016 Supp.) for the reimbursable budgets of the Commission and the Office of the People’s Counsel in the following manner:

- (a) For CLECs, competitive electric suppliers, and competitive natural gas suppliers (collectively “alternative providers”), the assessments shall be equal to the ratio of the alternative provider’s calendar year gross jurisdictional revenues to the sum of the calendar year gross jurisdictional revenues of all public utilities and all alternative providers times the budgets of the Commission and the Office of the People’s Counsel; or
- (b) For public utilities, the assessment shall be the public utility’s proportionate share of the calendar year gross jurisdictional revenues of all public utilities times the budgets of the Commission and the Office of the People’s Counsel less the amount to be reimbursed by the alternative providers in paragraph (a).

- (c) If an alternative provider's assessment is less than or equals twelve dollars (\$12), then the Commission may waive the payment of this assessment.
- 1301.2 By March 15th of each year the Commission shall send to each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC an Annual Survey and Affidavit for assessment purposes. Each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC shall file its responses to the Annual Survey with the Commission by April 15th. Each response shall include a report of the responder's gross jurisdictional revenues for the proceeding calendar year ending December 31st.
- 1301.3 Failure to respond to the Commission issued Annual Survey by April 15th shall result in a penalty of one hundred dollars (\$100.00) per day for each day that the filing is late.
- 1301.4 Responders who under-report their gross jurisdictional revenues in their Annual Survey, shall be subject to a penalty equal to twice the correct assessment amount, up to but not to exceed five thousand dollars (\$5,000), in addition to paying the correct assessment amount.
- 1301.5 Responders who file incomplete or incorrect information in their Annual Survey shall be subject to a penalty not to exceed five thousand dollars (\$5,000).
- 1301.6 Responders shall receive notice of any penalty that the Commission intends to impose and shall be given an opportunity for a hearing pursuant to D.C. Official Code §§ 34-706(c), 34-1508(a), 34-1671.11(a), or 34-2002(h-1).

This Errata Notice's correction to the Notice of Final Rulemaking is non-substantive in nature and does not alter the intent, application, or purpose of the proposed rules. The rules are effective upon the original publication date of July 8, 2016.

Any questions or comments regarding this notice shall be addressed by mail to Victor L. Reid, Esq., Administrator, Office of Documents and Administrative Issuances, 441 4th Street, N.W., Suite 520 South, Washington, D.C. 20001, email at victor.reid@dc.gov, or via telephone at (202) 727-5090.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING**RM29-2016-02, IN THE MATTER OF 15 DCMR CHAPTER 29-RENEWABLE ENERGY PORTFOLIO STANDARD-RENEWABLE ENERGY STANDARD EXPANSION AMENDMENT ACT OF 2016**

1. The Public Service Commission of the District of Columbia (“Commission”), pursuant to D.C. Official Code § 34-802 and in accordance with D.C. Official Code § 2-505, hereby gives notice of its final rulemaking action amending Chapter 29 (Renewable Energy Portfolio Standard) (“REPS” or “Standard”) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR), effective upon publication of this Notice of Final Rulemaking (“NOFR”) in the *D.C. Register*.

2. On November 18, 2016 at 63 DCR 14208, the Commission published a Notice of Proposed Rulemaking (“NOPR”) in the *D.C. Register* amending Chapter 29, in accordance with the “Renewable Portfolio Standard Expansion Amendment Act of 2016” (“Act”).¹ In response to the NOPR, the Commission received comments from the DTE Energy Trading, Inc. (“DTE”),² Knollwood Energy, LLC,³ and SRECTrade, Inc.⁴ DTE filed reply comments.⁵

3. The Act, *inter alia*, adds raw or treated wastewater used as a heat source or sink for a heating or cooling system as a Tier One renewable source. This legislation also increases the solar energy compliance fee starting with the 2017 compliance year. Under the Act, energy supply contracts entered into prior to the Act’s effective date (October 8, 2016) shall not be subject to the increased solar energy compliance fees as required by that act for five years after the effective date of that Act; but any extension or renewal of such contracts shall be subject to the increased solar energy compliance fees as required by that Act. In addition, this legislation increases the capacity of participating solar energy systems, which are not located on property owned by the Government of the District of Columbia or by any agency or independent authority of the Government of the District of Columbia, to fifteen (15) megawatts. Commission Rules 2901.2, 2901.14, 2901.18, 2902.1, and 2999.1 were revised accordingly in the NOPR.

¹ D.C. Law 21-154 (October 8, 2015).

² *RM29-2016-02, In the Matter of 15 DCMR Chapter 29-Renewable Energy Portfolio Standard Renewable Energy Standard Expansion Amendment Act of 2016 (“RM29-2016-02”), Comments of DTE Energy Trading, Inc. in Response to Notice of Proposed Rulemaking, filed Dec. 19, 2016.*

³ *RM29-2016-02, Comments of Knollwood Energy, LLC in Response to Notice of Proposed Rulemaking, filed Dec. 19, 2016.*

⁴ *RM29-2016-02, Comments of SRECTrade, Inc. in Response to Notice of Proposed Rulemaking, filed Dec. 23, 2016.*

⁵ *RM29-2016-02, Reply Comments of DTE Energy Trading, Inc. in Response to Notice of Proposed Rulemaking, filed Jan. 3, 2017.*

4. After fully considering the comments and reply comments filed, by Order issued April 13, 2017, the Commission adopted the revised version of the rules as final,⁶ and they will become effective upon publication of this notice in the *D.C. Register*.

Chapter 29, RENEWABLE ENERGY PORTFOLIO STANDARD, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 2901, RPS COMPLIANCE REQUIREMENTS, is amended as follows:

Subsection 2901.2 is amended in its entirety to read as follows:

2901.2 An Electricity Supplier shall meet the solar portion of the Tier One requirement by obtaining the equivalent amount of RECs from solar energy systems no larger than fifteen megawatts (15 MW) in capacity that are located within the District of Columbia or in locations served by a distribution feeder serving the District of Columbia, except that RECs generated by solar energy facilities that are not located within the District of Columbia nor in locations served by a distribution feeder serving the District of Columbia that the Commission certified prior to February 1, 2011, may be used to meet the solar requirement. However, an Electricity Supplier may also meet the solar requirement by obtaining RECs from solar energy systems larger than fifteen megawatts (15 MW) in capacity, provided that these solar energy systems are located on property owned by the Government of the District of Columbia or by any agency or independent authority of the Government of the District of Columbia. In addition, Electricity Suppliers may meet the non-solar portion of the Tier One renewable source requirement of the renewable energy portfolio standard by obtaining renewable energy credits from solar energy systems that are not located within the District of Columbia or in locations served by a distribution feeder serving the District of Columbia, regardless of capacity.

Subsection 2901.14 is amended in its entirety to read as follows:

2901.14 Energy supply contracts entered into prior to August 1, 2011, shall not be subject to the increased solar energy requirement as required by the Distributed Generation Amendment Act of 2011 (D.C. Law 19-36); but any extension or renewal of such contracts, executed on or after August 1, 2011, shall be subject to the increased solar energy requirement as required by this act. Energy supply contracts entered into prior to the effective date of the Renewable Portfolio Standard Expansion Amendment Act of 2016 (D.C. Law 21-154), October 8, 2016, shall not be subject to the increased solar energy compliance fees as required by that act for five years after the effective date of that act; but any extension or renewal of such contracts shall be subject to the increased solar energy compliance fee as required by that act.

⁶ RM29-2016-02, Order No. 18749, rel. April 13, 2017.

Subsection 2901.15 is amended in its entirety to read as follows:

2901.15 The Compliance Fee shall be:

- (a) Fifty dollars (\$50) for each REC shortfall for Tier One resources;
- (b) Ten dollars (\$10) for each REC shortfall for Tier Two resources; and
- (c) Three hundred dollars (\$300) for each REC shortfall for Solar Energy resources in 2008; five hundred dollars (\$500) for each REC shortfall for Solar Energy resources in 2009 through 2023; four hundred dollars (\$400) for each REC shortfall for Solar Energy resources in 2024 through 2028; three hundred dollars (\$300) for each REC shortfall for Solar Energy resources in 2029 through 2032; and fifty dollars (\$50) for each REC shortfall for Solar Energy resources in 2033 and thereafter.

Section 2902, GENERATOR CERTIFICATION AND ELIGIBILITY, is amended as follows:**Subsection 2902.1 is amended in its entirety to read as follows:**

2902.1 Renewable generators, including behind-the-meter (BTM) generators, must be certified as a qualified resource by the Commission. The Commission shall not certify any Tier One solar energy system larger than fifteen megawatts (15 MW) in capacity – except for solar energy systems larger than fifteen megawatts (15 MW) in capacity that are located on property owned by the Government of the District of Columbia or by any agency or independent authority of the Government of the District of Columbia – located within the District of Columbia or in locations served by a distribution feeder serving the District of Columbia. In addition, solar energy systems that are not located within the District of Columbia or in locations served by a distribution feeder serving the District of Columbia, regardless of capacity may be certified as a qualified resource to meet the non-solar portion of the Tier One renewable source requirement of the renewable energy portfolio standard.

Section 2999, DEFINITIONS, is amended as follows:**The following definition in Subsection 2999.1 is amended in its entirety to read as follows:**

Tier One renewable source - one (1) or more of the following types of energy sources:

- (a) Solar energy;
- (b) Wind;

- (c) Qualifying biomass used at a generation unit that achieves a total system efficiency of at least sixty-five percent (65%) on an annual basis, can demonstrate that it achieved a total system efficiency of at least 65% on an annual basis through actual operational data after one year, and that started commercial operation after January 1, 2007;
- (d) Methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;
- (e) Geothermal;
- (f) Ocean, including energy from waves, tides, currents, and thermal differences;
- (g) Fuel cells producing electricity from a Tier One renewable source under paragraph (c) or (d) of this paragraph; and
- (h) Raw or treated wastewater used as a heat source or sink for a heating or cooling system.

The qualifications to qualifying biomass in subsection (c) shall not apply to RECs retired for compliance purposes with respect to electricity consumed by SOS customers on or before May 31, 2015; or with respect to electricity consumed by non-SOS customers on or before December 31, 2017, provided that these RECs were produced by a facility certified as a Tier I energy source before April 30, 2015 and were purchased by an Electricity Supplier pursuant to a contract executed before April 30, 2015. In all other instances, subsection (c) shall apply as of April 30, 2015.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the intent to adopt an amendment to Section 997 of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled “Durable Medical Equipment, Prosthetics, Orthotics, and Supplies.”

These proposed rules update the guidelines for reimbursement of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) under the District of Columbia Medicaid program, in line with new federal requirements, codified at 42 CFR § 440.70, for DMEPOS provided under the State Plan Home Health services benefit. The new federal requirements include the provision and documentation of a face-to-face encounter with the beneficiary by the ordering health practitioner, as well as clarification regarding the settings in which DMEPOS may be provided under the State Plan Home Health services benefit.

The Director also gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 997, DURABLE MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS, AND SUPPLIES, is amended as follows:

- 997.1 The Department of Health Care Finance (DHCF), the single state agency for the administration of medical assistance programs authorized under Titles XIX and XXI of the Social Security Act, shall ensure the provision of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) to qualified Medicaid beneficiaries in accordance with the requirements of this section and the D.C. Medicaid DMEPOS Provider/Supplier Billing Manual. All providers/suppliers of DMEPOS shall be enrolled as such by DHCF in accordance with Provider and Supplier Screening and Enrollment regulations and policies and § 996 of Title 29 District of Columbia Municipal Regulations (DCMR).
- 997.2 DHCF shall ensure that each Medicaid beneficiary retains his/her freedom of choice of DMEPOS providers/suppliers, in accordance with 42 CFR § 431.51.
- 997.3 In order for a beneficiary to receive DMEPOS, the following requirements shall be met:

- (a) The cost of the item shall be reasonable;
- (b) The item shall be prescribed by a physician or other licensed practitioner of the healing arts operating within the scope of practice allowed under the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*) and implementing rules, as well as all other applicable federal and District laws;
- (c) The prescribing clinician shall be enrolled as a provider in the District of Columbia Medicaid Program; and
- (d) The prescribing clinician and DMEPOS provider/supplier shall provide their National Provider Identification (NPI) numbers on the prescription, DMEPOS Request and Prior Authorization Form (Form 719(A)), and claim.

997.4 The prescribing clinician shall ensure that Form 719(A) and any supporting documentation describe the beneficiary's condition and include, at minimum, a description of the following:

- (a) The diagnosis related to the need for the DMEPOS item;
- (b) Any complicating medical conditions;
- (c) The functional abilities and limitations, using assessments based on the standards described in § 997.8;
- (d) The anticipated duration of the condition;
- (e) The physical examination findings; and
- (f) The potential for rehabilitation, if applicable.

997.5 For a beneficiary ages birth through twenty-one (21), who is entitled to the early and periodic screening, diagnosis, and treatment (EPSDT) benefit, covered items shall be limited to DMEPOS that are included within the scope of the definition set forth in Section 1905(r) of the Social Security Act (42 USC § 1396d(r)).

997.6 Medicaid reimbursement of DMEPOS shall require prior authorization by DHCF or its designee for the following items:

- (a) DMEPOS items that exceed specific criteria and/or require prior authorization, as set forth in the D.C. Medicaid Provider/Supplier Billing

Manual and/or D.C. Medicaid Fee Schedule, available online at www.dc-medicaid.com;

- (b) DMEPOS items that are billed using miscellaneous codes or that require manual pricing;
- (c) Items of durable medical equipment (DME) that exceed five-hundred dollars (\$500) in purchase price, unless exempted from the requirement as indicated on the fee schedule;
- (d) Customized equipment; and
- (e) DME, prosthetics, and orthotics, outside of the warranty period, that require repair or replacement.

997.7 For items that require prior authorization in order to be reimbursed by Medicaid, as set forth in § 997.6, the following tasks shall be completed:

- (a) The prescribing clinician, as identified on the prescription provided in accordance with § 997.3(b), shall complete the clinical portion of Form 719(A) and provide the form to the DMEPOS provider/supplier for completion;
- (b) The DMEPOS provider/supplier shall present the completed Form 719(A), including the corresponding prescription, to DHCF or its designee for approval; and
- (c) The DMEPOS provider/supplier shall collect and submit supporting documentation and invoices to DHCF or its designee for review and approval.

997.8 DHCF or its designee shall use national standards, such as InterQual, to assess the reasonableness and necessity of all DMEPOS that requires prior authorization.

997.9 A supplier that delivers a DMEPOS item that is subject to prior authorization, as set forth in § 997.6, before DHCF or its designee has issued a prior authorization for the item shall not receive Medicaid reimbursement for the item.

997.10 Except for oxygen and oxygen equipment provided to children, qualified physicians or other practitioners of the healing arts operating within the scope of practice outlined in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, as amended (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*) and implementing rules, shall review a beneficiary's continued need for any DMEPOS item at least on an annual basis, or as otherwise appropriate based on a beneficiary's condition in order to receive Medicaid reimbursement.

- 997.11 Information set forth in the D.C. Medicaid DMEPOS Provider/Supplier Billing Manual shall govern specific criteria regarding Medicaid reimbursement for the following categories of DMEPOS items:
- (a) Mobility assistive equipment; and
 - (b) Oxygen and oxygen equipment.
- 997.12 A DMEPOS provider/supplier shall not provide any new item for which prior authorization is required, as set forth in § 997.6, to a beneficiary until DHCF or its designee has provided a new prior authorization number. If a prior authorization has previously been issued for an item to a different DMEPOS provider/supplier, the current DMEPOS provider/supplier shall include a reference to the original prior authorization number on the Form 719(A) submitted to DHCF or its designee for approval.
- 997.13 DMEPOS Medicaid reimbursement shall be subject to the following standards:
- (a) DHCF shall establish maximum reimbursement rates for items included under the DMEPOS benefit and shall set forth these rates in the D.C. Medicaid Fee Schedule, available online at www.dc-medicaid.com;
 - (b) All rates for DMEPOS shall be subject to a pricing analysis by DHCF or its designee. The pricing analysis may consider the following:
 - (1) Beneficiary's condition;
 - (2) Brand comparison;
 - (3) Anticipated duration of beneficiary's need for the item;
 - (4) Warranty coverage and conditions;
 - (5) Medicare local coverage and pricing determinations;
 - (6) Pricing under other jurisdictions' Medicaid programs;
 - (7) Usual and customary pricing; or
 - (8) Discounts.
 - (c) For any DMEPOS item that is determined to be covered under the District of Columbia's Medicaid program, but is not included on the D.C. Medicaid Fee Schedule, DHCF shall price the item using the process described in § 997.13(b);

- (d) For a beneficiary enrolled in both Medicare and Medicaid, a DMEPOS provider/supplier shall first bill the Medicare program when providing any item to the beneficiary. If Medicare denies the claim, the provider may then submit the remittance advice along with the claim to DHCF or its designee. Under no circumstances shall a DMEPOS provider/supplier bill a dual eligible beneficiary for any amount not paid by Medicare. Failure to adhere to these requirements may subject the DMEPOS provider/supplier to termination of its Medicaid Provider Agreement;
- (e) If a prescribing clinician or DMEPOS provider/supplier receives a discount for an item ordered for use by a D.C. Medicaid beneficiary, the prescribing clinician and/or DMEPOS provider/supplier shall subtract the amount of the discount from the amount for which reimbursement is sought prior to submitting the claim to DHCF. Failure to comply with the requirements of this paragraph may result in denied claims, temporary suspension of payments, or termination of the Medicaid Provider Agreement;
- (f) A DMEPOS provider/supplier shall provide original documentation reflecting all discounts that apply to the cost of any item provided to a Medicaid beneficiary;
- (g) A DMEPOS provider/supplier shall produce proof of delivery (POD) for all items that are provided to a Medicaid beneficiary, which may include:
 - (1) Receipts that are signed by the beneficiary who requires DMEPOS, or his or her legal representative; or
 - (2) Delivery confirmation.
- (h) Except for items deemed necessary under the EPSDT benefit, the following shall not be covered under the D.C. Medicaid DMEPOS benefit:
 - (1) Replacement of an item while it is still under warranty or before the item meets the associated life expectancy, unless prior authorization is obtained;
 - (2) Ventilators;
 - (3) Acquisition, maintenance, or repair of DME, prosthetic, and orthotic items that do not require prior authorization or are for general use in an institutional provider facility where a beneficiary resides;

- (4) Consumable medical supplies for general or non-beneficiary specific use in an intermediate care facility for individuals with intellectual disabilities (ICF/IID);
- (5) Items solely for comfort and convenience of the beneficiary or his/her caregivers, such as air conditioners;
- (6) Home or vehicle modifications that may be covered under waiver programs operating pursuant to Section 1915(c) of the Social Security Act;
- (7) Rehabilitative equipment, for beneficiaries age twenty-two (22) and up, if designed to bring a beneficiary into an upright position to stimulate vestibular function or balance;
- (8) Items that are not suitable for, or are not primarily used in the home setting, including, but not limited to, car seats and non-rehabilitative strollers; and
- (9) Supplies and other DME items used by personnel of a home health agency during the course of a home visit.

997.14 To be eligible for Medicaid reimbursement, the delivery of DME is subject to the following requirements:

- (a) DME includes equipment that:
 - (1) Can withstand repeated use;
 - (2) Is primarily and customarily used to serve a medical purpose;
 - (3) Is generally not useful to a beneficiary in the absence of illness or injury;
 - (4) Is appropriate for use in the beneficiary's home; and
 - (5) Is expected to have a useful life of at least three (3) years.
- (b) For a beneficiary age 0 (zero) through twenty-one (21), DME shall also include equipment used in natural environments;
- (c) For purposes of this section, for a beneficiary age twenty-two (22) and older, the home shall also include an assisted living center, home for the aged, or other senior living facility;

- (d) DME shall be rented if the beneficiary's medical condition is anticipated to last six (6) months or less. Rental rates shall include costs of maintenance and servicing rented items. Except for fees associated with maintaining and servicing oxygen equipment, DHCF shall not allow payment for maintenance and servicing of a rented item. Any provider/supplier of rental DME seeking Medicaid reimbursement shall adhere to the following:
 - (1) Maintain and repair any DME item(s) being rented to D.C. Medicaid beneficiaries;
 - (2) Accept returns of substandard or unsuitable items; and
 - (3) Provide a replacement item that meets the specifications of the originally prescribed item to the beneficiary and in such a manner as to minimize the burden on the beneficiary.
- (e) The total reimbursement available for DME obtained through rental shall not exceed the purchase price of the item. At the time when rental payments equal the purchase price of the item, the item shall be considered purchased and shall become the property of the beneficiary;
- (f) DME shall be purchased under the following circumstances:
 - (1) If the beneficiary's medical condition is anticipated to last more than six (6) months and the equipment does not require frequent servicing and/or repair; or
 - (2) If the beneficiary's medical condition requires customized equipment.
- (g) DME that is purchased shall become the property of the beneficiary for whom it was prescribed;
- (h) In accordance with § 997.6(e), DHCF, or its designee, shall prior authorize any repairs to purchased equipment. A DME provider/supplier shall be required to submit to DHCF, or its designee, a copy of the warranty for the item needing repair within thirty (30) days of the date of the request for repair;
- (i) When DME is purchased for use by a beneficiary, and is under warranty, the provider/supplier of DME shall be required to pay reasonable charges for maintenance and servicing of the item;

- (j) A DME provider/supplier shall first seek to have a covered item maintained, serviced, or repaired by the manufacturer in accordance with the warranty;
- (k) DHCF shall reimburse a DME provider/supplier for charges related to parts and labor that are not otherwise covered under a manufacturer or supplier warranty;
- (l) When a beneficiary's DME item is undergoing repair, a DME provider/supplier may receive reimbursement for a substitute DME item if prior authorized by DHCF or its designee. Prior authorization of substitute DME items is subject to the following conditions:
 - (1) The substitute DME item must be reasonable and necessary;
 - (2) The frequency of use, or the number of units requested, of the substitute DME item must be consistent with code definitions;
 - (3) The total cost to rent the substitute DME item must not exceed the purchase price; and
 - (4) The substitute DME item shall be prior authorized for a period not to exceed two (2) months, except that substitute DME items provided during repair of customized equipment shall be prior authorized for a period not to exceed six (6) months;
- (m) A DME provider/supplier who is responsible for maintaining, servicing, or repairing a customized item that requires repair or replacement shall perform the following:
 - (1) Obtain an estimated repair time from the manufacturer and provide the information to the Medicaid beneficiary and his/her caregivers; and
 - (2) Provide the beneficiary a substitute DME item with specifications that are as similar to the customized item as possible, if needed or requested, in accordance with prior authorization requirements.
- (n) A DME provider/supplier of substitute DME items shall not continue to bill DHCF for the substitute DME item once the beneficiary receives the repaired or replacement DME item;
- (o) Prior to or at the time of delivery of DME, the DMEPOS provider/supplier shall perform an on-site evaluation of the beneficiary's home, if applicable, in order to verify that the beneficiary can adequately maneuver the item that is provided considering the physical layout, doorway widths

and thresholds, and surfaces. There shall be a written report of this evaluation, and the provider/supplier shall make it available upon DHCF's request. Documentation required under this section shall also be subject to the record keeping requirements of 29 DCMR § 996.9;

- (p) A prescribing clinician shall describe the clinical appropriateness of oxygen therapy by completing CMS Form 484 and submitting to DHCF, or its designee, along with any other required documentation. A beneficiary shall be eligible for oxygen therapy, including portable oxygen therapy, if his or her condition is supported by documentation of diagnosis and laboratory results reflecting any of the following conditions:
 - (1) Severe lung disease, including but not limited to chronic obstructive pulmonary disease (COPD), diffuse interstitial lung disease, cystic fibrosis, bronchiectasis, and widespread pulmonary neoplasm; or
 - (2) Hypoxia-related symptoms or findings that might be expected to improve with oxygen therapy, including but not limited to pulmonary hypertension, recurring congestive heart failure due to chronic cor pulmonale, erythrocytosis, impairment of the cognitive process, nocturnal restlessness, and morning headache;
- (q) Oxygen therapy shall be subject to the following:
 - (1) An authorization for oxygen therapy shall be valid for twelve (12) months for adults, beneficiaries twenty-two (22) and older, and six (6) months for children, ages zero (0) through age twenty-one (21); and
 - (2) A prescriber of oxygen therapy shall be required to see a beneficiary in person within a thirty (30) day period prior to the start of therapy in order to certify the need for the items/services.
- (r) Oxygen therapy shall not be covered for the following conditions:
 - (1) Angina pectoris in the absence of hypoxemia;
 - (2) Breathlessness without cor pulmonale or evidence of hypoxemia;
 - (3) Severe peripheral vascular disease resulting in clinically evident denaturation in one or more extremities;
 - (4) Terminal illnesses that do not affect the lungs;
 - (5) Treatment of headache, including migraine; and

- (6) Treatment of other health care conditions in which oxygen therapy is determined to be experimental or investigational; and
- (s) Diabetic testing meters shall be limited to those preferred items authorized pursuant to the D.C. Medicaid Diabetic Supplies program.

997.15 The delivery of prosthetics and orthotics shall be subject to the requirements as follows:

- (a) Prosthetics and orthotics shall include the following:
 - (1) Devices that can replace all or part of an internal body organ, including ostomy bags and supplies directly related to ostomy care, as described in § 997.15(b);
 - (2) Breast prostheses, including the surgical brassiere;
 - (3) Leg, arm, back, and neck braces;
 - (4) Artificial legs, arms, including stump cover or harness, where necessary;
 - (5) One pair of conventional eyeglasses or contact lenses furnished subsequent to cataract surgery that included insertion of an intraocular lens;
 - (6) Artificial eyes; and
 - (7) Therapeutic shoes, diabetic shoe inserts, splints, and supports.
- (b) Coverage of prosthetic and orthotic devices shall include replacements that are required based on a change in a beneficiary's physical condition or consumable nature of the item (e.g., ostomy supplies).
- (c) Replacement of prosthetic and orthotic devices shall be covered only when prescribed by a clinician meeting the requirements of § 997.3(b).
- (d) Covered prosthetic and orthotic devices shall not include the following items:
 - (1) Intraocular lenses;
 - (2) Supplies and equipment related to ostomy care that is furnished by home health agency personnel during the course of a home visit; and

- (3) Dental prostheses.

997.16 The delivery of supplies shall be subject to the requirements as follows:

- (a) Supplies shall only include items required for use for the treatment of specific illnesses, injuries, diseases, and/or disabilities and that meet the following:
 - (1) Serve a medical purpose;
 - (2) Are generally not useful to a beneficiary in the absence of illness or injury; and
 - (3) Are appropriate for use in the beneficiary's home.
- (b) Supplies include, but are not limited to:
 - (1) Lancets;
 - (2) Gloves;
 - (3) Bandages;
 - (4) Enteral products; and
 - (5) Incontinence supplies.

997.17 In addition to all other requirements set forth in this Section, the following requirements must be met in order for a provider to receive Medicaid reimbursement for DMEPOS provided under the Home Health services benefit, in accordance with 42 CFR § 440.70:

- (a) The DMEPOS shall be provided at the beneficiary's place of residence, which does not include a hospital, nursing facility, or ICF/IID, except for Home Health services in an ICF/IID that are not required to be provided by the facility under 42 CFR § 483.460;
- (b) The beneficiary's need for the DMEPOS shall be reviewed annually by a physician;
- (c) The ordering physician or allowed non-physician practitioner, as described in § 997.18, shall:
 - (1) Document that a face-to-face encounter with the beneficiary, related to the primary reason the beneficiary requires medical

equipment or supplies, occurred no more than six (6) months prior to the start of services; and

- (2) Indicate on the order the name of the practitioner who conducted the face-to-face encounter and the date of the encounter.

997.18 The face-to-face encounter described in § 997.17(c) may be conducted by any of the following practitioners:

- (a) The beneficiary's physician;
- (b) A nurse practitioner working in collaboration with the beneficiary's physician;
- (c) A physician assistant acting under the supervision of the beneficiary's physician; or
- (d) For beneficiaries admitted to Home Health immediately after an acute or post-acute stay, the attending acute or post-acute physician.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy Director/Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900 South, Washington DC 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING**Z.C. Case No. 08-06K****(Text Amendment – 11 DCMR)****Technical Corrections to Z.C. Order 08-06A**

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Rep1.)), hereby gives notice of its intent to amend Subtitle U (Use Permissions) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR) to make technical corrections to the amendments made by Z.C. Order No. 08-06A (Order). The Order, which took the form of a Notice of Final Rulemaking, adopted comprehensive amendments to the Zoning Regulations that became effective on September 6, 2016.

The proposed amendments would correct an inadvertent omission of a child/elderly development center and an adult day treatment facility as matter of right uses in the Residential Flats (RF) zones. The uses had been permitted as a matter of right in the R-4 zone, which was re-designated as RF zones as of effective date of the Zoning Regulations of 2016. The provision in Residential Apartment (RA) zones that permits these same uses is also proposed to be amended so that both the RF and RA provision will be similarly stated.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to Title 11 DCMR are proposed (additions are shown in **bold underlined** text and deletions are shown in ~~striketrough~~ text):

Title 11-U DCMR, USE PERMISSIONS, is amended as follows:

Subsection 301.1 of § 301, MATTER-OF-RIGHT USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, is amended by adding new paragraphs (m) and (n) and to make conforming changes to paragraphs (k) and (l) as follows:

301.1 The following uses shall be permitted as a matter of right in an RF zone subject to any applicable conditions:

...¹

(k) Medical care uses; ~~and~~

¹ The uses of this and other ellipses indicate that other provisions exist in the subsection begin amended and that the omission of the provisions does not signify an intent to repeal.

- (l) A multiple dwelling in Squares 2580, 2581, 2582, 2583, 2584, 2586W, 2587, or 2589, in existence as of December 14, 2015 with a valid certificate of occupancy, or a building permit application for a multiple dwelling that was officially accepted by DCRA as being complete prior to December 14, 2015, provided that the multiple dwelling shall not be expanded in gross floor area, lot occupancy, number of stories, building height, penthouse height, or number of units. Said multiple dwelling, however, may be repaired, renovated, remodeled, or structurally altered;
- (m) Child/elderly development center located in a building that was built as a place of worship and that has been used continuously as a place of worship since it was built; provided, that all of the play space required for the use by the licensing regulations shall be located on the same lot on which the center or facility is located; and**
- (n) Child/elderly development center or adult day treatment facility, provided, that the use shall be limited to no more than sixteen (16) individuals, not including staff.**

Subsection 401.1 of § 401, MATTER-OF-RIGHT USES (RA), of Chapter 4, USE PERMISSIONS RESIDENTIAL APARTMENT (RA) ZONES, is amended by revising its first sentence and paragraph (c) as follows:

401.1 The following uses shall be permitted as a matter of right **in an RA zone** subject to any applicable conditions:

...

- (c) Child/Elderly development center or adult day treatment facility ~~in RA zones~~ provided, that the **use** ~~center~~ shall be limited to no more than twenty-five (25) individuals **not including staff**;

...

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of a new Section 910, entitled “Medicaid-Reimbursable Telemedicine Services,” of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

Telemedicine services are designed to improve access to healthcare services, improve patient compliance with treatment plans, improve health outcomes through timely disease detection and treatment options; and increase capacity and choice for treatment in the District of Columbia’s Medicaid program. These rules establish standards for governing eligibility for Medicaid beneficiaries receiving health services via telemedicine under the Medicaid fee-for-service program, and to establish conditions of participation and reimbursement policies for providers who deliver healthcare services to Medicaid beneficiaries via telemedicine.

In accordance with the Telehealth Reimbursement Act of 2013, effective October 17, 2013 (D.C. Law 20-26; D.C. Official Code § 31-3861 (2013 Repl.)), Medicaid will cover and reimburse healthcare services appropriately delivered through telemedicine if the same services would be covered when delivered in person. These rules establish: (1) eligibility criteria for the receipt of telemedicine services; and (2) conditions of participation for providers who deliver telemedicine services as part of the District of Columbia’s Medicaid program.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of beneficiaries who face barriers to accessing Medicaid services. Beneficiaries may be unable to access traditional in-person Medicaid services because they face unique health challenges that make travelling to receive healthcare services difficult, or because a specialty provider is not located in their community or healthcare services area. Telemedicine provides a new service delivery pathway to enable these beneficiaries to receive ongoing Medicaid services via telecommunications. These services will be essential to ensure that beneficiaries will have continued access to health care. Therefore, to ensure that the beneficiary’s health, safety and welfare are not threatened by the lapse in access to ongoing healthcare services provided by qualified providers, it is necessary that these rules be published on an emergency basis.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on July 8, 2016 at 63 DCR 009435. The comment period officially closed on August 8, 2016. Comments were received from the D.C. Department of Behavioral Health (DBH), American Speech-Language Hearing Association (ASHA), Children’s Law Center (CLC), and Unity Health Care (UHC). DHCF carefully considered as comments received, as detailed below.

The following comments were received regarding expansion of Provider Site eligibility:

DBH requested expansion of Provider Site eligibility to those sites affiliated with the Home and Community Based Services (HCBS) Medicaid Waiver program. DBH stated that its behavioral health clinics treat one hundred and ninety-one (191) individuals with intellectual and developmental disabilities, ninety-seven percent (97%) of which receive HCBS Medicaid Waiver services. Many of these individuals also have chronic physical conditions, necessitating one to one (1:1) staffing and twenty-four/seven (24/7) supervision in the community in order to ensure their safety and the safety of others. DBH stated that it is very challenging for such patients to successfully complete their psychiatric and medical appointment in the traditional face-to-face clinic setting. Some of the obstacles that are routinely encountered for a typical doctor's visit include: lack of transportation; unreliable transportation; and significant patient agitation during transport and at the clinic itself. DBH believes that extending telemedicine into locations affiliated with HCBS Waiver providers and/or within the patient's own home would significantly improve access to care for this vulnerable population by minimizing travel and wait times. Patients would be more likely to attend their appointments if given the option of receiving care in a more convenient and familiar environment closer to their home. Family members, caretakers, and guardians could be more involved in medical decisions and treatment planning, and it would help facilitate coordination of care between 35 K Street, the HCBS Waiver service providers, and the DC Department of Disability Services to prevent mental health crises, emergency room visits and hospitalization. Most importantly, it supports our ultimate goal of allowing individuals to live in their own homes and communities rather than in institutional setting.

Based on the language of the current rule, there is no need for revision to address DBH's concern. Eligible providers include the following provider types: Hospital; Nursing Facility; Federally Qualified Health Center (FQHC); Clinic; Physician Group/Office; Nurse Practitioner Group/Office; DC Public School (DCPS); DC Public Charter School (DCPCS); and Core Service Agency (CSA). A clinic enrolled as a Medicaid provider would satisfy the criteria and be eligible to participate. For example, DBH's facility at 35 K Street is enrolled a Mental Health Clinic and, thus, would be an eligible provider under the Clinic category.

DBH and UHC requested that DHCF consider one additional "originating site" – a beneficiary's home. For Behavioral Health and Focused Home Health, UHC believes that "home-based" telemedicine will prove to be an invaluable tool for case management and care coordination. UHC further stated that telemedicine offers an efficient and convenient alternative to face-to-face behavioral health services for some customers. UHC urged DHCF to expand the list of eligible "originating sites" to include a beneficiary's home for the purpose of receiving behavioral health services. If used properly, UHC stated that home-based telemedicine can reduce unnecessary emergency room usage, hospital admissions, and readmissions. Just as with behavioral health services, UHC encouraged DHCF to permit a beneficiary's home to serve as an "originating site" for certain services.

Upon careful consideration, DHCF has concluded that the home will not be included as an originating site in this rule for the reasons that follow. First, the Centers for Medicare and Medicaid Services (see <https://www.medicaid.gov/medicaid-chip-program-information/by->

[topics/delivery-systems/telemedicine.html](#)) indicates that States that implement telemedicine without a State Plan Amendment (SPA) must “reimburse for telemedicine services the same way/amount that they pay for face-to-face services/visits/consultations.” DHCF is not using a SPA to implement telemedicine reimbursement and our fee schedule does not currently include coverage at home for any of the allowable telemedicine services.

Second, the current hub and spoke model makes it difficult to include the home as an originating site. As part of this structure, DHCF is requiring a provider to be in attendance at the originating site (when clinically indicated). Adding the home as an originating site is inconsistent with this requirement. It also adds new operational and financial considerations. There would be no utilization management controls in place, potentially allowing a beneficiary to misuse this modality. Additionally, there may be HIPAA concerns with this approach. DHCF recognizes stakeholders’ desire to utilize the home as an originating site. DHCF is committed to evaluating this initial iteration of telemedicine and exploring future iterations of telemedicine, either through updates to the rules, a SPA, or alternative payment models that support telemedicine (with or without direct reimbursement for telemedicine).

The following comments were received regarding the reimbursement of rehabilitative services:

ASHA requested that DHCF include reimbursement for audiology services in § 910.11,. Upon careful consideration, the only rehabilitative service rendered through the telemedicine service delivery model that DHCF will reimburse is speech-therapy. Other rehabilitative services, like audiology, present higher standards of care that, at this time, cannot be ensured. Examples of such include the absence of policies and procedures, a plan for the presence of on-site technicians trained in the installation and use of various audiology equipment, credentialing of on-site facilities, and a method for reimbursement of both sites. Accordingly, DHCF will amend § 910.11(d) to state “speech therapy” only.

The following comments were received regarding compliance with the consent requirements of Section 3026 of Title 5-E of the District of Columbia Municipal Regulations:

CLC requested clarification as to whether § 910.6 is intended to cover all “consent requirements” for the District of Columbia Charter Schools, or whether it only applies to consent regarding the evaluation or reevaluation of children with disabilities. The Medicaid reimbursable school-based health services are currently exclusively for children with disabilities. DHCF is exploring options to expand the availability of Medicaid-reimbursed health services to all Medicaid-eligible children and accordingly amended Section 910.6 to read: “Comply with any applicable consent requirements under District laws, including but not limited to Section 3026 of Title 5-E of the District of Columbia Municipal Regulations” in order to afford flexibility in the application of additional consent requirements based on future policy developments.

The following comments were received regarding consent of youth receiving mental health services or mental health supports:

UHC requested that DHCF clarify § 910.5 to expressly include language regarding consent protections for youth. DHCF agrees with this comment and will amend § 910.5 to read:

“Provide written consent to receive telemedicine service in lieu of face-to-face healthcare service, consistent with all applicable District laws.”

The following comments were received regarding the word “accompany” in § 910.17:

CLC requested that DHCF clarify whether the term “accompany” used in § 910.17 means that the “primary support professional” is responsible for escorting the patient, or will be required be present in the room while the patient is receiving services. DHCF agrees that the proposed language was ambiguous about intent of the role and requirements for the primary support professional. DHCF is recommending amendments to clarify intention that primary support professionals be present except in circumstances where it is not clinically appropriate or when the beneficiary feels the subject is sensitive. To address this, DHCF recommends amending Section 910.17 to read: “When DCPS or DCPCS is the originating site provider, a primary support professional shall be in attendance during the patient’s medical encounter, except in instances referenced in Subsection 910.16.”

The following comments were received regarding clarification of the term “supervisory services” in § 910.18:

CLC stated that the term “supervisory services” used in § 910.18 is unclear in its meaning and should be better defined. As “primary support professional” is defined, CLC has concerns regarding the privacy and the confidentiality of the patient while having such a person in the room with the patient, especially with regard to children receiving telehealth behavioral/mental health services. The American Academy of Child & Adolescent Psychiatry recommends that providers should spend some time interviewing the youth alone. DHCF agrees that the proposed language was ambiguous about the term supervisory services. DHCF is recommending a definition to clarify the term. To address this, DHCF recommends amending Section 910.99 to read: “Supervisory Services – The oversight of services delivered via telemedicine by a primary support professional at the originating site.” Privacy concerns are addressed in Sections 910.16 and 910.17.

While not explicitly requested in this comment, DHCF did hear from stakeholders that they are uncomfortable with the requirement that the originating site provider or designee is present with the patient. To address this concern, DHCF will clarify that presence in the room is only appropriate when clinically indicated but not when the beneficiary feels the subject is sensitive. This would address concerns about situations where it is more appropriate for the patient to have direct, one-on-one interaction without the presence of the additional provider. To address this, DHCF will amend § 910.16 to read: “When clinically indicated, an originating site provider or its designee shall be in attendance during the patient’s medical encounter with the distant site professional. An originating site provider shall not be required to be in attendance when the beneficiary prefers to be unaccompanied because the beneficiary feels the subject is sensitive. Sensitive topics may include counselling related to abuse, or other psychiatric matters. An originating site provider shall note their attendance in the patient’s medical record.”

The following comments were received regarding payment of a facility fee by DHCF:

UHC stated that, as proposed, the rule does not permit telemedicine providers to receive a transaction or facility fee associated with providing telemedicine services to their Medicaid beneficiaries and that without these fees, providers will find it nearly impossible to invest in the technology and infrastructure to support telemedicine. Unity asked that DHCF reconsider this prohibition and establish a transaction and/or facility fee for telemedicine service. DHCF is unable to agree to this change due to limited authority to provide the requested fee. Since telemedicine is being implemented without a SPA, DHCF can only offer add-on payments that are consistent with the current fee schedule. Currently, the only eligible providers that can receive a facility fee under our current fee schedule would be hospitals and no other providers are eligible to receive a transaction fee. As such, DHCF is unable to include a transaction and/or facility fee for all providers and has decided not to allow one.

However, the proposed rule providing a new FQHC payment methodology increases payment rates for FQHCs that adopt the alternative payment methodology rate. FQHCs that adopt the new Alternative Payment Methodology (APM) will be able to include in allowable costs the IT costs associated with patient care, which may include telemedicine implementation and maintenance costs. Thus, FQHCs like Unity will be able to include these costs as the basis of their new APM rate when the rates are rebased based on actual costs in future years.

The following comments were received regarding reimbursement of store-and-forward telemedicine services in the areas of dermatology, radiology, and ophthalmology, and remote patient monitoring reimbursement:

UHC stated that, as proposed, the rule excludes providers from obtaining reimbursement for all store-and-forward telemedicine services and encouraged DHCF to reconsider this across-the-board prohibition. At present, nine states permit reimbursement for certain categories of store-and-forward telemedicine services in the Medicaid programs. United stated that given the insufficient number of specialist in underserved communities and the transportation barriers that many FFS beneficiaries face, DHCF should permit reimbursement for store-and-forward telemedicine services in the following areas: dermatology, radiology and ophthalmology.

As with store-and -forward telemedicine, the rule also prohibits all reimbursements for remote patient monitoring (RPM). At present, sixteen (16) states permit some form of reimbursement for RPM in their Medicaid programs, especially for those individuals who suffer from chronic conditions and are at risk for hospitalization. UHC requested that DHCF reevaluate this blanket prohibition and instead permit RPM subject to the following conditions: (1) Require that RPM services be ordered by a physician, physician assistant, or nurse practitioner; (2) Establish “limiting” criteria for who is eligible to receive RPM services, e.g. individuals who: (a) have been diagnosed with one or more of the following chronic conditions: diabetes, congestive heart failure, asthma, or chronic obstructive pulmonary disease; (b) have two (2) or more hospitalization and /or emergency room visits in the past twelve (12) months times for one of the chronic conditions listed above (with two (2) or more separate hospitalizations and/or emergency room visits for the same chronic condition); or (c) are capable of using RPM equipment and transmitting the necessary data or have someone who can assist with the transmission of the data; (3) Limit the daily rate for reimbursement regardless of the number of chronic conditions being monitored; (4) Terminate RPM if the beneficiary or caregiver misses more than five monitoring

events in a 30 day period; and (5) Require prior authorization by District Medicaid of RPM services for an eligible beneficiary.

Given the Department's principal objectives of reducing unnecessary emergency room utilization, decreasing avoidable hospitalizations, and lowering the number of hospital readmissions within thirty (30) days of a previous discharge, Unity submitted that the Department would be well served by embracing, and reimbursing for RPM services.

DHCF is unable to include the requested reimbursement due to restrictions under District and federal law. The Telehealth Reimbursement Act of 2013, effective October 17, 2013 (D.C. Law 20-26; D.C. Official Code § 31-3861 (2013 Repl.)), indicates that telemedicine services shall be delivered "through the use of interactive audio, video, or other electronic media used for the purpose of diagnosis, consultation, or treatment; provided, that services delivered through audio-only telephones, electronic mail messages, or facsimile transmissions are not included." Additionally, the Centers for Medicare and Medicaid Services (see <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/delivery-systems/telemedicine.html>) indicate that States that implement telemedicine without a SPA must "reimburse for telemedicine services the same way/amount that they pay for face-to-face services/visits/consultations." DHCF is not using a SPA to implement telemedicine reimbursement and our fee schedule does not currently include coverage of store and forward or remote patient monitoring applications.

Lastly, DHCF recommends aligning the language in §§ 910.24 and 910.25 to reflect that FQHCs may be reimbursed at the applicable prospective payment system (PPS), or alternative payment methodologies (APM) rate. To address this, DHCF recommends amending § 910.25 to read: "If an FQHC is both the originating and distant site provider, and both sites deliver the same healthcare service as outlined in Subsection 910.24, only the distant site will be eligible for reimbursement."

DHCF also recommends amending § 910.5(c) to clarify that the term "face-to-face" refers to telemedicine consults and the term "in-person" only includes consults delivered while both patient and provider are physically present. Therefore, Subsection 910.5(c) has been amended to read: "Provide written consent to receive telemedicine services in lieu of in-person healthcare services."

In sum, the following changes have been made to address commenters' concerns for these second emergency and proposed rules: (1) changing the term "face-to-face" to "in-person" to conform to other DHCF rulemakings; (2) clarifying that consent for the delivery of telemedicine services must be obtained in accordance with all applicable District laws; (3) specifying that rehabilitation services offered through telemedicine are limited to speech therapy; (4) clarifying that the originating site provider is only required to be present during delivery of the distant site service when clinically indicated; (5) changing the term "accompany" to "be in attendance" in § 910.17 to clarify the responsibilities of the primary support professional; (6) including the term "alternative payment methodology" in § 910.24 to conform to other DHCF rulemakings; and (7) adding a definition for "supervisory services."

The emergency rulemaking was adopted on April 27, 2017 and became effective immediately. The emergency rules will remain in effect for one hundred and twenty (120) days or until August 25, 2017, unless superseded by publication of a Notice of Final Rulemaking in the *DC Register*.

The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

A new Section 910, MEDICAID-REIMBURSABLE TELEMEDICINE SERVICES, is added to read as follows:

910 MEDICAID-REIMBURSABLE TELEMEDICINE SERVICES

910.1 The purpose of this section is to establish the Department of Health Care Finance (DHCF) standards governing eligibility for Medicaid beneficiaries receiving healthcare services via telemedicine under the Medicaid fee-for-service program, and to establish conditions of participation for providers who deliver healthcare services to Medicaid beneficiaries via telemedicine.

910.2 Telemedicine is a service delivery model that delivers healthcare services as set forth in Subsections 910.10 and 910.11 through a two-way, real time interactive video-audio communication for the purpose of evaluation, diagnosis, consultation, or treatment.

910.3 The originating site shall be the place where an eligible Medicaid beneficiary is located at the time the healthcare services furnished for payment via a telecommunications system occurs.

910.4 The distant site shall be the place where the eligible Medicaid provider who furnishes and receives payment for the covered service(s) via a telecommunication system,

910.5 To be eligible for Medicaid reimbursement of telemedicine services under these rules, a Medicaid beneficiary shall meet the following criteria:

- (a) Be enrolled in the District of Columbia Medicaid program pursuant to Chapter 95 of Title 29 of the District of Columbia Municipal Regulations;
- (b) Be physically present at the originating site at the time the telemedicine service is rendered; and
- (c) Provide written consent to receive telemedicine services in lieu of in-person healthcare services, consistent with all applicable District laws.

- 910.6 A telemedicine provider shall meet the following program requirements:
- (a) Be enrolled as a Medicaid Provider and comply with all the requirements set forth under Chapter 94 (Medicaid Provider and Supplier Screening, Enrollment, and Termination) of Title 29 DCMR including having a completed, signed, Medicaid Provider Agreement;
 - (b) Comply with all technical, programmatic and reporting requirements as set forth in this section;
 - (c) Be licensed in the jurisdiction where the provider is physically located; and
 - (d) Comply with any applicable consent requirements under District laws, including but not limited to Section 3026 of Title 5-E of the District of Columbia Municipal Regulations if providing telemedicine services at the District of Columbia Public School (DCPS) or District of Columbia Public Charter Schools (DCPCS).

- 910.7 An originating site provider shall consist of the following provider types:

- (a) Hospital;
- (b) Nursing Facility;
- (c) Federally Qualified Health Center (FQHC);
- (d) Clinic;
- (e) Physician Group/Office;
- (f) Nurse Practitioner Group/Office;
- (g) DCPS;
- (h) DCPCS; and
- (i) Core Service Agency (CSA).

- 910.8 A distant site provider shall consist of the following provider types:

- (a) Hospital;
- (b) Nursing Facility;
- (c) FQHC;

- (d) Clinic;
- (e) Physician Group/office;
- (f) Nurse Practitioner Group/Office;
- (g) DCPS;
- (h) DCPCS; and
- (i) CSA

- 910.9 When the provider and patient receiving healthcare services are located in the District of Columbia, all individual practitioners shall be licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2016 Supp.)). For healthcare services rendered outside of the District, the provider of the services shall meet any licensure requirements of the jurisdiction in which the provider is physically located and where the patient is physically located.
- 910.10 Medicaid reimbursement of healthcare services rendered at the originating site shall include only those healthcare services which are covered under the Medicaid State Plan and implementing regulations.
- 910.11 Medicaid reimbursement of healthcare services rendered at the distant site shall include only the following healthcare services:
- (a) Evaluation and management;
 - (b) Consultation of an evaluation and management of a specific healthcare problem requested by an originating site provider;
 - (c) Behavioral healthcare services including, but not limited to, psychiatric evaluation and treatment, psychotherapies, and counseling; and
 - (d) Speech therapy.
- 910.12 To be eligible for Medicaid reimbursement, a telemedicine provider shall utilize the reimbursement codes designated for telemedicine and available at www.dhcf.dc.gov.
- 910.13 A telemedicine provider shall comply with the following technology requirements:

- (a) Use a camera that has the ability to, either manually or by remote control, provide multiple views of a patient and has the capability of altering the camera's resolution, and focus as needed during the consultation;
- (b) Use audio equipment that ensures clear communication and includes echo cancellation;
- (c) Ensure internet bandwidth speeds sufficient to provide quality video to meet or exceed fifteen (15) frames per second;
- (d) Use a display monitor size sufficient to support diagnostic needs used in the telemedicine services; and
- (e) Use video and audio transmission equipment with less than a three hundred (300) millisecond delay.

910.14 Effective January 1, 2017, DHCF shall send a Telemedicine Program Evaluation survey to providers, no more than every three (3) months, via email or regular US mail. A provider shall have thirty (30) calendar days to respond to the survey via email or regular US mail.

910.15 A telemedicine provider shall develop a confidentiality compliance plan in accordance with Health Insurance, Portability, and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191, 110 Stat. 1936) (HIPAA) administrative simplification guidance from the Department of Health and Human Services, Office of Civil Rights, available at: <http://www.hhs.gov/sites/default/files/hipaa-simplification-201303.pdf> to incorporate appropriate administrative, physical, and technical safeguards around data encryption (both for data in transit and at rest) and to protect the privacy of telemedicine participants and ensure compliance with the HIPAA and the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, approved February 17, 2009 (Pub. L. No. 111-5, §§ 13001-424, 123 Stat. 226).

910.16 When clinically indicated, an originating site provider or its designee shall be in attendance during the patient's medical encounter with the distant site professional. An originating site provider shall not be required to be in attendance when the beneficiary prefers to be unaccompanied because the beneficiary feels the subject is sensitive. Sensitive topics may include counselling related to abuse, or other psychiatric matters. An originating site provider shall note their attendance status in the patient's medical record.

910.17 When DCPS or DCPCS is the originating site provider, a primary support professional shall be in attendance during the patient's medical encounter, consistent with Subsection 910.16.

- 910.18 A primary support professional is an individual designated by the school to provide supervisory services for school-based healthcare services. A primary support professional includes a paraprofessional, classroom teacher, resource room staff, library media specialist, and any other certified or classified school staff member.
- 910.19 Each telemedicine provider shall maintain complete and accurate beneficiary records of services provided (not to include videos) for each beneficiary that document the specific healthcare services provided to each beneficiary for a period of ten (10) years or until all audits are completed, whichever is longer.
- 910.20 All beneficiary, personnel and telemedicine program administrative and fiscal records shall be maintained so that they are accessible and readily retrievable, upon request, for inspection and review or audit by DHCF, the federal Centers for Medicare and Medicaid Services, and other authorized government officials or their agents.
- 910.21 A provider shall not be reimbursed by Medicaid for healthcare services delivered via telemedicine when:
- (a) A provider is only assisting the beneficiary with technology and not delivering a healthcare service; or
 - (b) The healthcare service is incomplete.
- 910.22 Reimbursement shall be prohibited for an incomplete healthcare service when the service is not fully rendered due to technical interruptions or other service interruptions resulting in the partial delivery of care.
- 910.23 Telemedicine providers shall be subject to the standard billing practices that are in place for the healthcare services provided in accordance with the relevant regulations, policies, or transmittals issued by the DHCF.
- 910.24 Where a FQHC provides any of the allowable healthcare services described within this Section at the originating or distant site, the FQHC shall be reimbursed at the applicable rate, prospective payment system (PPS), alternative payment methodology (APM), or fee-for-service rate, consistent with Chapter 45 (Medicaid Reimbursement for Federally Qualified Health Centers) of Title 29 DCMR and Subsection 910.27.
- 910.25 If an FQHC is both the originating and distant site provider, and both sites deliver the same healthcare service as outlined in Subsection 910.24, only the distant site will be eligible for reimbursement.
- 910.26 In accordance with the DCPS/DCPCS Medicaid payment methodology, when DCPS or DCPCS provides any of the allowable healthcare services at the

originating or distant site, the provider shall only be reimbursed for distant site healthcare services that are Medicaid eligible and are to be delivered in a licensed education agency.

910.27 In accordance with the Mental Health Rehabilitation Services Medicaid payment regulations under Chapter 54 of Title 29 DCMR, and consistent with Chapter 34 of Title 22-A DCMR, when an originating site and a distant site are CSAs, and the same provider identification number is used for a serviced delivered via telemedicine, only the distant site provider shall be eligible for reimbursement of the allowable healthcare services described within this section.

910.28 Telemedicine providers shall not be reimbursed for a telemedicine transaction fee and/or facility fee.

910.29 Telemedicine providers shall not be reimbursed for store and forward and remote patient monitoring.

910.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed below:

Bandwidth - A measure of the amount of data that can be transmitted at one time through a communication conduit

Core Service Agency - A Department of Behavioral Health (DBH) certified community-based mental health provider that has entered into a Human Care Agreement with DBH to provide specified mental health rehabilitation services.

Data Encryption - The conversion of electronic data into another form which cannot be easily understood by anyone except authorized parties.

Echo Cancellation - A process which removes unwanted echoes from the signal on an audio and video telecommunications system.

Facility Fee - An add-on payment to a provider for the use of their facility for telemedicine.

Fee-For-Service Program - A healthcare payment system that provides Medicaid reimbursement to providers in accordance with a fee schedule, rather than through a Managed Care Organization.

Incomplete Service - A healthcare service that is not fully rendered for reasons to include any technical interruptions or other service interruptions that result in the partial delivery of care.

Medical Encounter - A healthcare service delivered through a two-way, real time, interactive video-audio communication system.

Remote Patient Monitoring - A digital technology that collects medical and/or health data from individuals in one location and electronically transmits that information securely to health care providers in a different location for assessment and recommendations.

Store and Forward - A technology that allows for the electronic transmission of medical information, such as digital images, documents, and pre-recorded videos through secure email transmission.

Supervisory Services – The oversight of services delivered via telemedicine by a primary support professional at the originating site.

Transaction Fee - An add-on payment to a provider for delivering a healthcare service via telemedicine.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, N.W., Suite 900, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (“DHCF” or “Department”), pursuant to the authority set forth in An Act to enable the District of Columbia (“District”) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes approved December 27, 1967 (81 Stat.774; D.C. Official Code § 1-307.02 (2016 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Chapter 27 (Medicaid Reimbursement for Fee for Service Pharmacies) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (“DCMR”).

These emergency and proposed rules amend the Medicaid reimbursement methodology of covered outpatient drugs for fee for service pharmacies. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (“CMS”) promulgated new federal rules that require all states to comply with new reimbursement requirements for covered outpatient drugs in accordance with 42 CFR §§ 447.500 – 447.522 effective April 1, 2017. Under the federal rules, states must use actual acquisition costs (“AAC”) as part of the methodology to reimburse ingredient costs of brand name and multiple source drugs that do not have established federal upper limits (“FULs”). The federal rules also provided a new definition of professional dispensing fees, which in effect requires states to restructure their professional dispensing fees to take into account additional costs (*e.g.*, overhead, a pharmacist's time in checking the computer for information about an individual's coverage, performing drug utilization review and preferred drug list review activities, and packaging.). These emergency and proposed rules amend Subsection 2708 through 2711 to comply with the federal requirements for reimbursement methodology and dispensing fees. First, the federal rules require that the District change its reimbursement methodology to use actual acquisition costs (“AAC”) for brand name and multiple source drugs. With this change, reimbursement for brand name drugs will be the lesser of the National Average Drug Acquisition Cost (“NADAC”), the Wholesale Acquisition Cost (“WAC”), or the usual and customary charges to the general public. Reimbursement for multiple source drugs would be the lesser of the established FUL, NADAC, WAC, the District Maximum Allowable Cost (“DMAC”), or usual and customary charges to the general public. DHCF expects a decrease in aggregate expenditures of approximately \$3,217,000 in FY 2017 and a decrease in aggregate expenditures of approximately \$6,434,700, each year, in FY 2018 through FY 2021.

The federal rules also require that the District reimburse pharmacies a new professional dispensing fee that takes into account required factors and ensures the District rate is comparable to other jurisdictions. Taking these factors into account, the District’s reimbursement of the professional dispensing fee will increase from four dollars and fifty cents (\$4.50) to eleven dollars and fifteen cents (\$11.15), the fee amount derived from an analysis of a national cost of dispensing survey and Virginia’s state-wide professional dispensing survey. The District is also amending Section 2702 to define the professional dispensing fee and clarify the types of costs included in its calculation.

The federal rules also specify the reimbursement methodologies that apply to: retail pharmacies; specialty drugs primarily dispensed through the mail; non-retail community pharmacies (*e.g.*, institutional or long-term care pharmacy when not included as part of an inpatient stay); clotting factor from Specialty Pharmacies Hemophilia Treatment Centers, Centers of Excellence; drugs acquired via the Federal Supply Schedule (“FSS”); drugs acquired at nominal price outside of 340B Drug Pricing Program and FSS; federally approved 340B covered entity pharmacies; and 340B contract pharmacies. These emergency and proposed rules make changes to conform to these federal requirements. In addition, the emergency and proposed rules amend the limitations and requirements for certain services in order to specify that investigational drugs are not reimbursable in the District. Under the emergency and proposed amendments, the rule will no longer include a tiered dispensing fee for nursing facility pharmacies; rather, the professional dispensing fee will be the same for all pharmacies, including nursing facility pharmacies. Furthermore, the emergency and proposed rule amends the definitions in Section 2799 by: (1) adding new definitions for the terms actual acquisition costs, brand name drugs, federal supply schedule, federal upper limits, investigational drugs, and 340 entities; (2) amending the definition of pharmacy benefit manager; and (3) amending the definition for multiple source drugs and moving the definition to Subsection 2708.1.

The District is also amending Sections 2703 and 2706 in order to allow the District to expand its reimbursement for needed medications and to achieve consistency with the District State Plan for Medical Assistance (“State Plan”). Specifically, the list of reimbursable prescription drugs includes smoking cessation products, single ingredient antihistamine medications, geriatric vitamins, and other over-the-counter medications found to be medically necessary that are FDA-approved or medically indicated based on documentation in official compendia or peer-reviewed medical literature. The Patient Protection and Affordable Care Act of 2010, approved March 23, 2010 (Pub. L. No. 111-148, 124 Stat. 119) requires coverage of smoking cessation treatment. Due to the need for single ingredient antihistamine products among Medicaid-enrolled adults and children, the emergency and proposed rule provides Medicaid reimbursement for these drugs. The inclusion of the broad category of over-the-counter medications among covered drugs conforms to a previously approved State Plan Amendment (“SPA”), which includes this category as an exception to non-covered drugs. Additionally, the category of over-the-counter medications approved by the U.S. Preventive Services Task Force allows the District to have the flexibility to react to epidemics or other public health concerns and cover needed drugs that are FDA-approved. The list of drugs that are excluded from reimbursement includes over-the-counter drugs provided by nursing home pharmacies in order to achieve consistency with a previously approved SPA. These particular drugs are specified as being excluded since reimbursement for these drugs is already included in the nursing homes’ daily rates.

The District Medicaid Program is also amending the State Plan. These rules correspond to the SPA, which requires approval by the Council of the District of Columbia (“Council”) and CMS. The Council approved the corresponding SPA through the Fiscal Year 2017 Budget Support Act of 2016, signed August 18, 2016 (D.C. Act 21-488; 63 DCR 10775 (August 26, 2016)).

Because the federal law requires that States have these rules in place by April 1, 2017, these emergency rules shall become effective for services rendered on or after April 1, 2017, once the

corresponding SPA has been approved by CMS with an effective date of April 1, 2017, or the effective date established by CMS in its approval of the corresponding SPA, whichever is later. These emergency rules were adopted on April 27, 2017 and shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until August 25, 2017, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 27, MEDICAID REIMBURSEMENT FOR FEE FOR SERVICE PHARMACIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 2702 [RESERVED], is amended to read as follows:

2702 PROFESSIONAL DISPENSING FEE

2702.1 Medicaid reimbursement of covered outpatient drugs to fee for service pharmacies shall include a professional dispensing fee. A professional dispensing fee is a fee that:

- (a) Is incurred at the point of sale or service;
- (b) Pays for pharmacy costs in excess of the ingredient cost of a covered outpatient drug each time a covered outpatient drug is dispensed;
- (c) Includes only pharmacy costs associated with ensuring that possession of the appropriate covered outpatient drug is transferred to a Medicaid beneficiary. Pharmacy costs include, but are not limited to reasonable costs associated with delivery, special packaging and overhead associated with maintaining the facility and equipment necessary to operate the pharmacy, and a pharmacist's time spent:
 - (1) Checking the computer for information about an individual's coverage
 - (2) Performing drug utilization review and preferred drug list review activities;
 - (3) Measuring or mixing of the covered outpatient drug;
 - (4) Filling the container;
 - (5) Counseling a beneficiary; and
 - (6) Physically providing the completed prescription to the Medicaid beneficiary.

2702.2 The professional dispensing fee shall not include administrative costs incurred by the District in the operation of the covered outpatient drug benefit including systems costs for interfacing with pharmacies.

Subsection 2703.1 of Section 2703, REIMBURSEMENT FOR PRESCRIPTIONS, is amended as follows:

2703.1 The District of Columbia Medicaid Program shall reimburse claims submitted by participating providers for the following prescriptions:

- (a) Legend drugs that are prescribed for their labeled use; and
- (b) Over-the-counter (“OTC”) medications as listed in the District Medicaid Preferred Drug List and the Pharmacy Billing Manual. The following categories of OTC medications shall be covered when prescribed by a licensed provider:
 - (1) Oral Analgesics with a single active ingredient (*e.g.*, aspirin, acetaminophen, and ibuprofen);
 - (2) Ferrous salts (sulfate, gluconate);
 - (3) Antacids (aluminum, magnesium, bismuth);
 - (4) Diabetic preparations (*e.g.*, Insulin, syringes);
 - (5) Prenatal vitamins and Fluoride; pediatric multivitamins; single agent Vitamin B1, Vitamin B6, Vitamin B12, Vitamin D, and folic acid products; and geriatric vitamins;
 - (6) Family planning drugs;
 - (7) Senna extract, single dose preparations when required for diagnostic radiological procedures performed under the supervision of a physician;
 - (8) Smoking cessation products;
 - (9) Single ingredient antihistamine medications; and
 - (10) Other over-the-counter, US Preventative Services Task Force recommended, medications found to be medically necessary that are FDA-approved or medically indicated based on documentation in official compendia or peer-reviewed medical literature.

Subsection 2706.3 of Section 2706, LIMITATIONS AND REQUIREMENTS FOR CERTAIN SERVICES, is amended to read as follows:

- 2706.3 The drugs or classes of drugs listed in Section 1927(d)(2) of Title XIX of the Social Security Act (42 U.S.C. § 1396r-8(d)(2)) shall be excluded from coverage unless specifically placed, either individually or by drug class, on the Medicaid Preferred Drug List of prior authorized drugs based on U.S. Food and Drug Administration (FDA)-approved indications. The following categories of medications shall be excluded from the Medicaid outpatient pharmacy benefit:
- (a) A drug which has been issued a “less than effective” (“LTE”) rating by the FDA or a drug that is “identical, related or similar” to an LTE drug;
 - (b) A drug that has reached the termination date established by the drug manufacturer;
 - (c) A drug that the drug manufacturer has not entered into or has not complied with a rebate agreement for in accordance with Section 1927(a) of Title XIX of the Social Security Act (42 U.S.C. § 1396r-8(a)), unless DHCF reviewed and determined that it shall be in the best interest of a Medicaid beneficiary to make a payment for the non-rebated drug;
 - (d) Investigational drugs;
 - (e) Over-the-counter drugs provided by nursing home pharmacies;
 - (f) Weight loss;
 - (g) Fertility;
 - (h) Non-prescription cough and cold;
 - (i) Non-prescription vitamin and mineral products; and
 - (j) Erectile dysfunction drugs except for limited medical uses as required by federal law.

Section 2708, MAXIMUM ALLOWABLE COST (MAC) FOR PRESCRIBED MULTIPLE SOURCE DRUGS, is deleted in its entirety and amended to read as follows:

2708 REIMBURSEMENT FOR MULTIPLE SOURCE DRUGS

- 2708.1 A multiple source drug is a covered outpatient drug for which there is at least one other drug product that is:
- (a) Rated as therapeutically equivalent as reported in the FDA's “Approved Drug Products with Therapeutic Equivalence Evaluations” which is available at <http://www.accessdata.fda.gov/scripts/cder/ob/>;
 - (b) Pharmaceutically equivalent and bioequivalent, as determined by the FDA; and

(c) Sold or marketed in the United States during the rebate period.

2708.2 Reimbursement for multiple source drugs shall include a professional dispensing fee in the amount of eleven dollars and fifteen cents (\$11.15) plus the lesser of:

(a) The National Average Drug Acquisition Cost (“NADAC”) when available, which shall be published online at:
<https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Benefits/Prescription-Drugs/Pharmacy-Pricing.html>;

(b) The Wholesale Acquisition Cost (“WAC”) plus zero percent (0%), which shall be kept by drug file vendors such as First Data Bank;

(c) The Federal Upper Limit (“FUL”) of the drug for multiple source drugs, with the exception of the following:

(1) Multiple source drugs that do not have FULs; and

(2) Brand name drugs for which a prescriber has certified in writing as “Dispense as Written” or “Brand Necessary,” subject to the requirements set forth under Subsection 2708.3;

(d) The pharmacy’s usual and customary charges to the general public; or

(e) The District Maximum Allowable Cost (“DMAC”) established pursuant to Subsections 2708.4 and 2708.5.

2708.3 Certification of “Dispense as Written” or “Brand Necessary,” as described in Subsection 2708.2, shall be subject to the following requirements:

(a) The handwritten phrase “Dispense as Written” or “Brand Necessary” shall appear on the face of the prescription form;

(b) If the prescription is for a nursing facility resident, a handwritten phrase “Dispense as Written” or “Brand Necessary” shall be documented in the resident’s medical record accompanied by a copy of the physician’s order and plan of care; and

(c) A dual line prescription form, a check-off box on the prescription form, and a check-off box on the physician’s orders and plan of care shall not satisfy the certification requirement.

2708.4 A DMAC may be established for any drug for which two (2) or more A-rated therapeutically equivalent, source drugs with a significant cost difference. The DMAC shall be determined taking into account drug price status (non- rebatable, rebatable), marketplace status (obsolete, regional availability), equivalency rating (A-rated), and relative comparable pricing. Other factors that may be considered

are clinical indications of generic substitution, utilization, and availability in the marketplace.

2708.5 The DMAC for a drug shall be determined as follows:

- (a) Multiple drug pricing resources shall be utilized to determine the pricing for multiple source drugs, applying the necessary multipliers to ensure reasonable access by providers to the drug at or below the at or below the determined pricing benchmark; and
- (b) The resources used to determine DMAC shall be maintained by a vendor under contract with DHCF, and include but are not limited to pharmacy providers, wholesalers, drug file vendors such as First Data Bank, and pharmaceutical manufacturers, or any current equivalent pricing benchmark.

2708.6 DHCF shall supplement the CMS listing for DMAC pricing described in Subsection 2708.2(e) by adding drugs and their prices, which meet the following requirements:

- (a) The formulation of the drug approved by the U.S. Food and Drug Administration (FDA) has been evaluated as therapeutically equivalent in the most current edition of its publication, Approved Drug Products with Therapeutic Equivalence Evaluations (including supplements or in successor publications); and
- (b) At least two (2) suppliers list the drug (which has been classified by the FDA as category "A" in its publication, Approved Drug Products with Therapeutic Equivalence Evaluations, including supplements or in successor publications) based on listing of drugs which are locally available.

Section 2709, METHODS FOR DETERMINING COST FOR SINGLE SOURCE DRUGS, is deleted in its entirety and amended to read as follows:

2709 REIMBURSEMENT FOR BRAND NAME DRUGS

2709.1 Reimbursement for brand name drugs shall be at the lesser of:

- (a) The Actual Acquisition Cost, which shall be determined by DHCF in accordance with Subsection 2709.2, plus a professional dispensing fee in the amount of \$11.15; or
- (b) The pharmacies' usual and customary charges to the general public.

2709.2 The AAC shall be determined by DHCF based upon the lesser of:

- (a) The NADAC when available, which shall be published online at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Benefits/Prescription-Drugs/Pharmacy-Pricing.html>; or
- (b) The WAC plus zero percent (0%), which shall be kept by drug file vendors such as First Data Bank.

Section 2710, CLAIMS REIMBURSEMENT REQUIREMENTS FOR RETAIL PHARMACIES, is deleted in its entirety and amended to read as follows:

2710 CLAIMS REIMBURSEMENT REQUIREMENTS FOR PHARMACIES

2710.1 Reimbursement by the Department shall be restricted to only those drugs supplied from manufacturers that have a signed a national rebate agreement or an approved existing agreement, as specified in Section 1927(a) of Title XIX of the Social Security Act (42 U.S.C. § 1396r-8(a)).

2710.2 To be reimbursable, all prescriptions shall comply with District, state and federal laws and regulations for legal prescriptions.

2710.3 To be reimbursable, all prescriptions that have been written, verbally ordered, or electronically initiated by a licensed prescriber shall contain the following information on the prescription form:

- (a) Name and address of patient;
- (b) Individual Prescriber's Name and National Provider Identifier;
- (c) Name, strength, and quantity of the medication;
- (d) Directions for use;
- (e) Number of refills, if any;
- (f) Indication for "Dispense as Written" or "Brand necessary," when applicable; and
- (g) Signature and date of the prescriber.

2710.4 To be reimbursable, prescriptions for controlled substances ordered by a licensed prescriber shall contain the prescription requirements set forth in Subsection 2710.3 and include the following additional information:

- (a) The Drug Enforcement Agency ("DEA") number of the licensed prescriber;

- (b) The District of Columbia controlled substance registration number of the licensed prescriber; and
- (c) The X-DEA number of the licensed prescriber for buprenorphine/naloxone drug preparations.

2710.5 The reimbursement methods for brand name drugs and multiple source drugs, set forth under Sections 2708 and 2709 of this Chapter, shall apply to the following claims, as appropriate:

- (a) Pharmacy claims for retail pharmacy providers;
- (b) Specialty drugs primarily dispensed through the mail;
- (c) Institutional pharmacy claims when not included as part of an inpatient stay;
- (d) Clotting factors from Specialty Pharmacies Hemophilia Treatment Centers, Centers of Excellence;
- (e) Drugs acquired via the Federal Supply Schedule (“FSS”); and
- (f) Drugs acquired at nominal price (outside of 340B Drug Pricing Program and FSS).

2710.6 Except for 340B (Public Health Service) contract pharmacies, federally approved 340B covered entity pharmacies that include Medicaid claims in the 340B Drug Pricing Program shall be reimbursed in accordance with Subsections 2710.7 or 2710.8, as applicable, plus the professional dispensing fee of eleven dollars and fifteen cents (\$11.15).

2710.7 The submitted ingredient cost for drugs purchased through the Federal Public Health Service’s 340B Drug Pricing Program shall mean the 340B acquisition cost, and shall be reimbursed no higher than the 340B ceiling price as published or calculated by Average Manufacturer Price minus Unit Rebate Amount. 340B Pharmacies shall include the National Council for Prescription Drug Program (NCPDP) indicator on each claim for drugs purchased through the 340B program.

2710.8 Drugs purchased outside of the 340B program shall be submitted without the NCPDP 340B claim indicator described in Subsection 2710.7, and shall be reimbursed using the methodology described in Sections 2708 and 2709, as applicable, plus up to the established professional dispensing fee of eleven dollars and fifteen cents (\$11.15). All applicable Federal and State

Supplemental rebate shall be applied to claims submitted without the NCPDP 340B claim indicator.

- 2710.9 DHCF shall not reimburse prescription claims submitted by 340B contract pharmacies.
- 2710.10 340B contract pharmacies shall exclude Medicaid claims from the 340B Drug Pricing Programs.
- 2710.11 Drugs covered by Medicare for persons who are dually eligible for Medicare and Medicaid shall be billed to Medicare under the Medicare Prescription Drug Benefit Part D. The Medicaid program shall continue to provide coverage to persons who are dually eligible for the following excluded or otherwise restricted classes of drugs to the same extent that it provides coverage to all Medicaid beneficiaries:
- (a) Select agents when used for weight gain: Megesterol;
 - (b) Select prescription vitamins and mineral products limited to: single agent Vitamin B1, Vitamin B6, Vitamin B12, Vitamin D, and folic acid products; and
 - (c) Select non-prescription drugs: analgesics with a single active ingredient, antacids, and bowel diagnostic preparation kits.
- 2710.12 An additional supply of covered medications may be dispensed for use by a beneficiary residing in a long-term care facility during a short-term medically approved trip away from the facility.
- 2710.13 Nursing facility pharmacies' reimbursement for prescribed drugs for patients in their care shall not include the following prescription drugs and items which have been included in the Medicaid reimbursement rates for nursing facilities:
- (a) Over-the-counter medications;
 - (b) Syringes for diabetic preparations;
 - (c) Geriatric vitamin formulations; and
 - (d) Senna extract single dose preparations except when required for diagnostic radiological procedures performed under the supervision of a physician.

Section 2711, CLAIMS REIMBURSEMENT REQUIREMENTS FOR NURSING HOME PHARMACY PROVIDERS, is deleted in its entirety and amended as follows:

2711 [RESERVED]

Section 2799, DEFINITIONS, is amended to read as follows:

2799 DEFINITIONS

For purposes of this chapter, the following terms and phrases shall have the meanings ascribed:

Actual Acquisition Costs – DHCF’s determination of the pharmacy providers’ actual prices paid to acquire drug products marketed or sold by specific manufacturers.

Brand - Any registered trade name commonly used to identify a drug.

Brand name drugs – A single source or innovator multiple source drug.

Compound medication – Any prescription drug, excluding cough preparations, in which two (2) or more ingredients are extemporaneously mixed by a registered pharmacist.

Container – A light resistant receptacle designed to hold a specific dosage form which is or maybe in direct contact with the item and does not interact physically or chemically with the item or adversely affect the strength, quality, or purity of the item.

Department of Health Care Finance – The executive department responsible for administering the Medicaid program within the District of Columbia.

Federal Supply Schedule – A multiple award, multi-year federal contract for medical equipment, supplies, pharmaceutical, or service programs that is available for use by federal government agencies that complies with all federal contract laws and regulations. Pricing is negotiated based on how vendors do business with their commercial customers.

Federal Upper Limit – The upper limits of payment established by the Centers for Medicare and Medicaid Services, consistent with the requirements set forth under 42 CFR §§ 447.512 – 447.516.

Generic drug – A drug that is produced and distributed without patent protection.

Investigational drug – A drug that is under study but does not have permission from Food and Drug Administration to be legally marketed and sold in the U.S.

Legend drug – A drug that can only be dispensed to the public with a prescription.

Medicaid Drug Rebate Program – The program created pursuant to the Omnibus Budget Reconciliation Act of 1990, approved November 5, 1990 (104 Stat. 1388, 42 USC § 1396r-8) (OBRA 1990), which requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services (HHS) for states to receive Federal funding for outpatient drugs dispensed to Medicaid patients.

Maintenance narcotic medication – A narcotic medication that has been dispensed in quantities sufficient for thirty (30) days or more for pain management therapy.

Pharmacy benefit manager – A company under contract with DHCF to manage pharmacy networks, provide drug utilization reviews, outcome management and disease management.

340B Covered Entity Pharmacy – An in-house pharmacy of an entity that meets the requirements set forth in § 340B(a)(4) of the Public Health Services Act.

340B Contract Pharmacy – A pharmacy dispensing drugs on behalf of a covered entity described at § 340B(a)(4) of the Public Health Services Act.

X-DEA number – A unique identification number (x-number) assigned by the Drug Enforcement Administration under the Drug Addiction Treatment Act of 2000 in order to prescribe or dispense buprenorphine/naloxone drug preparations.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-8742, via email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-109
April 27, 2017

SUBJECT: Reappointment and Appointment — District of Columbia Health Benefit Exchange Authority Executive Board


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to section 6 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012, D.C. Act 19-94; D.C. Official Code § 31-3171.05 (2012 Repl.) which established the District of Columbia Health Benefit Exchange Authority Executive Board ("**Board**"), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1-523.01 (2016 Repl.), it is hereby **ORDERED** that:

1. **DIANE CLAIRE LEWIS**, pursuant to the District of Columbia Health Benefit Exchange Authority Executive Board Diane Lewis Confirmation Resolution of 2016, effective November 26, 2016, PR21-0943, is reappointed as a voting member of the Board, for a term to end July 6, 2020.
2. **NATHANIEL BEERS**, pursuant to the District of Columbia Health Benefit Exchange Authority Executive Board Nathaniel Beers Confirmation Resolution of 2016, effective December 17, 2016, PR21-0996, is appointed as a member of the Board, replacing Nancy Hicks, for a term to end July 6, 2020.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to the date of confirmation.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-110
April 27, 2017

SUBJECT: Reappointment and Appointment — Board of Long-Term Care Administration

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), pursuant to section 204 of the District Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986, D.C. Law 6-99; D.C. Official Code 3-1202.05 (2016 Repl.), which established the Board of Long-Term Care Administration, and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1-523.01 (2016 Repl.), it is hereby **ORDERED** that:

1. **KEYSHA DALE**, pursuant to the Board of Long-Term Care Administration Keysha Dale Confirmation Resolution of 2017, effective February 25, 2017, PR22-0055 is reappointed as a licensed nursing home administrator member of the Board of Long-Term Care Administration, for a term to end July 21, 2018.
2. **SHAWNTELLE NESMITH**, pursuant to the Board of Long-Term Care Administration Shawntelle Nesmith Confirmation Resolution of 2016, effective December 20, 2016, R21-0726 is appointed as a health professional licensed in the District who has experience in long-term care member of the Board of Long-Term Care Administration, filling a vacant seat, for a term to end July 21, 2019.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to the date of confirmation.


MURIEL BOWSER
MAYOR

ATTEST:


LAUREN C. VAUGHAN

SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-111
April 27, 2017

SUBJECT: Reappointment and Appointments — Alcoholic Beverage Control Board

ORIGINATING AGENCY: Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), pursuant of D.C. Official Code § 25-201 (a) and D.C. Official Code § 25-206(d) (2012 Repl.), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1-523.01 (2016 Repl.), it is hereby **ORDERED** that:

1. **JAMES SHORT**, pursuant to the Alcoholic Beverage Control Board James Short Confirmation Resolution of 2016, effective October 18, 2016, R21-0622, is reappointed as a member of the Board, for a term to end May 7, 2020.
2. **MAFARA HOBSON**, pursuant to the Alcoholic Beverage Control Board Mafara Hobson Confirmation Resolution of 2016, effective October 18, 2016, R21-0624, is appointed as a member of the Board, replacing Ruthanne Miller, for a term to end May 7, 2020.
3. **DAVID JACOB PERRY**, pursuant to the Alcoholic Beverage Control Board David Jacob Perry Confirmation Resolution of 2016, effective October 18, 2016, R21-0623, is appointed as a member of the Board, replacing Victor Rodriguez, for a term to end May 7, 2019.
4. **DONALD L. ISAAC SR.**, pursuant to the Alcoholic Beverage Control Board Donald L. Isaac Sr. Confirmation Resolution of 2017, effective April 4, 2017, R22-0072, is appointed as a member of the Board, replacing Herman Jones, for a term to end May 7, 2019.

5. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to the date of confirmation.



MURIEL BOWSER
MAYOR

ATTEST: 
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-112
April 27, 2017

SUBJECT: Appointments — District of Columbia Commission on Human Rights

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), pursuant of Title IV, section 401 of the Human Rights Act of 1977, effective December 7, 2004, D.C. Law 15-216; D.C. Official Code §2-1404.03 (2016 Repl.), which established the District of Columbia Commission on Human Rights (“**Commission**”), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1-523.01 (2016 Repl.), it is hereby **ORDERED** that:


1. **MARK HERZOG**, pursuant to the District of Columbia Commission on Human Rights Mark Herzog Confirmation Resolution of 2016, effective December 20, 2016, R21-0711, is appointed as a member of the Commission, replacing Edwin Powell, for a term to end December 31, 2018.
2. **TIMOTHY THOMAS**, pursuant to the District of Columbia Commission on Human Rights Timothy Thomas Confirmation Resolution of 2016, effective December 20, 2016, R21-0710, is appointed as a member of the Commission, replacing Michelle McLeod, for a term to end December 31, 2019.
3. **DR. ALBERTO FIGUEROA-GARCIA**, pursuant to the District of Columbia Commission on Human Rights Dr. Alberto Figueroa-Garcia Confirmation Resolution of 2016, effective June 28, 2016, R21-0524, is reappointed as a member of the Commission, for a term to end December 31, 2019.
4. **GENORA REED**, pursuant to the District of Columbia Commission on Human Rights Genora Reed Confirmation Resolution of 2016, effective June 28, 2016, R21-0525, is appointed as a member of the Commission, replacing Alexandra Andrea Beninda, for a term to end December 31, 2018.
5. **JOHN ROBINSON**, pursuant to the District of Columbia Commission on Human Rights Dr. John D. Robinson Confirmation Resolution of 2016, effective June 28, 2016, R21-

0528, is reappointed as a member of the Commission, for a term to end December 31, 2018.

6. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to the date of confirmation.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-113
April 27, 2017

SUBJECT: Reappointment and Appointment — Board of Chiropractic


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), pursuant to section 2(d) of the District of Columbia Health Occupations Revision Act of 1985, effective March 21, 1995, D.C. Law 10-231; D.C. Official Code § 3-1202.16 (2016 Repl.), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1-523.01 (2016 Repl.), it is hereby **ORDERED** that:

1. **JUSTIN PALMER**, pursuant to the District of Columbia Board of Chiropractic Justin Palmer Confirmation Resolution of 2016, effective October 8, 2016, PR 21-0811, is reappointed as a consumer member of the Board of Chiropractic, for a term to end October 23, 2019.
2. **DR. JUSTIN MICHAEL KLEIN**, pursuant to the Board of Chiropractic Robert Klein Confirmation Resolution of 2016, effective October 8, 2016, PR 21-0810, is appointed as a licensed chiropractic doctor member of the Board of Chiropractic, replacing Carol Hopson, for a term to end October 23, 2019.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to October 8, 2016.


MURIEL BOWSER
MAYOR

ATTEST:


LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-114
April 27, 2017

SUBJECT: Reappointment and Appointment — Board of Industrial Trades

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), pursuant of 1002 (b) of the Second Omnibus Regulatory Reform Amendment Act of 1998, effective April 20, 1999, D.C. Law 12-261; D.C. Official Code § 47-2853.06 (d) (2012 Repl. and 2015 Supp.) , which established the Board of Industrial Trades (“**Board**”), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1-523.01 (2016 Repl.), it is hereby **ORDERED** that:

1. **VICTORIA LEONARD**, pursuant to the Board of Industrial Trades Ms. Victoria Leonard Confirmation Resolution of 2016, effective June 4, 2016, PR21-0650, is reappointed as the consumer member of the Board, for a term to end June 26, 2018.
2. **SHAWN ELLIS**, pursuant to the Board of Industrial Trades Shawn Ellis Confirmation Resolution of 2016, effective November 5, 2016, PR21-0874, is appointed as a licensed steam and other operating engineer member of the Board of Industrial Trades, replacing Johnny Constantino, for a term to end June 26, 2018.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to the date of confirmation.


MURIEL BOWSER
MAYOR

ATTEST:


LAUREN C. VAUGHAN

SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-115
April 27, 2017

SUBJECT: District of Columbia Data Policy

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422 (2), 422 (6), and 422 (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22 (2), (6) and (11) (2016 Repl.), and the Freedom of Information Act of 1976, effective March 25, 1977, D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.* (2016 Repl.), it is hereby **ORDERED** that:

I. PURPOSE

- A. This Order establishes a comprehensive data policy for the District government.
- B. The data created and managed by the District government are valuable assets and are independent of the information systems in which the data reside. As such, the District government shall:
 1. Maintain an inventory of its enterprise datasets;
 2. Classify enterprise datasets by level of sensitivity;
 3. Regularly publish the inventory, including the classifications, as an open dataset; and
 4. Strategically plan and manage its investment in data.
- C. The greatest value from the District's investment in data can only be realized when enterprise datasets are freely shared among District agencies, with federal and regional governments, and with the public to the fullest extent consistent with safety, privacy, and security. "Shared" means that enterprise datasets shall be:
 1. Open by default, meaning their existence will be publicly acknowledged, and further, if enterprise datasets are not shared, an explanation for restricting access will be publicly provided;
 2. Published online and made available to all at no cost;
 3. Discoverable and accessible;

4. Documented;
 5. As complete as can be shared;
 6. Timely;
 7. Unencumbered by license restrictions; and
 8. Available in common, non-proprietary, machine-readable formats that promote analysis and reuse.
- D. By so sharing, the District can:
1. Improve the quality and lower the cost of government operations;
 2. Make government more open, transparent, and accountable;
 3. Enhance collaboration between public bodies, with partner organizations, and with the public; and
 4. Further economic development, social services, public safety, and education by making data available to work with and study.
- E. Because inappropriate disclosure of personal information and misuse of data for activities such as identity theft are significant concerns, the District's data must also be managed and responsibly protected. To protect the safety, privacy, and security of residents, workforce members, clients, partners, stakeholders, visitors, and others, datasets requiring protection shall be identified and:
1. Regularly reviewed to determine whether the dataset is relevant and necessary for meeting the current business needs and mission of the public body collecting the data;
 2. Securely stored, transported, and otherwise technically and physically protected against unauthorized access, destruction, modification, disclosure, or loss;
 3. Disseminated only to those persons and entities who reasonably require the information to perform their duties;
 4. Reviewed to determine if useful derivative datasets can be created and publicly distributed by segregating sensitive portions of an enterprise dataset;

5. Reviewed to determine if metadata of derivative datasets or the combination of redacted datasets could result in the ability to accurately identify a person, and therefore jeopardize their privacy; and
6. Appropriately disposed of or archived when no longer needed.

II. SCOPE

- A. The requirements of this Order shall apply to each agency, office, board, commission, and other division of the District government (“public body”) that is subject to the administrative authority of the Mayor.
- B. Each District agency, office, board, commission, and other division of the District government that is not subject to the administrative authority of the Mayor is strongly encouraged to voluntarily comply with the general standards set forth in Section I of this Order and the specific requirements set forth in Sections IV through IX of this Order.
- C. This Order does not waive of any intellectual property rights the District may have in data. Nothing in this Order grants title to any patent, copyright, trademark, or other intellectual property that the District may have in data. In an event of a conflict between any provision, term, or definition in this Order and federal or common intellectual property law, the federal or common intellectual property law shall control.

III. DEFINITIONS

In this policy, the following definitions apply:

Agency Data Officer (ADO) means an employee, designated by an agency head, who, in coordination with the CDO, helps ensure that the agency is implementing this policy.

Agency Information Security Officer (AISO) means an employee designated by a District agency head or an OCTO employee, who is responsible for coordinating with the CISO to implement, manage, monitor, and report on cyber security for their assigned agency.

Automated-anonymization-aggregation-generalization-redaction is the process of creating a new derivative dataset that can be a lower-level dataset classification for more open distribution through a straightforward and repeatable automated processes.

Chief Data Officer (CDO) means the senior official reporting to the CTO who has overall responsibility for the District’s data governance processes, including the collection, creation, maintenance, documentation, dissemination, and archiving of high-quality, highly interoperable datasets.

Chief Information Security Officer (CISO) means the senior official reporting to the CTO who has overall responsibility for the District's information security strategy and practices.

Chief Performance Officer means the chief performance officer of the District government, a position within the Office of the City Administrator.

Chief Technology Officer (CTO) means the agency director of OCTO.

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Data means a subset of information, whether quantitative or qualitative, that is regularly maintained by, created by or on behalf of, and owned or licensed by a public body in non-narrative, alphanumeric, or geospatial formats. Data are an asset independent of the systems or formats in which they reside.

Dataset means a collection of data organized or formatted in a specific or prescribed way. Typically, a dataset consists of one or more tables and is stored in a database or spreadsheet. Files of the following types are not datasets: text documents, emails, messages, videos, recordings, image files such as designs, diagrams, drawings, photographs, and scans, and hard-copy records.

Dataset classification means the process of assessing the relevance of a given dataset to an agency's mission, confidentiality, sensitivity, customary availability, and legal requirements so that the appropriate level of openness and protection can be determined and applied.

Dataset classification levels are defined as the following:

- a. **Level 0, Open**, refers to all enterprise datasets that do not fall within the definitions of level 1, 2, 3, or 4. For example, certificates of occupancy are determinations by the Department of Consumer and Regulatory Affairs (DCRA) that the use of a building, structure, or land in the District conforms to zoning regulations and building codes. This dataset would not be designated by DCRA as Level 1, 2, 3, or 4 and therefore would be considered Level 0. Moreover, any dataset regularly published in machine-readable format on opendata.dc.gov or another dc.gov website prior to this Order is considered "Level 0, Open" unless an agency makes a proactive determination to raise the classification.
- b. **Level 1, Public Not Proactively Released**, refers to a dataset that is not protected from public disclosure or subject to withholding under any law (including FOIA),

regulation, or contract. Nevertheless, publication of the dataset on the public Internet and exposure to search engines would:

- i. Have the potential to jeopardize the safety, privacy, or security of residents, agency workforce members, clients, partners, or anyone else identified in the information;
- ii. Require subjective redaction;
- iii. Impose an undue financial or administrative burden on the agency; or
- iv. Expose the District to litigation or legal liability.

For example, the Board of Elections (BOE) maintains a voter file, which traditionally is public data, and in fact the BOE is required by law to “publish and display on its website ... a searchable copy of the list of qualified voters.” The law does not state that the entire file, including voter history, must be posted. Under this policy, BOE could declare the voter history to be “public but not proactively released.”

- c. **Level 2, For District Government Use**, refers to a dataset that the originating agency determines is subject to one or more FOIA exemptions, is not highly sensitive, and may be distributed within the District government without restriction by law, regulation, or contract. For example, OCTO licenses commercial data on businesses operating in the District. The license prohibits the public distribution of the data, and proprietary restrictions qualify as a FOIA exemption. Nevertheless, the data has widespread utility within the government, including for economic development and emergency management, and therefore would be classified as Level 2.
- d. **Level 3, Confidential**, refers to a dataset that the originating agency has determined is protected from disclosure by law, including FOIA, regulation, or contract and that is either highly sensitive or is lawfully, regulatorily, or contractually restricted from disclosure to other public bodies. Such datasets generally include datasets that contain data that qualifies for designation by a federal agency or District agency as:
 - i. Attorney-Client Privileged;
 - ii. Criminal Justice Information;
 - iii. Critical Infrastructure Information;
 - iv. Family Educational Rights and Privacy Act (FERPA);
 - v. Federal Tax Information (FTI);

- vi. For Official Use Only (FOUO);
- vii. Law Enforcement Sensitive;
- viii. Legally privileged;
- ix. Payment Card Information (PCI); or
- x. Protected Health Information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA);
- xi. Sensitive but Unclassified.

“Personally identifiable information” (PII) would generally be designated as Level 3, but not always. For example, property records contain owner names and addresses but are traditionally public data and not protected from disclosure under FOIA. On the other hand, the public library tracks the books and materials borrowed by patrons so that it can ensure the return of those assets. Disclosure of what material was borrowed by which patron(s) would violate the personal privacy of the patron and is therefore exempted from mandatory disclosure by FOIA.

- e. **Level 4, Restricted Confidential** refers to datasets for which the originating agency has determined that unauthorized disclosure could potentially cause major damage or injury, including death, to residents, agency workforce members, clients, partners, stakeholders, or others identified in the information, or otherwise significantly impair the ability of the agency to perform its statutory functions. Includes any dataset designated by a federal agency at the level “Confidential” or higher under the federal government’s system for marking classified information.

District of Columbia Internal Data Catalog (Internal Catalog) means a District government intranet-accessible web portal that is centrally managed, hosted, and funded and has capabilities similar to the District of Columbia Open Data Catalog but which is open only to District government employees and which facilitates interagency data sharing.

District of Columbia Open Data Catalog (Open Catalog) means a publicly accessible web portal that helps members of the public find, understand, and utilize enterprise datasets.

Districtwide domain tables means database tables and services designated by the CDO that provide a standard source of values to be used across District information systems and data transformations. For example, the CDO could designate a table as containing the official list of agency names and abbreviations and promote use of the table by other systems.

Enterprise dataset refers to a dataset that directly supports the mission of one or more public bodies. Typically, an enterprise dataset is stored in a named information technology system. For example, the District's general ledger is a dataset hosted in the "System of Accounts and Records." Typically, such named systems and the datasets they contain are accessible to multiple workforce members. Any named system may hold one or more enterprise datasets. Enterprise datasets include records of:

- a. **Determinations:** means final decisions, including a final decision to issue a permit or other authorization; register, certify, or license an individual or entity; impose a civil or criminal penalty; determine eligibility for a service or benefit; and award a contract.
- b. **Measurements:** means the quantification of a characteristic of an observable event, occurrence, or object in reference to a standard.
- c. **Transactions:** means a transfer, receipt, or disbursement of funds (including grants and donations) or, for example, the issuance of a purchase order.
- d. **Sensor data:** means data from devices including those deployed in the field.
- e. **Geographic data:** means spatial data for the District and its environs.
- f. **Existing digital indexes:** means the index for collections of narrative documents, videos, recordings, image files such as designs, diagrams, drawings, photographs, and scans, and hard-copy records.

Enterprise datasets also exist in small systems and spreadsheets. Any dataset, even a spreadsheet, is an enterprise dataset if it currently is maintained and:

- a. Is (or has been) used in decision making, or documents a public body's performance, determinations, transactions, or assets; and
- b. Is not largely duplicative of a dataset within an inventoried named system.

Enterprise Dataset Inventory means a listing of datasets of all public bodies, including each enterprise dataset's designated classification level and justification for that designation and other limited metadata elements for each dataset.

Freedom of Information Act (FOIA) means the Freedom of Information Act of 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*). FOIA provides that any person has the right to request access to records. Under FOIA, all public bodies of the District government are required to disclose public records, except for those records, or portions of records, that are protected from disclosure by the exemptions found at D.C. Code Official § 2-534.

Information means all records, narrative and non-narrative, managed by the District.

Metadata means a description of an enterprise dataset, such as date of creation or last update; author, maintainer, or point of contact; a dictionary to support the correct interpretation of data; and documentation of methodology or business rules.

Originating agency means the District agency that compiles and manages the dataset in its original form, or on whose behalf the compiling and management is done.

Open Government Advisory Group (OGAG) means a committee of District government employees and public representatives established by Mayor's Order 2016-094, issued June 9, 2016, to provide advice on transparency, open data, and open government.

Subjective redaction means the process of creating a derivative dataset at a lower-level classification for more open distribution through a process that require humans or artificial intelligence to review the dataset each time the dataset is requested.

IV. PERSONNEL AND ROLES

A. Chief Information Security Officer

The CTO shall appoint a CISO for the District government who has the full delegated authority of the CTO for all matters pertaining to information security for the District. The CISO shall be a full-time employee who, in alignment with his or her primary responsibilities, furthers implementation of and compliance with this policy by doing the following:

1. Establishing an information security program for the District government;
2. Leading and facilitating an information technology governance program that issues detailed strategies, guidelines, standards, and policies governing the District's procurement, development, installation, configuration, implementation, use, security, and disposition of information technology systems and information;
3. Balancing security with the benefit of sharing data among District agencies, and with federal and regional partners, and the public;
4. Establishing an information technology risk management program that develops, implements, and manages a formal process for systems authorization that includes a risk assessment, the classification of data, categorization of systems, selection and implementation of controls, assessment of controls, authorization to operate, and continuous monitoring;

5. Establishing an information technology compliance program that will conduct internal District information technology assessments for compliance with laws, regulations, policies, and standards; lead the coordination of OCTO support to external information technology audits for all agencies in the District; and track all findings until remediated or residual risk is accepted by the corresponding agency Director;
6. Establishing a security engineering program that develops the security architecture for the District and designs, procures, implements, and manage information technology security appliances that provide technical security controls for the District;
7. Operating a 24/7 cyber security operations center (SOC) that monitors the District's cyber security posture across the network and all systems, detects and leads OCTO's response to security incidents, and escalates and reports on events and changes to the security baseline;
8. Expanding and operating a District identity management program that centralizes employee, contractor, and student resident identities that connects to other application databases to support physical access to buildings, government network access, government application access, and student Washington Metropolitan Transit Authority access;
9. Including the consideration for the various types of privacy data (PII, PHI, PCI, FTI, etc.) in the systems authorization process for selecting, implementing, and assessing controls, along with developing and implementing a privacy breach response and reporting process;
10. Coordinating with the CDO to promote data safeguards by the District government and safe computing practices by District government employees;
11. Establishing and chairing a committee of AISOs that propagates best management practices and meets at least quarterly;
12. Assisting the CDO in collecting, maintaining, and publishing the District's Enterprise Dataset Inventory through the systems authorization process;
13. Developing, procuring, and mandating the use of standard security tools for use by AISOs and public bodies;
14. Identifying training opportunities and in some cases providing training for AISOs and other public body staff;
15. Making recommendations to the CTO, the City Administrator, and the Mayor regarding investments to bring non-compliant public bodies or

systems into compliance with security standards, and recommending changes to laws and regulations as may be required to ensure the protection of data; and

16. Taking other actions as appropriate to further this policy.

B. Agency Information Security Officers

Within thirty (30) days after the effective date of this Order, each public body shall designate an AISO. The AISO may be an existing employee who performs other functions. The AISO is assumed to be the public body's information technology lead unless another employee is designated by the agency director. For smaller public bodies, an employee of OCTO shall, at the request of the agency director, serve as the public body's AISO, and the agency director shall appoint an employee of the public body to serve as the public body's liaison with the AISO. AISOs shall, in coordination with public body CIOs, the CISO, the CDO, and OCTO, assist with implementation of this policy by doing the following:

1. Participating in the information security governance processes for the District government;
2. Preparing, implementing, and maintaining public body security plans;
3. Conducting agency information technology system risk assessments;
4. Leading the agency information technology system systems authorization process to classify data, categorize systems, select and implement controls, and then monitor and respond to incidents as directed by the SOC;
5. Supporting OCTO information technology assessments and external information technology audits for compliance of laws, regulations, policies, and standards;
6. Balancing security with the benefit of sharing data among District agencies, and with federal and regional partners, and the public;
7. Coordinating with the CISO and CDO to promote data safeguards by the public body and safe computing practices by public body employees;
8. Participating in an interagency committee of AISOs that propagates best management practices and meets at least quarterly;
9. Assisting the CDO in collecting, maintaining, and publishing the District's Enterprise Dataset Inventory;

10. Operating information technology security systems, when appropriate, at the public body level;
11. Identifying training opportunities and in some cases providing training for public body staff;
12. Making recommendations to the CISO and agency director regarding investments to bring non-compliant public bodies or systems into compliance with security standards, and recommending changes to laws and regulations as may be required to ensure the protection of data; and
13. Taking other actions as appropriate to further this policy.

C. Chief Data Officer

The CTO shall appoint a CDO for the District government. The CDO shall be a full-time employee who, among his or her other responsibilities, furthers implementation of, and compliance with, this policy by doing the following:

1. Establishing dataset governance processes within and among District public bodies that manage data as assets, including the collection, creation, maintenance, documentation, dissemination, and archiving of high quality, highly interoperable datasets;
2. Establishing data exchange standards, including for metadata;
3. Issuing technical guidance for the publication of data by public bodies;
4. Working to ensure that data are provided to the public freely and to the fullest extent consistent with legal requirements, safety, privacy, security, cost, and efficiency;
5. Collaborating with the Chief Performance Officer to identify opportunities to increase efficiency and efficacy of government through sound data practices, analytics, and modeling;
6. Receiving and responding to public input regarding the District's data policy and activities;
7. Establishing and chairing a committee of ADOs that propagates best management practices and meets at least quarterly;
8. Designating Districtwide domain tables and promoting the use of standardized data values and elements across the District's IT enterprise;

9. Assisting public bodies in setting standards for automated-anonymization-aggregation-generalization-redaction, thereby taking datasets classified Level 1 and above and creating derivative datasets that can be classified Level 0, Open;
10. Collecting, maintaining, and publishing the District's Enterprise Dataset Inventory;
11. Developing and procuring standard tools for use by ADOs and public bodies;
12. Identifying training opportunities and in some cases providing training for ADOs and other public body staff;
13. Developing and operating systems, including the District of Columbia Data Catalog and the District of Columbia Intranet Data Catalog, that lower the cost of and increase the quality and quantity of interagency and public data sharing;
14. Working with the Chief Procurement Officer to ensure that the District's rights to and ownership of data are preserved in government contracts with particular attention to software as a service contract;
15. Establishing, with the Chief Performance Officer, a process for non-governmental actors (such as research institutions) to be vetted and access data classified above Level 1;
16. Coordinating with the Office of the Secretary regarding archive and disposition policies for data;
17. Helping public bodies prioritize the publication of datasets that are most useful to the public;
18. Publishing, in coordination with ADOs and the OGAG, an annual report to the Mayor beginning November 1, 2017. At a minimum, the report shall include recommended changes to this policy and other relevant policies, recommended legislation, a list of datasets opened during the prior fiscal year, and a list of datasets planned to be opened during the then-current fiscal year; and
19. Taking other actions as appropriate to further this policy.

D. Agency Data Officer

Within thirty (30) days after the effective date of this Order, each public body shall designate an ADO, who shall, in coordination with the public body CIO, the

CISO, the AISO, the CDO, and OCTO, assist with implementation of this policy. The ADO may be an existing employee who performs other functions. In many cases, the ADO may be an analyst with a crosscutting view of the public body's data, often an analyst who prepares performance data submissions for the Office of the City Administrator. In smaller public bodies, the ADO may be the public body's information technology or communications lead. ADOs shall further implementation of, and compliance with, this policy by doing the following:

1. Participating in dataset governance processes established by the CDO;
2. Collaborating with the Chief Performance Officer to identify opportunities to increase efficiency and efficacy of government through sound data practices and analysis and modeling;
3. Assisting with inventorying and classifying public body datasets;
4. Prioritizing public body datasets for publication;
5. Assisting in data cleanup and maintaining data quality;
6. Coordinating the publication and redactions of datasets with the public body FOIA officer and the public body's general counsel;
7. Publishing prioritized Level 0, Open, datasets on the Open Data Catalog and, as appropriate, Level 2, For District Government Use, datasets on the Internal Data Catalog;
8. Assisting the CDO with implementation of data standards and related best practices;
9. Ensuring the accuracy of the public body's enterprise data inventory listings and metadata;
10. Receiving and responding to complaints and suggestions from the public about the public body's adherence to the requirements of this data policy;
11. Assisting with automated-anonymization-aggregation-generalization-redaction, thereby taking datasets classified Level 1 and above and creating derivative datasets that can be classified Level 0, Open; and
12. Taking other actions as appropriate to further this policy.

For smaller agencies, OCTO shall, upon the request of the agency, assist the agency ADO in carrying out these functions.

V. **ENTERPRISE DATASET INVENTORY, CLASSIFICATION, AND PRIORITIZATION**

- A. Public bodies shall inventory their enterprise datasets.
- B. To establish the Districtwide enterprise dataset inventory, the following actions shall be taken:
1. Within sixty (60) days of the issuance of this Order, OCTO shall provide public bodies with an intranet-based data inventory tool and train ADOs and AISOs on its use.
 2. Within one hundred eighty (180) days of receiving the tool, public bodies shall inventory and designate the dataset classification levels of their enterprise datasets using the online tool provided by OCTO. Each public body shall consult with the general counsel for the public body or the general counsels designee (and, as appropriate, other individuals necessary to determine whether the disclosure of data in the dataset may jeopardize the safety, security, or privacy of an individual or individuals) in determining the appropriate classification level of each dataset. The tool shall include a series of questions that walk public bodies through the dataset classification and the specific metadata required for each dataset. Prioritization will not be included in the initial Enterprise Dataset Inventory.
 3. Where enterprise datasets are not classified as Level 0: Open, an explanation for the higher classification shall be included in the inventory.
 4. Within two hundred and seventy (270) days of the issuance of this Order, OCTO shall publish the first iteration of the Enterprise Dataset Inventory as Level 0, Open.
 5. Public bodies and OCTO shall update the Enterprise Data Inventory continuously as new datasets are discovered, created, or archived.
 6. The enterprise inventory shall be updated annually through a process developed by OCTO. The updated inventory shall be published by November 1 of each year and shall reflect the inventory of the District's government enterprise datasets as of the prior September 30.
 7. By November 1, 2018, each Enterprise Dataset Inventory shall include a prioritization by public bodies for publication of Level 0, Open, datasets within the then-current fiscal year.
- C. As part of the annual dataset inventory and in coordination with public bodies, the CDO shall establish a process for assessing datasets or derivatives of datasets for

future publication as Level 0, Open. That process shall include whether publication of a dataset:

1. Would increase public body accountability, efficiency, or responsiveness, or improve the delivery of services;
2. Would help improve the public health, safety, or welfare;
3. Would provide reliable, accurate, and documented information;
4. Is already required under existing open government policies;
5. Is frequently the subject of requests from the public;
6. Is recommended by the Mayor's Open Government Advisory Group;
7. Would facilitate informed public engagement; and/or
8. Would create private sector economic opportunity.

VI. MINIMUM DATA PROTECTION STANDARDS

The safety, privacy, and security of residents, agency workforce members, clients, partners, or anyone else identified in the datasets are paramount concerns. Public bodies shall work on an ongoing basis toward meeting the following dataset protection minimum standards:

1. Public bodies shall minimize risk by limiting the collection, use, and retention of private identifying information, and its subsets such as private health information, to what is necessary to accomplish the agency's business purpose and mission.
2. Level 4, Restricted Confidential, data shall be secured via encryption, whether the data are at rest or in transit; and by additional safeguards such as digital certificates for integrity and non-repudiation. Disclosure, transmission, or dissemination of Level 4 data to other agencies within the District shall not occur unless it is approved in advance by the agency director and general counsel, and each such disclosure, transmission, or dissemination shall be documented by the AISO. Level 4 datasets shall not be accessible to the public in any way.
3. Level 3, Confidential, data shall be secured via encryption, whether the data are at rest or in transit; and by additional safeguards such as digital certificates for integrity and non-repudiation. It may be accessed and used by internal District parties only when specifically authorized to do so in the performance of their duties. External parties requesting this information for authorized public body business must be under contractual obligation of confidentiality with the public

body before receiving it. Information identified as Level 3 or above shall not be accessible to the public in any way.

4. Level 2, For District Government Use, and Level 1, Public Not Proactively Released, data shall not be posted on the public Internet or exposed to search engines. It will, however, be made available upon request directly to the requesting entity. The data may be distributed without special security controls within the District of Columbia Intranet and between public bodies by email and other means. Whenever practical, the data shall be available through the data.in.dc.gov catalog.
5. Level 0, Open, data shall be distributed publicly pursuant to the provisions of this Order.

VII. DATA CATALOGS

- A. To facilitate data sharing, OCTO shall:
 1. Operate and continuously improve the District of Columbia Open Data Catalog and the District of Columbia Internal Data Catalog. At a minimum, the catalogs shall facilitate:
 - a. Searching for datasets;
 - b. Downloading of datasets in non-proprietary, machine-readable formats;
 - c. Exposing the data to developers as industry-standard application programming interfaces (API) and services;
 - d. Obtaining metadata in a consistent format;
 - e. Hosting datasets;
 - f. Managing catalog entries and data publication work flows;
 - g. Browsing by users with accessibility requirements;
 - h. Employing appropriate technology to notify users of updated datasets; and
 - i. Embedding elements of the catalog on public body websites and intranet sites;

2. Not impose incremental fees on public bodies for the publication or listing of data on the catalogs data.dc.gov, data.in.dc.gov, or opendata.dc.gov; and
 3. Assist public bodies with dataset and metadata publication particularly when the process can be automated.
- B. To facilitate data sharing, public bodies shall:
1. Publish all Level 0 datasets on the District of Columbia Open Data Catalog;
 2. Publish Level 1 and Level 2 datasets on the District of Columbia Internal Data Catalog as appropriate;
 3. Determine the frequency for updates to each dataset, and the mechanism to be utilized to update the dataset. Public bodies shall update each dataset as frequently as practical to maintain the utility of the data. To the extent possible, datasets shall be updated through an automated process;
 4. If a public body is notified or otherwise learns that any dataset or portion of a dataset posted on either data catalog is factually inaccurate or misleading or is protected data, the public body shall, as appropriate, promptly correct or remove, or cause to be corrected or removed, such data from the Data Catalog and shall so inform the CDO; and
 5. Not purchase or maintain data catalogs for datasets Level 2 or below other than the official Open Catalog and Internal Catalog operated by OCTO. However, public bodies should embed relevant data catalog elements on their public and intranet websites and should work to enhance the user experience for visitors to the data catalogs and agency websites.

VIII. STREAMLINED PROCESSES FOR INTERAGENCY DATA SHARING

To lower the cost and increase the speed of the intra-District sharing of datasets classified as Level 2 or Level 1, the Chief Technology Officer, in coordination with the Office of the City Administrator, shall develop uniform data-sharing agreements. A public body shall not require another public body to enter into a data-sharing agreement other than the uniform data-sharing agreement in order to have access to view, utilize, or transfer Level 1 or Level 2, datasets, unless a different data-sharing agreement is approved by the City Administrator.

IX. NEXUS BETWEEN FOIA AND LEVEL 0, OPEN DATASETS

- A. FOIA and this policy shall be distinct but complementary practices. On the one hand, FOIA request-tracking data should inform public bodies about the demand

for and priority of publishing certain datasets or derivatives of those datasets as Level 0, Open. Similarly, successful appeals for datasets previously denied under FOIA exemptions can inform public bodies about potential errors in dataset classification. On the other hand, publication of FOIA request-tracking data can help residents hold public bodies accountable for the timely and consistent processing of requests.

B. Therefore:

1. OCTO shall:

- a. Operate and improve a citywide tool for managing and tracking FOIA requests. The tool shall at a minimum facilitate request submission, request routing, and tracking responses; and
- b. Publish FOIA request-tracking data as Level 0, Open. There shall be a 14 business-day delay between closing a FOIA request and publishing data about that request as Level 0, Open.

2. Public bodies shall:

- a. Use the tool provided by OCTO (currently, <https://foia-dc.gov/palMain.aspx>) to track all FOIA requests and appeals; and
- b. Transmit responses to FOIA requests that may be publicly distributed, consistent with safety, privacy, and security, through a common portal.

X. LEVEL 0, OPEN, DATA LEGAL POLICY, AND LICENSING

The following terms and conditions are established to facilitate the sharing of datasets:

1. Nothing in this Order shall be deemed to prohibit the District from adopting or implementing measures necessary or appropriate to (i) ensure access to public datasets housed on the District of Columbia Open Data Catalog; (ii) protect the District of Columbia Open Data Catalog from unlawful use or from attempts to impair or damage the use of the portal; (iii) analyze the types of public data in the District of Columbia Open Data Catalog being used by the public in order to improve service delivery or for any other lawful purpose; and (iv) describe any modifications made to the public dataset.
2. Nothing in this Order shall be construed to create a private right of action to enforce any provision of this Order. Failure to comply with any provision of this Order shall not result in any liability to the District, including, but not limited to, OCTO or any public body or third party that establishes or maintains on behalf of the District the data catalogs required under this Order.


3. Public bodies shall not enter into agreements in which the District's data ownership or rights are transferred to a specific third party or set of third parties, unless authorized by the Mayor or the Mayor's designee.
4. The following terms and conditions apply to data publicly released by the District as Level 0, Open:
 - a. Use of click-through agreements, click-through acknowledgments, or click-through disclaimers is prohibited.
 - b. These statements shall be displayed in the District of Columbia Data Catalog and incorporated into the District's standard metadata and shall accompany each dataset:
 - i. "This data are classified by the District of Columbia as Level 0, Open. This data are placed in the public domain. The data should be treated as if covered by a Creative Commons CC0 Universal License. There are no restrictions on copying, publishing, distributing, or using the data for a non-commercial or commercial purpose. Attribution and notification to the District is not required, but is requested."
 - ii. "This data are provided as a public service, on an 'as is' basis. The District makes no warranty, representation, or guaranty of any type as to the content, accuracy, timeliness, completeness, or fitness for any particular purpose or use of any public data provided on this portal; nor shall any such warranty be implied, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. The District assumes no liability by making data available to the public or other public bodies."
 - iii. "The District reserves the right to discontinue availability of this data at any time and for any reason."

XI. NO THIRD-PARTY BENEFICIARIES


No individual or entity shall have any right, interest, or claim under this policy or be entitled to any benefit under or on account of this policy as a third-party beneficiary or otherwise.

XII. EFFECTIVE DATE

This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 

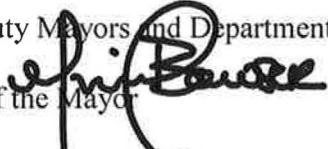
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Memorandum 2017-001
May 2, 2017

TO: All Deputy Mayors and Department, Agency, and Office Heads

ORIGINATOR: Office of the Mayor 

SUBJECT: **RULES GOVERNING APPROVAL OF INTERNATIONAL TRAVEL BY DISTRICT OF COLUMBIA EMPLOYEES AND RECEIPT OF GIFTS AND DONATIONS FROM FOREIGN GOVERNMENTS AND ORGANIZATIONS**

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 792, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2016 Repl.), and section 115 of the District of Columbia Appropriations Act, 2003, approved February 20, 2003, 117 Stat. 123, Pub. L. 108-7, D.C. Official Code § 1-329.01 (2016 Repl.), the following rules of conduct governing approval of international travel on behalf of the District of Columbia government (“**District government**”) are hereby issued. The rules of conduct shall apply to all employees of the District government as described below in Sections I and X. Any District government employee who does not comply with a rule set forth in this memorandum may be subject to adverse personnel action and/or penalties imposed by the Board of Ethics and Government Accountability (BEGA).

I. PURPOSE

The District of Columbia wishes to provide a transparent process and clear guidelines for review and approval of employees’ international travel and to facilitate the donation of goods and services to the District of Columbia, while guarding against gifts made for an unethical purpose. All international travel on behalf of the District government, other than travel by the City Administrator, is to be approved by the Mayor’s Chief of Staff (**Chief of Staff**), through the Mayor’s Office of the General Counsel (**OGC**). International travel by Deputy Mayors must first be approved by the City Administrator. Each agency head and Deputy Mayor may establish internal agency procedures for approving staff travel to international locations.

II. CHIEF OF STAFF APPROVAL OF INTERNATIONAL TRAVEL

1. Agency heads shall submit to OGC a completed International Travel Request Form (Travel Form) for international travel to be undertaken by a District government

employee, or persons who are not District employees but whose travel is to be paid for by the agency, at least thirty (30) days in advance of the proposed travel and before committing District funds for nonrefundable flight, hotel, or ground transit reservations, conference fees, contracts with travel agents or consultants, or any other nonrefundable expenses. Once submitted, the Chief of Staff (through the OGC) will review the Travel Form (*see attached*) and provide final approval or disapproval based upon the information and documentation provided. Documentation shall include, as required by the Travel Form, a thorough narrative explanation of the purpose, cost, and expected outcomes of the travel. The Travel Form shall be accompanied by, if applicable, a donation application that has received initial approval from the Office of Partnerships and Grant Services (OPGS) (see Section IV, below), and a completed District of Columbia Employee Training Authorization Form (*see attached*).

III. GIFTS OF TRAVEL FROM FOREIGN GOVERNMENTS

1. District employees may not accept gifts of travel or expenses related to travel of more than minimal value, as that term is defined in 5 U.S.C. § 7342, from a foreign government, including a foreign national, state, local, or municipal government, any organization composed of any unit of a foreign government, or any agent or representative of a foreign government, unless the travel takes place entirely outside the United States and is approved by the employing agency and the Chief of Staff.¹ Minimal value with regard to such gifts is, as of the effective date of this Memorandum, \$390 or less.²
2. If travel, lodging, or other expenses are proposed as donations, the donations protocol set forth in Mayor's Memorandum 2015-001, dated August 21, 2015, shall be followed.

IV. DONATIONS PROTOCOL

All proposed travel donations from a foreign government shall be made directly to the agency. Pursuant to Mayor's Memorandum 2015-001, dated August 21, 2015, an application to accept a foreign travel donation must be submitted to OPGS. The application process ensures that the proposed donor is not providing the trip in expectation of any benefit from the District, and that the donation is legally sufficient. If initial approval of the proposed donation is received from OPGS, the Donation Application shall be submitted with the Travel Form to the OGC, for review by the Chief of Staff. If the Chief of Staff approves both the international travel request and the donation, OPGS and the donor must execute a donation agreement.

V. COORDINATION WITH THE OFFICE OF THE SECRETARY

¹ See 5 U.S.C. § 7342, 6B DCMR 1803.4(7).

² "Minimal value" is established by the federal General Services Administration and adjusted every three years based on the Consumer Price Index. <http://www.gpo.gov/fdsys/pkg/FR-2014-04-02/pdf/2014-07369.pdf> (41 CFR Part 102-42, April 2, 2014). The current minimal value for foreign gifts is \$390.00. <https://www.gsa.gov/portal/content/129418> (Jan. 12, 2017).

The Office of the Secretary shall be consulted well in advance of proposed international travel for advice on customs particular to the country to be visited and gift exchanges.

VI. RECEIPT OF GIFTS

Employees may accept personal gifts of minimal value, as that term is defined in 5 U.S.C. § 7342, from a foreign government or organization if the Chief of Staff (through the OGC) authorizes acceptance.¹ Each gift accepted by a District employee – including gifts of minimal value – shall be reported within three (3) days of receipt to the OGC for inclusion in a list cataloguing gifts received by the District and District employees, which will be published quarterly on the Executive Office of the Mayor's Freedom of Information Act (FOIA) website. Gifts that are not authorized, those of more than minimal value, ceremonial gifts, or gifts to the District will be disposed of by the OGC in coordination with the Office of the Secretary.

VII. ETHICAL CONSIDERATIONS

Employees must comply with the District of Columbia Code of Conduct.² Notwithstanding the terms of this Memorandum and any applicable statutory or regulatory exception that may permit acceptance of a personal gift, an employee may not solicit a gift, or accept a gift in exchange for being influenced in the performance of an official duty. Public office is not to be used for private gain, and District officials must always avoid creating the appearance of impropriety or favoritism.³

VIII. FINANCIAL CONSIDERATIONS

If a District agency is paying for an employee's international travel, the employee must adhere to applicable international per diem rates as established monthly by the Office of Allowances, U.S. Department of State,⁴ and must retain receipts or other documentation of expenses. No reimbursement shall be issued without such documentation. No reimbursements shall be issued for travel stop-overs or other expenses that are of a personal nature. More on general rules for employees traveling can be found at 1 DCMR 801 *et seq.*

IX. SECURITY CLEARANCE PERSONNEL

Holders of Secret, TS or TS/SCI clearances are required by the federal Department of Homeland Security to report all planned international travel.

X. SCOPE AND EXEMPTIONS

¹ See 5 U.S.C. § 7342, 6B DCMR 1803.4(7); see also Mayor's Memorandum 2015-001, dated Aug. 21, 2015.

² D.C. Official Code § 1-1161.01(7).

³ *Ethics Manual, The Plain Language Guide to District Government Ethics*, <http://www.bega-dc.gov/sites/default/files/documents/Ethics%20Manual%20-%2011.1.14.pdf> (Dec. 1, 2015).

⁴ Per diem rates may be obtained from the website of the U.S. Department of State at the following web address: https://aoprals.state.gov/content.asp?content_id=184&menu_id=78 (Jan. 27, 2017).

This memorandum does not purport to govern the Council of the District of Columbia, the District of Columbia Auditor, the Office of the Attorney General, the Office of the Chief Financial Officer, the District of Columbia courts, the District of Columbia Public Library Board of Library Trustees, the District of Columbia Office of the Advisory Neighborhood Commissions, any independent agency as defined by the DC Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), the District of Columbia Public Charter School Board, or the District of Columbia State Board of Education. However, any “entity of the District of Columbia government,” as specified in D.C. Official Code § 1-329.01, shall comply with Mayor’s Memorandum 2015-001, dated August 21, 2015, which establishes the Rules of Conduct Governing Donations and Honorary Gifts to the District of Columbia Government.

Note: although the District of Columbia State Board of Education is exempt, the District of Columbia Public Schools must receive approval from the Chief of Staff and follow the procedures established by this Memorandum.

XI. SUBMISSION OF APPLICATIONS AND CURRENT CONTACTS

Submit all applications to the Chief of Staff through the Deputy General Counsel. The current contact for further information about the donations process at OPGS is Marcel Guy, Marcel.Guy@dc.gov; for international protocol in the Office of the Secretary is Patricia Elwood, Patricia.Elwood@dc.gov; and for Security Clearance holders’ reporting is Bill Curry, William.Curry@dc.gov. This protocol survives the tenure of individual employees.

XII. EFFECTIVE DATE

This Memorandum shall become effective immediately and reflects guidance previously issued through an Interested Parties memorandum dated December 1, 2015.

INTERNATIONAL TRAVEL REQUEST FORM									
NAME OF TRAVELER			POSITION TITLE			AGENCY/DEPARTMENT			
CONTACT INFORMATION					TRAVEL DESTINATION				
DATES OF TRAVEL					HOURS ON DUTY: _____		HOURS OFF DUTY: _____		
MODE OF TRANSPORTATION <input type="checkbox"/> Airline <input type="checkbox"/> Train <input type="checkbox"/> Other									
	POINT OF DEPARTURE	TRAVEL DATE	CARRIER NAME	FLIGHT OR TRAIN ID	DEPARTURE TIME	ARRIVAL TIME			
TRANSPORT DEPARTURE									
TRANSPORT RETURN									
Please explain in detail the following regarding proposed travel:									
1) What is the purpose of the proposed travel and how does it relate to the agency's mission? 2) Why has this individual been chosen to make this trip? 3) What are the expected outcomes of the proposed trip and expected benefits to the District? 4) Who is paying for the proposed travel? 5) Is this expenditure or donation of travel subject to any other conditions? 6) Are all parties aware that this expenditure or donation may be made public?									
REQUIRED OF ALL APPLICANTS: Attach a list of all agency travel during the current fiscal year, including name of traveler, destination, dates of travel, and purpose.									
HOTEL NAME/ADDRESS & PHONE#									
TOTAL COST									
ITEM	UNIT COST	SUBTOTAL	TAX RATE	TOTAL RATE	TOTAL COST	ESTIMATED GOVERNMENT COST	DONATED AMOUNT		
TRANSPORTATION (AIRLINE, TRAIN, ETC.)									
LODGING (GOVERNMENT RATE)									
PER DIEM									
CAR RENTAL (ONLY IF APPROVED)									
TRAINING/REGISTRATION FEES									
OTHER EXPENSES:									
TOTAL									
FUNDING ATTRIBUTES									
AGENCY	YEAR	ORG CODE	FUND	INDEX	PCA	PROJECT/ PHASE	GRANT/ PHASE	OBJECT	INITIALS
TRAVELER SIGNATURE									
I have prepared this request in accordance with all applicable District of Columbia policies and procedures governing travel and training. I certify that I am traveling on official District government business. I will keep original receipts for all expenses and submit them, along with a properly completed travel reconciliation, within five business days of the authorized travel completion date. I understand that if I fail to attend this travel or training, submit a properly completed reconciliation by the required date or reimburse the District or any advance in excess of actual costs, the balance may be withheld from my bi-weekly pay or other District payments.									
Signature					Date				
AUTHORIZATIONS									
	NAME	TITLE	SIGNATURE	DATE					
SUPERVISOR									
AGENCY FISCAL OFFICER									
AGENCY COS									
OFFICE OF CITY ADMINISTRATOR (Only Required for Deputy Mayor Travel)									
EOM, COS									

District of Columbia Employee Training Authorization Form

1. Name of Participant	2. Department/Agency	3. Position/Title																																												
4. Telephone Number	5. Email Address	6. Years of continuous District government service																																												
7. Description of Duties																																														
8. Training Description (Please attach any brochures and agendas or schedules)																																														
9. Training Period From: / / To: / /	10. Number of Course Hours On Duty: Off Duty: Total:																																													
11. Name and Address of Training Vendor:		12. Location of Training Site:																																												
13. Cost While in Training Paid by (incl. Paid Leave)		14. Related Cost Paid by:																																												
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%;"></td> <td style="width:15%; text-align: center;">Appropriation</td> <td style="width:15%; text-align: center;">Donation</td> <td style="width:15%; text-align: center;">Employee</td> </tr> <tr> <td>Salary</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td>Benefits</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td>Other Fringe</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td>TOTAL:</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> </table>		Appropriation	Donation	Employee	Salary	\$	\$	\$	Benefits	\$	\$	\$	Other Fringe	\$	\$	\$	TOTAL:	\$	\$	\$	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%;"></td> <td style="width:15%; text-align: center;">Appropriation</td> <td style="width:15%; text-align: center;">Donation</td> <td style="width:15%; text-align: center;">Employee</td> </tr> <tr> <td>Travel</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td>Per Diem</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td>Registration Fees</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td>Other (specify)</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td>TOTAL:</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> </table>			Appropriation	Donation	Employee	Travel	\$	\$	\$	Per Diem	\$	\$	\$	Registration Fees	\$	\$	\$	Other (specify)	\$	\$	\$	TOTAL:	\$	\$	\$
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Other (specify)	\$	\$	\$																																											
TOTAL:	\$	\$	\$																																											
15. Name, Signature, and Title of Funding Officer (Certification of Available Funds)																																														
Name:	Title:	Signature:																																												
Approvals																																														
16. Immediate Supervisor																																														
Name:	Title:	Signature:																																												
17. Agency Head (or Designated Official)																																														
Name:	Title:	Signature:																																												
18. Mayor's Chief of Staff																																														
Name:	Signature:																																													
19. Remarks:																																														

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, MAY 10, 2017
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Mafara Hobson, Jake Perry

- Show Cause Hearing (Status)** **9:30 AM**
Case # 16-CC-00155; 1807 Corporation t/a Dupont Market, 1807 18th Street NW, License #21578, Retailer B, ANC 2B
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age, No ABC Manager on Duty
- Show Cause Hearing (Status)** **9:30 AM**
Case # 16-CMP-00773; Saldivar and Associates, Inc., t/a R & R Catering 8004 Alban Road Springfield, VA, License #77459, Retailer Caterer
Failure to File Caterer's Report
- Show Cause Hearing (Status)** **9:30 AM**
Case # 15-CC-00156; Albo Corp, t/a Eleven Market, 1936 11th Street NW License #60236, Retailer B, ANC 1B
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age, No ABC Manager on Duty
- Fact Finding Hearing*** **9:30 AM**
Dennis S. Hodge, t/a Family Liquors, 710 H Street NE, License #21877, Retailer A, ANC 6A
Request to Extend Safekeeping
- Fact Finding Hearing*** **9:30 AM**
KCC Entertainment, Inc., t/a Club 2020 Bar & Lounge, 2434 18th Street NW License #101093, Retailer CR, ANC 1C
Request to Extend Safekeeping

Board's Calendar
May 10, 2017

Fact Finding Hearing*

10:00 AM

M & T Grocer's Beer and Wine, Inc., t/a M & T Grocer's Beer and Wine,
20115th Street NE, License #77390, Retailer B, ANC 6A

Request to Extend Safekeeping

Fact Finding Hearing*

10:30 AM

7 Round, Inc., t/a Davis Market; 3819 Georgia Ave NW, License #60094,
Retailer B, ANC 4C

Request to Extend Safekeeping

BOARD RECESS AT 12:00 PM

ADMINISTRATIVE AGENDA

1:00 PM

Protest Hearing*

1:30 PM

Case # 16-PRO-00117, 1716 I, LLC, t/a Eye Bar/Garden of Eden, 1716 I Street
NW, License #83133, Retailer CN, ANC 2B

Application to Renew the License

Protest Hearing*

1:30 PM

Case # 16-PRO-00126; Restaurant Enterprises, Inc., t/a Smith Point, 1338
Wisconsin Ave NW, License #60131, Retailer CT, ANC 2E

Application to Renew the License

***The Board will hold a closed meeting for purposes of deliberating these
hearings pursuant to D.C. Official Code §2-574(b)(13).**

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING
CANCELLATION AGENDA**

**WEDNESDAY, MAY 10, 2017
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

The Board will be cancelling the following licenses for the reasons outlined below:

ABRA-096125 – **Hans Pedr’ Kaffe & Restaurant** – Retail – D – Restaurant – 1781 Florida Avenue NW

[Licensee did not renew and has not made a payment on the license since 2014.]

ABRA-095031 – **Union Social** – Retailer – C – Restaurant - 100 Florida Avenue NW
[Licensee did not make 2nd year payment and indicated via phone that they wish to allow the license to go through to cancellation for non-payment.]

ABRA-092844 – **STK** – Retailer – C – Restaurant - 1250 CONNECTICUT AVENUE NW
[Licensee did not make 2nd year payment and indicated via phone that they wish to allow the license to go through to cancellation for non-payment.]

ABRA-099818 – **Kouzina Authentic Greek Restaurant** – Retailer – C – Restaurant - 3234 Prospect Street NW
[Licensee did not make 2nd year payment and indicated via email that they wish to allow the license to go through to cancellation for non-payment.]

ABRA-075464 – **Armand’s Chicago Pizzeria** – Retailer – C – Restaurant - 226 MASSACHUSETTS AVENUE NE
[Licensee did not make 2nd year payment and indicated via phone that they wish to allow the license to go through to cancellation for non-payment.]

ABRA-094777 – **Noelia** – Retailer – C – Restaurant - 1153 F STREET NW
[Licensee did renew license and indicated via phone that they wish to allow the license to go through to cancellation for non-payment/non-renewal.]

ABRA-097611 – **Decadence** – Retailer – C – Restaurant - 6204 GEORGIA AVENUE NW
[Licensee did not make 2nd year payment and indicated via phone that they wish to allow the license to go through to cancellation for non-payment.]

ABRA-098781 – **Pizza Studio** – Retailer – C – Restaurant – 1333 NEW HAMPSHIRE AVENUE NW
[Licensee did not make 2nd year payment and indicated via phone that they wish to allow the license to go through to cancellation for non-payment.]

ABRA-100533 – **Mango Tree** – Retailer – C – Restaurant - 929 H STREET NW
[Licensee did not make 2nd year payment and indicated via phone that they wish to allow the license to go through to cancellation for non-payment.]

ABRA-087628 – **Spectrum** – Caterer – 1299 Pennsylvania Avenue NW
[Licensee did not make 2nd year payment.]

ABRA-091399 – **Union Kitchen** – Caterer – 1369 New York Avenue NE
[Licensee did not make 2nd year payment.]

ABRA-094227 – **Root and Stem Catering** – Caterer – 2941 Fairview Park Drive, Falls Church, VA
[Licensee did not make 2nd year payment.]

ABRA-095166 – **District Provisions/550 Events** – Caterer – 550 Penn Street NE
[Licensee did not make 2nd year payment.]

ABRA-099262 – **Grace Period** – Caterer – 350 G Street SW, Unit N520
[Licensee did not make 2nd year payment.]

ABRA-101345 – **Haute Saison Catering** – Caterer – 1110 Congress Street NE
[Licensee did not make 2nd year payment.]

ABRA-077459 – **R & R Catering** – Caterer – 8004 Alban Road, Springfield, VA
[Licensee did not make 2nd year payment.]

ABRA-103546 – **Bluejacket** – Caterer – 300 Tingey Street SE
[Licensee did not make 2nd year payment.]

ABRA-082037 – **Speakeasy Spirits** – Wholesaler – A – 719 L Street NE
[Licensee did not make 3rd year payment.]

ABRA-093639 – **Il Pioppo** – Wholesaler – A – 2052 West Virginia Avenue NE
[Licensee did not make 3rd year payment.]

ABRA-000654 – **Seven Seas Restaurant** – Retailer – C – Restaurant – 5915 GEORGIA
AVENUE NW
[Safekeeping][Licensee did not make 2nd year payment.]

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING
INVESTIGATIVE AGENDA**

**WEDNESDAY, MAY 10, 2017
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On Wednesday, May 10, 2017 at 4:00 pm., the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations.”

1. Case# 17-CC-00045, Good Food Markets, 2006 Rhode Island Avenue N.E., Retailer B, License # ABRA-098178

2. Case# 17-251-00034, Stadium Club, 2127 Queens Chapel Road N.E., Retailer CN, License # ABRA-094244

3. Case# 17-CMP-00217, Reren, 817 7th Street N.W., Retailer CR, License # ABRA-103950

4. Case# 17-CMP-00218, The Ugly Mug Dining Saloon, 723 8th Street S.E., Retailer CR, License # ABRA-071793

5. Case# 17-CMP-00219, Capitol Fine Wine and Spirits, 415 H Street N.E., Retailer A, License # ABRA-082981

6. Case# 17-CMP-00226, Las Placitas, 1100 8th Street S.E., Retailer CR, License # ABRA-100267

7. Case# 17-CMP-00214, Elroy (The), 1423 H Street N.E., Retailer CT, License # ABRA-096771

CENTER CITY PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS**

Center City Public Charter Schools, Inc. is soliciting proposals from qualified vendors for the following:

Center City PCS would like to engage a contractor to build out new office space, restroom, and modify existing instructional spaces at the Capitol Hill campus. Scope of work to include, but not limited to, existing instructional space modifications (i.e. flooring, paint, doors, drywall, etc.), new office space build out, new restroom outfit, and HVAC installation as necessary.

Contact person:

Natasha Harrison
nharrison@centercitypcs.org

To obtain copies of full RFP's, please visit our website: www.centercitypcs.org. The full RFP's contain guidelines for submission, applicable qualifications and deadlines.

D.C. BILINGUAL PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

D.C. Bilingual Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for vendors to provide the following services for the FY17 school years:

- Special Education Services

The school must receive a PDF version of your proposal no later than 4:00 pm, Monday, May 19, 2017. Proposals should be emailed to: bids@dcbilingual.org

Please include the bid category for which you are submitting as the subject line in your e-mail (e.g. IT Support Services). Respondents should specify in their proposal whether the services they are proposing are only for a single year or will include a renewal option.

DISTRICT OF COLUMBIA STATE BOARD OF EDUCATION**Educational Excellence Committee**

This notice provides information to the public of the first meeting of the Educational Excellence Committee of the D.C. State Board of Education on May 8, 2017 from 1:00 pm to 2:00 pm. The meetings are held in open session and the public is invited to attend. The meetings are held at 441 4th Street, NW, Washington, DC. An agenda for the meeting is below. This agenda is subject to change without notice.

1. Goals of Educational Excellence Committee
2. Review of high school graduation requirements as first task
 - a. Process for review
 - b. Process for recruiting and selecting task force members
 - c. Broader communication efforts

For further information, please contact the front desk at 202-741-0888.

DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS

MAY BOARD MEETING

This notice outlines the schedule of the regular meetings of the Board for the Office of Employee Appeals. Portions of the meetings are held in open session, and the public is invited to attend. The May 30, 2017 Board meeting was cancelled. The meeting will take place on June 6, 2017. The meeting will be held at 1100 4th Street, Suite 380E, NW, Washington, D.C. A copy of the draft agenda for the meeting will be posted on the agency’s website and the lobby of the Office of Employee Appeals. For further information, please contact the front desk at 202.727.0004. This schedule is subject to change.

DATE	TIME	ROOM NUMBER
Tuesday, June 6, 2017	11:00 AM	Suite 380 East

DEPARTMENT OF ENERGY AND ENVIRONMENT**PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, Washington, DC, intends to issue a permit (#6106-R1) to Naval Research Laboratory (NRL) to operate one existing (1) Newage/Cummins GTA28 emergency generator set with serial number S213762-01, powered by a 770 bhp (574 kWm) Cummins natural gas-fired engine, located at Building 149, 4555 Overlook Avenue SW, Washington DC, Washington DC. The contact person for the facility is Lionel Vega, Environmental Engineer, Safety Branch, phone number: 202-404-2109.

The application to operate the emergency generator and the draft renewal permit are available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement, outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
stephen.ours@dc.gov

No comments or hearing requests submitted after June 5, 2017 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT**PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, Washington, DC, intends to issue a permit (#6252-R1) to Naval Research Laboratory (NRL) to operate one existing (1) 130 kWe Generac emergency generator set with a Generac natural gas-fired engine rated at 210 bhp (157 kWm) engine output. The generator is located at Building 256 on Bolling Air Force Base property, but owned and operated by NRL, located next door at 4555 Overlook Avenue SW, Washington DC. The contact person for the facility is Lionel Vega, Environmental Engineer, Safety Branch, phone number: 202-404-2109.

The application to operate the emergency generator and the draft renewal permit are available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement, outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
stephen.ours@dc.gov

No comments or hearing requests submitted after June 5, 2017 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FUNDING AVAILABILITY

Large Parcel Tree Planting

The Department of Energy and Environment (the Department) seeks eligible entities to perform outreach to large parcel landowners to identify tree planting opportunities in the District of Columbia; develop and implement planting plans; maintain newly planted trees; and as appropriate, engage community members and organizations and landholders throughout the process. The amount available for the project is approximately \$300,000.00. This amount is subject to availability of funding and approval by the appropriate agencies.

Beginning 5/5/2017, the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

Download from the Department's website, www.doe.dc.gov. Select the *Resources* tab. Cursor over the pull-down list and select *Grants and Funding*. On the new page, cursor down to the announcement for this RFA. Click on *Read More* and download this RFA and related information from the *Attachments* section.

Email a request to luke.cole@dc.gov with "Request copy of RFA 2017-1716-WPD" in the subject line.

Pick up a copy in person from the Department's reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. To make an appointment, call Luke Cole at (202) 724-5348 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Luke Cole RE:2017-1716-WPD" on the outside of the envelope.

An informational meeting at the address above and conference call will be held on May 2, 2017 at 1:00 PM. The call number is 866-741-7514 and conference code is 2014667.

The deadline for application submissions is 6/7/2017, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to luke.cole@dc.gov.

Eligibility: All the checked institutions below may apply for these grants:

- Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;
- Faith-based organizations;
- Government agencies
- Universities/educational institutions; and
- Private Enterprises.

For additional information regarding this RFA, write to: luke.cole@dc.gov.

DEPARTMENT OF HEALTH CARE FINANCE**NOTICE OF REQUEST FOR INFORMATION FOR
ACCOUNTABLE CARE ORGANIZATIONS**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code §1-307.02 (2012 Repl. & 2016 Supp.)) and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl. & 2016 Supp.)) hereby gives notice of the solicitation of information from interested parties regarding the potential development of Medicaid accountable care organizations (ACOs) within the District.

DHCF has issued an ACO Request for Information (RFI) in order to solicit information from health plans, provider networks, independent providers, hospital organizations, consumers, patient advocates, and other interested stakeholders with respect to the potential establishment of a Medicaid ACO program in the District. DHCF is interested in perspectives on the development of ACOs that would be charged with providing high-quality, cost-effective care to District Medicaid beneficiaries. DHCF will use findings generated by this RFI in conjunction with other available information to develop a proposed approach to a Medicaid ACO program design, provider eligibility standards, and potential contractual requirements for accountable entities.

Please note, this RFI is exploratory in nature. No award will be made as a result of this RFI.

The RFI is available on the DHCF website at:

https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/publication/attachments/Transmittal%2017-10_0.pdf

Responses to this RFI must be received via email at HealthInnovation@dc.gov no later than Friday, May 19th, at 5:00 PM (ET).

DEPARTMENT OF HEALTH
HEALTH REGULATION LICENSING ADMINISTRATION

NOTICE OF MEETING

Board of Chiropractic
May 09, 2017

On May 9, 2017 at 1:30 pm, the Board of Chiropractic will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed at 2:30 pm to consult with the attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body, or to approve settlement agreements pursuant to 2-575(b)(4)(a); Preparation, administration, or grading of scholastic, licensing, or qualifying examinations pursuant to section 2-575(b)(6); To discuss disciplinary matters pursuant section 2-575(b)(9); To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of the law or regulations, if disclosure to the public would harm the investigation pursuant to section 2-575(b)(14).

The meeting will be open to the public at 1:30 pm to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session to continue its deliberations at 2:30 pm.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Chiropractic website www.doh.dc.gov/boc and select BOC Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board of Chiropractic – Frank Meyers, JD - (202) 724-8755.

**MONUMENT ACADEMY PUBLIC CHARTER SCHOOL
WASHINGTON, DC**

REQUEST FOR PROPOSALS

Capital Campaign Consultant

Monument Academy Public Charter School, in compliance with section 2204 (c) of the District of Columbia School Reform Act of 1995 (“Act”), hereby solicits expressions of interest from Vendors or Consultants for the following task:

- Administration of a Capital Campaign to raise money for construction.

Please send an email to operations@mapcsdc.org to receive a full RFP offering more detail on the scope of work and bidder requirements.

Proposals shall be received no later than 5:00 pm on Monday, May 15 2017.

Prospective Firms shall submit one electronic submission via email to the following address: operations@mapcsdc.org

**OFFICE OF THE DEPUTY MAYOR FOR
PLANNING AND ECONOMIC DEVELOPMENT**

NOTICE OF PUBLIC MEETING

The District will conduct a community meeting in continuation of the Mayor's "Our RFP" process for the redevelopment of the District-owned property at 1125 Spring Road, NW, in the Petworth neighborhood. At this community meeting, development teams will present their visions for the redevelopment of the site and the community will have an opportunity to ask questions and provide feedback. The date, time, and location of the meeting shall be as follows:

Date: Thursday, May 25, 2017

Time: 6:30p.m.-8:30p.m.

Location: Raymond Recreation Center
3725 10th Street, NW
Washington, D.C. 20010

Contact: Tsega Bekele, tsega.bekele@dc.gov
(202) 724-2370

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICEFORMAL CASE NO. 1142, IN THE MATTER OF THE MERGER OF ALTAGAS LTD. AND WGL HOLDINGS, INC.

1. By this Public Notice, the Public Service Commission of the District of Columbia (“Commission”) opens this proceeding to review the merger Application filed by AltaGas, Ltd. (“AltaGas”), WGL Holdings, Inc. (“WGL Holdings”), and Washington Gas Light Company (“WGL”) (collectively, “Joint Applicants”) pursuant to D.C. Code § 34-504 and 34-1001 on April 24, 2017.¹ The Joint Applicants propose to merge WGL Holdings, the parent of WGL, and Wrangler Inc. (“Merger Sub”), a wholly-owned indirect subsidiary of AltaGas (the “Merger”).² However, the Joint Applicants represent that WGL will continue to operate as a District of Columbia utility subject to the continuing jurisdiction of the Commission and without any reduction in the Commission’s existing oversight or authority.³ The Merger will be an all-cash transaction for approximately \$4.5 billion.

2. In order to facilitate a transparent and effective proceeding, the Commission is scheduling a procedural conference, including, but not limited to, the following issues:

- Factors to be considered in determining whether the Application is in the public interest;
- Identification of factual issues in dispute; and
- Procedural schedule for filing of testimony and briefs, discovery, settlement conferences, and evidentiary hearings.

3. This procedural conference, led by Commission staff, will commence at 10:00 a.m. on May 18, 2017 in the Commission’s Hearing Room. So that the Commission staff and interested persons are prepared for the procedural conference, the Commission directs interested persons to make any filings related to the above issues by May 15, 2017.

4. More specifically, interested persons who wish to participate fully in this proceeding should file petitions to intervene pursuant to 15 DCMR § 106 by May 15, 2017. Interested persons who wish to file statements but do not wish to file testimony or participate in

¹ *Formal Case No. 1142, In the Matter of the Merger of AltaGas Ltd. and WGL Holdings, Inc.*, Application of AltaGas Ltd., WGL Holdings, Inc. and Washington Gas Light Company (“Joint Application”), filed April 24, 2017.

² Joint Application at 1.

³ Joint Application at 7.

evidentiary hearings may ask for limited appearance pursuant to 15 DCMR § 107 by May 15, 2017. It should be noted that persons need not be a party to the proceeding in order to provide comments on the Merger application. The Commission will also accept written comments from the public regarding the proposed transaction up until the close of the evidentiary record, which occurs after an evidentiary hearing. The Commission may also schedule one or more community hearings to receive public comment prior to the close of the record.

5. For the Commission to find that a transaction complies with D.C. Code §§ 34-504 and 34-1001, the Commission must determine that the transaction “taken as a whole must be consistent with the public interest.”⁴ To determine whether a transaction is in the public interest, the Commission has: (1) traditionally balanced the interests of shareholders and investors with ratepayers and the community; (2) determined that benefits to the shareholders must not come at the expense of the ratepayers; and (3) found that, to be approved, the transaction must produce a direct and tangible benefit to ratepayers.⁵

6. To determine whether these three public interest requirements are met, the Commission has in past merger cases identified several factors it considers in reviewing the nature of each transaction. Those factors include the effects of the transaction on: (1) ratepayers, shareholders, the financial health of the utilities standing alone and as merged, and the economy of the District; (2) utility management and administrative operations; (3) public safety and the safety and reliability of services; (4) risks associated with all of the Joint Applicants’ affiliated non-jurisdictional business operations, including nuclear operations; (5) the Commission’s ability to regulate the new utility effectively; (6) competition in the local retail, and wholesale markets that impacts the District and District ratepayers; and (7) conservation of natural resources and preservation of environmental quality.⁶ The Commission directs interested persons to comment by May 15, 2017, on whether these factors are appropriate for use in this proceeding. Interested persons may propose additions to or deletions from this list. Interested persons are also requested to identify issues and facts that may be in dispute and should be prepared to discuss these factors, issues, and facts at the May 18, 2017, procedural conference.

7. Finally, interested persons should propose procedural schedules that will permit a prehearing conference to finalize the issues that will be considered in this proceeding and the procedural schedule, filing of supplemental direct testimony by the Joint Applicants and direct

⁴ *Formal Case No. 1002, In the Matter of the Joint Application of Pepco and the New RC, Inc. for Authorization and Approval of Merger Transaction*, (“*Formal Case No. 1002*”) Order No. 12395, ¶ 17, rel. May 1, 2002.

⁵ *Formal Case No. 1002*, Order No. 12395, ¶ 17, rel. May 1, 2002. Citing *Formal Case No. 951, In the Matter of the Joint Application of Baltimore Gas and Electric Company, Potomac Electric Power Company and Constellation Energy Corporation for Authorization and Approval of Merger and for a Certificate Authorizing the Issuance of Securities*, Order No. 11075, pp. 17-18, rel. October 20, 1997.

⁶ *Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction* (“*Formal Case No. 1119*”), Order No. 17597, rel. August 22, 2014.

testimony by the parties, discovery on direct testimony, filing of rebuttal testimony, discovery on rebuttal testimony, settlement conferences, community hearings, evidentiary hearings, and filing of post-hearing briefs and reply briefs. The Commission seeks proposed procedural schedules that will allow this proceeding to progress in a timely manner and encourages interested persons to identify areas of agreement and stipulations of specific facts and factors early in the proceeding.

8. The Commission favors coordination among interested persons, especially regarding procedural issues. To the extent that interested persons can collaborate on any of these issues and can file joint responses, the Commission supports such efforts.

9. Any interested person interested in responding to the Public Notice may do so by May 15, 2017. Responses are to be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington D.C., 20005. Copies of the Application may be obtained by visiting the Commission's website at www.dcpSC.org. Once at the website, open the "eDocket" tab, click on "Search database" and input "FC 1142" as the case number and "1" as the item number. Copies of the Application may also be purchased, at cost, by contacting the Commission Secretary at (202) 626-5150 or PSC-CommissionSecretary@dc.gov.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICEFORMAL CASE NO. 1143, IN THE MATTER OF THE COMMISSION'S CONSIDERATION OF A DEMAND MANAGEMENT PROGRAM FOR ELECTRIC VEHICLE CHARGING IN THE DISTRICT OF COLUMBIA

1. On April 21, 2017, the Potomac Electric Power Company (“Pepco”) filed a proposal seeking approval for a limited, voluntary demand management program for plug-in electric vehicle (“PIV”) charging in the District of Columbia (“EV Program”) consisting of five offerings with varying options and to allow Pepco to focus on expanding PIV use in the District of Columbia.¹ By this Public Notice, the Public Service Commission of the District of Columbia (“Commission”) opens this proceeding to consider Pepco’s EV Program proposal.

2. To this end, Pepco proposes “a limited, voluntary EV Program” that would run through the third quarter of 2019.² Pepco anticipates that following the conclusion of the proposed EV Program, “the Company will be in a better position to determine if adjustments to the [EV] Program are warranted, provide for a wider roll out within the District of Columbia, if deemed appropriate, and apply the information gained to efforts promoted by the Government of the District of Columbia and third-parties to expand PIV use.”³ The proposed EV Program consists of five offerings:

- Offering 1: One Hundred (100) Residential customers with existing PIVs and installed Electric Vehicle Supply Equipment (“EVSE”) will have the option to select the PIV rate under Schedule “PIV”
- Offering 2: Fifty (50) Smart Level II EVSEs for Residential customers without an existing EVSE—Schedule “PIV”
- Offering 3: Ten (10) Smart Level II EVSE for Condominium/Apartment buildings with garage parking, customers without an existing EVSE—Schedule “GS ND-PIV”
- Offering 4: Maximum of four (4) Direct Current (“DC”) Fast Chargers in the District for Public Use—Schedule “GS D-PIV”
- Offering 5: Five Hundred (500) Residential whole-house Time-of-Use rates—Schedule “R-PIV”

¹ *Formal Case No. 1143, In the Matter of the Commission’s Consideration of a Demand Management Program for Electric Vehicle Charging in the District of Columbia (“Formal Case No. 1143”),* Potomac Electric Power Company’s (“Pepco”) proposal for a limited demand management program for plug-in electric vehicle charging in the District of Columbia, filed April 21, 2017 (“Pepco’s Proposed EV Program”).

² *Formal Case No. 1143, Pepco’s Proposed EV Program* at 6, 11.

³ *Formal Case No. 1143, Pepco’s Proposed EV Program* at 6.

3. Pepco proposes to supply electricity to the pilot program through Standard Offer Service (“SOS”), where Pepco serves as SOS Administrator.⁴ Pepco will manage demand from PIVs by setting rates so as to encourage PIV charging during off-peak periods and potentially using smart chargers to reduce charging to half power during periods requiring demand reductions, with notice to customers and the opportunity to opt out.⁵ Each offering will have various limitations on the applicable customers, different levels of customer cost sharing for equipment, and include options for 100% renewable energy for an additional charge. Pepco asserts that this EV Program will provide the benefits of PIV charging or discounted rates of up to 160 total PIV customers and up to 500 Residential whole house Time-of-Use customers and provide Pepco with valuable data that will be used to improve the service experience of all customers as more PIVs are added to the system.⁶ Pepco proposes to operate the initial EV Program until the end of the third quarter 2019 after which Pepco will present a report to the Commission after analyzing the data gathered from the initial EV Program.

4. Pepco reports that there are currently 567 registered PIVs in the District of Columbia and this number is expected to grow.⁷ Pepco has recently completed a pilot EV Program in Maryland and the proposed EV Program looks to develop “information specific to District of Columbia owners.”⁸ Specifically, Pepco aims for the proposed EV Program to:

- Understand any potential impact that increases in the adoption and saturation of PIVs may have on the distribution system in the District of Columbia;
- Obtain information needed to evaluate and mitigate impacts to the distribution system that PIV clustering may cause; and
- Test and validate various incentives, such as discounted Time-of-Use rates, for customers to curtail or shift vehicle charging to off-peak time periods.⁹

5. Pepco estimates that the total estimated cost for the program’s five options will be \$1,666,000. The cost amount excluding costs borne by customers, such as the cost-sharing for EVSEs and installations, is \$1,464,000. These costs are broken out across each of the offerings in Table 1 through Table 6 of the Proposal.¹⁰ Pepco proposes rate classes for customers who take service for their PIV. Pepco is requesting permission to establish a regulatory asset to recover EV Program costs in a future distribution rate case.

⁴ *Formal Case No. 1143*, Pepco’s Proposed EV Program at 6 n.19.

⁵ *Formal Case No. 1143*, Pepco’s Proposed EV Program at 6 n.18.

⁶ *Formal Case No. 1143*, Pepco’s Proposed EV Program at 11.

⁷ *Formal Case No. 1143*, Pepco’s Proposed EV Program at 2.

⁸ *Formal Case No. 1143*, Pepco’s Proposed EV Program at 4.

⁹ *Formal Case No. 1143*, Pepco’s Proposed EV Program at 3-4.

¹⁰ *Formal Case No. 1143*, Pepco’s Proposed EV Program at 12, 15-16.

6. Any interested person who wishes to participate as a party in this proceeding should file petition to intervene pursuant to 15 DCMR § 106 by May 22, 2017. It should be noted that a person need not be a party to the proceeding in order to provide comments on Pepco's EV Program.

7. Any person interested in commenting on Pepco's Proposed EV Program may do so by May 22, 2017, and any reply comments should be submitted by June 5, 2017. Responses are to be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington D.C., 20005. Copies of the Application may be obtained by visiting the Commission's website at www.dcpsc.org. Once at the website, open the "eDocket" tab, click on "Search database" and input "FC 1143" as the case number and "1" as the item number. Copies of Pepco's Proposed EV Program may also be purchased, at cost, by contacting the Commission Secretary at (202) 626-5150 or PSC-CommissionSecretary@dc.gov.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY (NOFA)

CLEAN TEAM GRANTS

The Department of Small and Local Business Development (DSLBD) is soliciting applications from eligible applicants to manage a **DC Clean Team Program** (“the Program”) in fourteen service areas (listed below). **The submission deadline is June 16, 2017, 2:00 p.m.**

Through this grant, DSLBD will fund clean teams, which will achieve the following objectives.

- Improve commercial district appearance to help increase foot traffic, and consequently, opportunity for customer sales.
- Provide jobs for DC residents.
- Reduce litter, graffiti, and posters, which contribute to the perception of an unsafe commercial area.
- Maintain a healthy tree canopy, including landscaping, along the corridor.
- Support Sustainable DC goals by recycling, mulching street trees, using eco-friendly supplies, and reducing stormwater pollution generated by DC’s commercial districts.

Eligible applicants are DC-based nonprofit organizations which are incorporated in the District of Columbia and which are current on all taxes. Applicants should have a demonstrated capacity with the following areas of expertise.

- Providing clean team services or related services to commercial districts or public spaces.
- Providing job-training services to its employees.
- Providing social support services to its Clean Team employees.

DSLBD will **award** one grant for **each** of the following **service areas** (i.e., a total of fourteen grants). The size of grant is noted for each district.

- 12th Street, NE - \$103,618
- Bellevue - \$103,000
- Benning Road - \$110,000
- Connecticut Avenue, NW - \$104,982
- Glover Park - \$128,000
- Pleasant Plains/Petworth - \$103,000
- Brightwood/Petworth, NW - \$104,982
- Upper Georgia Avenue - \$103,000
- Kennedy Street, NW - \$103,618
- Minnesota Avenue, NE - \$104,982
- New York Avenue, NE - \$116,521
- Pennsylvania Avenue, SE - \$110,000
- Ward 1 - \$103,618
- Wisconsin Avenue - \$116,521

The **grant performance period** to deliver clean team services is October 1, 2017 through September 30, 2018. Grants may be renewed for a second performance period of October 1, 2018 through September 30, 2019.

The **Request for Application** (RFA) includes a detailed description of clean team services, service area boundaries, and selection criteria. DSLBD will post the RFA on or before **Friday, May 12, 2017** at www.dslbd.dc.gov. Click on the *Our Programs* tab, then *Neighborhood Revitalization*, and then *Solicitations and Opportunities* on the left navigation column.

Application Process: Interested applicants must complete an online application on or before **Friday, June 16, 2017 at 2:00 p.m.** DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be forwarded to the review panel.**

The online application will also be live **Friday, May 12, 2017**. To open an application, applicants must complete and submit an **Expression of Interest** via the website address included in the Request for Applications. DSLBD will activate their online access within two business days and notify them via email.

Selection Criteria for applications will include the following criteria.

- Applicant Organization's demonstrated capacity to provide clean team or related services, and managing grant funds.
- Proposed service delivery plan for basic clean team services.
- Proposed service delivery plan for additional clean team services.

Selection Process: DSLBD will select grant recipients through a competitive application process that will assess the Applicant's eligibility, experience, capacity, service delivery plan, and, budget. Applicants may apply for one or more service areas by noting the number of service areas for which the applicant would like to be considered. DSLBD will determine grant award selection and notify all applicants of their status via email on or before July 12, 2017.

Funding for this award is contingent on continued funding from the DC Council. The RFA does not commit the Agency to make an award.

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

All applicants must attest to executing a DSLBD grant agreement as issued (sample document will be provided in online application) and to starting services on October 1, 2017.

For more information, contact Saba Fassil at the Department of Small and Local Business Development at (202) 578-1057 or saba.fassil2@dc.gov.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING****Governance Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Governance Committee will be holding a meeting on Wednesday, May 10, 2017 at 9:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dewater.com.

DRAFT AGENDA

- | | |
|--|---------------------------------|
| 1. Call to Order | Chairperson |
| 2. Government Affairs: Update | Government Relations
Manager |
| 3. Update on the Compliance Monitoring Program | TBD |
| 4. Update on the Workforce Development Program | Contract Compliance Officer |
| 5. Emerging Issues | Chairperson |
| 6. Agenda for Upcoming Committee Meeting (TBD) | Chairperson |
| 7. Executive Session | |
| 8. Adjournment | Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Human Resources and Labor Relations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will be holding a meeting on Wednesday, May 10, 2017 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or لمانley@dcwater.com.

DRAFT AGENDA

- | | |
|----------------------|-----------------------|
| 1. Call to Order | Committee Chairperson |
| 2. Union Presidents | |
| 4. Other Business | |
| 5. Executive Session | Committee Chairperson |
| 6. Adjournment | Committee Chairperson |

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Order No. 19315-A of Associated Catholic Charities, as amended, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance of BZA Order No. 19315, now requesting variance relief from the size of parking space requirements of Subtitle C § 712.5¹, to construct three flats in the R-4 District at premises (rear) 611-617 Rhode Island Avenue N.W. (Square 442, Lots 4, 49-50).

The original application (No. 19315) was pursuant to the Zoning Regulations of 1958, pursuant to 11 DCMR § 3103.22, for area variances from the lot area requirements under § 401.3 and the alley access requirements under § 2507.2, and a use variance from the flats on alley lot requirements under § 2507.1, to construct three flats in the R-4 District at premises (rear) 611-617 Rhode Island Avenue N.W. (Square 442, Lots 4, 49-50).

HEARING DATES (Case No. 19315):	July 6, 2016 and September 13, 2016
DECISION DATE (Case No. 19315):	September 13, 2016
FINAL ORDER ISSUANCE DATE (Case No. 19315):	September 27, 2016
MODIFICATION HEARING DATE:	April 5, 2017
MODIFICATON DECISION DATES:	March 1 and April 5, 2017 ²

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF SIGNIFICANCE

BACKGROUND

On September 13, 2016, in Application No. 19315, the Board of Zoning Adjustment (“Board” or “BZA”) approved the self-certified request by Associated Catholic Charities (the “Applicant”) for area variances from the lot area requirements under § 401.3 and the alley access requirements under § 2507.2, and a use variance from the flats on alley lot requirements under § 2507.1, to construct three flats in the R-4 District. The Board issued Order No. 19315 on September 27, 2016. The approval in Case No. 19315 was subject to the approved plans at Exhibit 26, Tab A,

¹ The original application was filed under the Zoning Regulations (Title 11, DCMR) which were then in effect (the “1958 Zoning Regulations”) but which were repealed on September 6, 2016 and replaced with new text of Title 11, DCMR (the “2016 Regulations”). Other than the description of the original application and its caption, the other references in this Order to provisions contained in Title 11 DCMR are to the 2016 Regulations. The repeal of the 1958 Zoning Regulations and their replacement with the 2016 Regulations has no effect on the vesting and validity of the original application. Thus, Order No. 19315 is vested under the 1958 Zoning Regulations pursuant to Subtitle A § 102.3(c). However, because the Applicant is seeking a modification to a vested project beyond a minor modification, the project is required to conform with the 2016 Regulations. Consequently, the Modification of Significance references the 2016 Regulations provision governing parking spaces (Subtitle C § 712.5).

² This case initially was placed on the Board’s agenda for its public meeting of March 1, 2017 as a minor modification. At its meeting on March 1st, the Board decided the case exceeded the scope of a minor modification and scheduled the case for a hearing on April 5th as a modification of significance. After the hearing was completed, the Board approved the modification of significance request.

as amended by Exhibit 32E in the record of Case No. 19315 and one condition, namely:

1. The Applicant shall record a restrictive covenant in the District of Columbia Land Records limiting one of the six dwelling units (as illustrated in Exhibit 32E, SD3.1 – Lot A Unit 1) as an affordable housing unit, which shall be available to households with an annual income of no more than 60% Area Median Income (adjusted for household size) for the life of the project.

MOTION FOR MODIFICATION OF SIGNIFICANCE

On January 30, 2017, the Applicant submitted a request for a Modification of Consequence / Technical Correction / Minor Modification to the relief previously approved by the Board in Order No. 19315. (Exhibit 1-4.) This is the same Applicant and Property for which the Board approved variance relief in Order No. 19315. The case was placed on the Board's agenda for its March 1, 2017 public meeting as a minor modification. On February 27, 2017, the Applicant submitted another cover letter that changed the request to one for a Modification of Significance. (Exhibit 7.)

At its public meeting on March 1, the Board determined that the request exceeded the scope of a minor modification, because the Applicant was asking for new relief that had not been discussed as part of the original case. The Board scheduled the case for a public hearing as a modification of significance and, at the Applicant's request, waived the 40-day notice requirements under Subtitle Y § 402 to allow the case to be heard on April 5, 2017.

In Case No. 19315, the Board approved, with one condition, area variances from the lot area requirements under § 401.3 and the alley access requirements under § 2507.2, and a use variance from the flats on alley lot requirements under § 2507.1, to construct three flats in the R-4 District. There is currently one existing Board Order attached to the Property, Order No. 19315. That order became effective on October 7, 2016. (Exhibit 3A.)

In the present case, the Applicant is now requesting variance relief from the size of parking space requirements of Subtitle C § 712.5, to construct the three flats in the R-4 District. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. In the original BZA application No. 19315 (Exhibit 6, page A3 in the record of Case No. 19315), the proposal showed each of the lots with one conforming parking space. Subsequently, the plans were revised and the parking space sizes were reduced, but the Applicant did not request variances to address the nonconforming parking spaces. During the Building Permit process, the Applicant was notified that relief for the nonconforming spaces would be required. In the current application, the Applicant originally requested relief from the parking dimensions on all three lots. Subsequently, the application was revised and the parking space on Lot B now meets the requirement and therefore no relief is necessary. The space on Lot C does not meet the eight-foot width requirement while the space on Lot A continues not to meet the lot width or size requirements. (See, Exhibit 25, pg. 1-2.)

Although the approved plans referenced in Order No. 19315 showed parking spaces that do not comply with the parking space size requirement of 11 DCMR, a request for specific relief from the appropriate subsection of the Zoning Regulations was not included in the original case. Due to the substandard nature of the parking spaces approved in Order No. 19315, the Applicant now is asking for that relief in this modification application and submitted plans for the parking. (Exhibit 3C.)

The Applicant indicated that the proposed modification of significance meets the burden of proof for the additional relief requested. (Exhibits 7 and 14.)

The Merits of the Request for Modification of Significance

Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence³ requires a public hearing and is a modification of significance. The Applicant's request complies with 11 DCMR Subtitle Y § 704, which provides the Board's procedures for considering requests for modifications of significance.

In the current case, the Applicant submitted an application for new variance relief from the nine feet by 19' parking space size requirement of 11 DCMR Subtitle C § 712.5. Since additional relief was being requested to that previously approved in Case No. 19315, it met the definition of a modification of significance and a public hearing was held.

Pursuant to Subtitle Y § 704.6, a public hearing on a request for a modification of significance shall be focused on the relevant evidentiary issues requested for modification and any condition impacted by the requested modification. Pursuant to Subtitle Y § 704.7, the scope of a hearing conducted pursuant to Subtitle Y § 704.1 is limited to the impact of the modification on the subject of the original application, and does not permit the Board to revisit its original decision. Pursuant to Subtitle Y § 704.8, a decision on a request for modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application. Finally, pursuant to Subtitle Y § 704.9, the filing of any modification request under this section does not act to toll the expiration of the underlying order and the grant of any such modification does not extend the validity of any such order.

Notice. Pursuant to Subtitle Y §§ 704.4, and 704.5, all requests for modifications of significance must be served by the moving party on all parties in the original proceeding at the same time that the request is filed with the Board. The Applicant served the Office of Planning ("OP"), the Department of Transportation ("DDOT"), the affected Advisory Neighborhood Commission ("ANC"), ANC 6E, and the affected Single Member District ANC Commissioner 6E02 when the current application was filed. (Exhibits 3 and 7.)

Also, pursuant to Subtitle Y § 400.4, the Office of Zoning provides notice upon its acceptance on behalf of the Board of an application requiring a public hearing to the applicant, the affected

³ See, Subtitle Y §§ 703.3 and 703.4.

ANC, the affected Single Member District ANC Commissioner, OP, DDOT, and the Councilmember for the ward within which the property is located. Pursuant to Subtitle Y § 402.1, the Board also provides notice of the public hearing to the applicant, the affected ANC, the affected Single Member District ANC Commissioner, all owners of property within 200 feet of the subject property, any leaseholders on the subject property, OP and all other appropriate government agencies, and the Councilmember for the ward within which the property is located.

Proper and timely notice of the application was provided to ANC 6E, the only other party to Application No. 19315, the ANC Commissioner for Single Member District 6E02, OP, DDOT, the Ward Councilmember for the Property, and the Council Chairman and the At Large Councilmembers. Also, notice of the public hearing was provided to the Applicant, ANC 2E, all owners of property within 200 feet of the subject property, and the Ward Councilmember. (Exhibits 11-22.)

Reports. ANC 6E submitted a report dated February 27, 2017, in support of the application for a modification. The ANC report indicated that at a regularly scheduled, properly noticed public meeting on February 7, 2017, at which a quorum was present, the ANC voted 7:0:0 to support the variance relief requested in this application. (Exhibit 9.)

OP submitted two timely reports. The original report, dated February 17, 2017, recommended removing the case from the consent calendar and re-filing the case as a Modification of Significance and scheduling it for a public hearing. (Exhibit 5.) The OP supplemental report, dated March 24, 2017, recommended approval of the requested modification and variance from the requirements of Subtitle C § 712.5 for Minimum Dimension for Full-Sized Space. (Exhibit 25.)

DDOT submitted a report dated February 14, 2017, stating that it had no objection to the granting of the request. (Exhibit 6.)

A letter of support for the application was submitted by Catholic Charities. (Exhibit 28.)

Burden of Proof. As directed by 11 DCMR Subtitle X § 901.2 and Subtitle Y § 704, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for an area variance and a modification of significance. With its application, the Applicant submitted the required documents in conjunction with the application, including a statement demonstrating how the application meets the burden of proof for the variance relief from the parking space size requirement of Subtitle C § 712.5 and for a Modification of Significance. (Exhibits 3-3C, 7, and 23.)

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for an area variance from the size of parking space requirements of Subtitle C § 712.5, to construct three flats in the R-4 District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle C § 712.5, and from Subtitle X § 1001.2, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board also concludes that in seeking a modification of significance to Case No. 19315, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 704.

As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant the request would not be adverse to any party and therefore an order containing full finding of facts and conclusions of law need not be issued pursuant to D.C. Official Code § 2-509(c) (2012 Repl.). Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of significance of the Board's approval in Application No. 19315-A is hereby **GRANTED**.

In all other respects, Order No. 19315 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON SEPTEMBER 13, 2016: 3-1-1

(Frederick L. Hill, Robert E. Miller, and Jeffrey L. Hinkle, to APPROVE; Anita Butani D'Souza, OPPOSED; Marnique Y. Heath, not present or participating.)

VOTE ON MODIFICATION OF SIGNIFICANCE ON APRIL 5, 2017: 4-0-1

(Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Robert E. Miller to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: April 21, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

**BZA APPLICATION NO. 19315-A
PAGE NO. 5**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19413 of Chughtai Family Properties LLC, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the side yard requirements of Subtitle D §§ 307.2 and 307.4, to permit the subdivision of two lots and construct four new one-family dwellings in the R-3 Zone at premises on Maple View Place S.E. (Square 5803, Lots 976 and 977).

HEARING DATES: February 8, March 8, and March 29, 2017²
DECISION DATE: April 12, 2017

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 (original) and 62 (revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 8A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8A, which is automatically a party to this application. The ANC submitted a timely report dated February 7, 2017, recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public

¹ The application originally requested variance relief from the lot area and width requirements of Subtitle D § 302.1 and the side yard requirements of Subtitle D § 307.2. The Applicant redesigned the project and as a result, the relief requested was amended from that in the original application by adding a variance from the side yard requirements of Subtitle D § 307.4 and removing the request for relief from lot area. (Exhibit 62) The project was again redesigned to respond to concerns raised by the Office of Planning and that removed the need for variance relief from lot width requirements under Subtitle D § 302.1, relying in its stead on the ability of the Zoning Administrator to grant *de minimus* 2% lot width relief. (Exhibit 67.) The caption has been revised accordingly.

² The case was originally scheduled for February 1, 2017, was postponed to February 8, 2017 and then continued to the hearing of March 8, 2017, and continued and heard to March 29, 2017. At the hearing on February 8, the Board heard testimony from the Applicant, the Office of Planning, and the Advisory Neighborhood Commissioner. The Board continued the hearing and requested supplemental information from the Applicant. The Applicant requested a continuance (Exhibit 31) which the Board granted so that the hearing was postponed from March 8 to March 29. The Applicant submitted the requested supplemental filing. (Exhibit 67.)

meeting on February 7, 2017, at which a quorum was present, the ANC voted 4-0-2 to support the application. (Exhibit 64.)

The Office of Planning (“OP”) submitted three timely reports regarding the application. In the first report, OP indicated that it required additional time to review the application based on late-filed information. (Exhibit 52.) In its second report, dated February 1, 2017, OP recommended denial of the requests for variance relief from lot area under Subtitle D § 302.1 and lot width under Subtitle D § 307.2, but did not object to the request for variance relief from side yard requirements under Subtitle D §§ 307.2 and 307.4. (Exhibit 59.) In its third report, OP still recommended denial of the request for a variance for lot width under Subtitle D § 302.1 and continued to recommend approval of side yard relief under Subtitle D § 307.4. In that report, OP noted that “[u]nlike the original proposal, the revised proposal would create lots that conform for lot area.” (Exhibit 68.)

In response to OP’s concerns as expressed in its reports and testimony, the Board continued the hearing and invited the Applicant to provide supplemental information with alternative configurations for the proposed dwellings, including a three-lot proposal. Based on the Board’s request, the Applicant redesigned the project which caused it to seek a reduced degree of relief from lot width relief and also asked the Zoning Administrator (“ZA”) to evaluate this redesign for the grant of minor flexibility. (Exhibit 67.) The ZA’s Zoning Determination letter indicated that the “proposed Project’s minor decrease in lot width relief satisfies the requirements for my office to grant the requested deviation/modification” in lot width. (Exhibit 69.) As a result of the ZA’s determination that minor flexibility could be granted, the Applicant no longer required a variance from lot width requirements; consequently, the Office of Planning’s objections to granting that relief became moot.

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 51.)

Twenty letters of support for the application were submitted to the record by nearby neighbors. (Exhibits 33-37, 40-49, and 53-58.) A letter in support of the application was also submitted by the Historic Anacostia Bock Association. (Exhibit 58.) Also, a letter of support was submitted to the record by the Single Member District ANC Commissioner, ANC 8A06, who is also a neighbor and a member of the Historic Anacostia Preservation Society. (Exhibit 63.)

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for variances from the side yard requirements of Subtitle D §§ 307.2 and 307.4, to permit the subdivision of two lots and construct four new one-family dwellings in the R-3 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle D §§ 307.2 and 307.4, and from Subtitle X § 1001.2, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 39A1-39A5 AS REVISED BY EXHIBIT 67, TAB A.**

VOTE: **3-1-1** (Frederick L. Hill, Carlton E. Hart, and Lesylleé M. White³, to APPROVE; Peter G. May, to DENY; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: April 21, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

³ Board member White indicated that she had read the full record of the case in order to participate in deliberations.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19454 of Kathleen Kern, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle F § 5201, from the nonconforming structure requirements of Subtitle C § 202.2, and the lot occupancy requirements of Subtitle F § 304.1, to renovate and expand an existing two-story, one-family dwelling into a three-story, one-family dwelling in the RA-2 Zone at premises 2212 12th Place N.W. (Square 271, Lot 127).

HEARING DATES: March 22, 2017 and April 12, 2017²
DECISION DATE: April 12, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibits 5 (original self-certification) and 36 (updated self-certification).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on February 3, 2017, at which a quorum was present, the ANC voted 12-0-0 to support the application. (Exhibit 32.) The Office of Planning ("OP") submitted several reports in this case. In its first report, dated March 10, 2017, OP recommended denial of the application because of its concerns that filling in the Applicant's court, along with the proposed addition, may have an adverse impact on the light

¹ The application originally requested variance relief from the floor area ratio ("FAR") requirements of Subtitle F § 302.1 and lot occupancy requirements of Subtitle F § 304.1. The Applicant amended the application by eliminating the need for relief from the FAR limitations and changing to a request for special exception relief as indicated in the caption above. (Exhibits 36 and 38.)

² The application was initially heard on March 22, 2017, then continued to April 12, 2017 to address concerns raised by the Office of Planning.

and air of the adjacent property at 2214 12th Place, N.W. and that the proposal would visually intrude upon the character of the houses along the alley by filling in the court. (Exhibit 40.) At the hearing of March 22nd, the Board asked the Applicant to provide additional information to address the concerns raised by OP about impacts of the project. In response, the Applicant submitted a shadow study to demonstrate that the impact on the adjacent property would not be significantly different from what currently exists. (Exhibit 42.)

The owner of the adjacent property to the north at 2214 12th Place, N.W. filed several letters in opposition to the application, along with photographs. (See Exhibits 31, 33, 41, 43, 48, 49, and 50.)

On April 7, 2017, OP filed a Supplemental Report summarizing its position presented thus far and stated that the adjacent neighbor continued to express concerns about the impact on his property and that both the Applicant and neighbor had agreed to meet to address these concerns. OP stated that it would submit another supplemental report once the Applicant and the neighbor had an opportunity to communicate about the outstanding issues. (Exhibit 45.)

The Applicant amended the application and plans by eliminating the third-story deck and reducing the floor area to meet the FAR limitations. (See Exhibit 38.) The Applicant also submitted a second shadow study regarding the proposed project. (Exhibit 46.) Finally, the Applicant submitted a letter addressed to the neighbor at 2214 12th Place, N.W. to the record describing her efforts to meet with him to discuss the project, and his lack of response. (Exhibit 43.)

At the hearing of April 12, 2017, OP testified that based on the supplemental information provided by the Applicant, including shadow studies, OP could support the application and recommended approval. At the Board's request, OP also submitted a 2nd Supplemental Report that reflected its change in position. In that report, OP reconfirmed that it recommended approval of the application, and noted that "the Applicant provided a sun study which demonstrated that the addition would not cast shadows in an amount of [sic] that would substantially affect the light and air to the neighboring property." (Exhibit 51.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 39.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle F § 5201, from the nonconforming structure requirements of Subtitle C § 202.2, and the lot occupancy requirements of Subtitle F § 304.1. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle F §§ 5201 and 304.1, and Subtitle C § 202.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 34 – UPDATED ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: 4-0-1 (Carlton E. Hart, Frederick L. Hill, Lesylleé M. White, and Peter G. May to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: April 26, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

BZA APPLICATION NO. 19454

PAGE NO. 3

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19458 of 3G 1G 1352 Randolph St NW, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RF-use requirements of Subtitle U § 320.2, to expand an existing one-family dwelling into an apartment house in the RF-1 Zone at premises 1352 Randolph Street N.W. (Square 2825, Lot 112).

HEARING DATE: March 22, 2017
DECISION DATE: April 12, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 9.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 4C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. The ANC submitted a resolution recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on February 8, 2017, at which a quorum was present, the ANC voted 8-1-0 to support the application with conditions.¹ (Exhibit 44.)

At the hearing, the Board requested clarification from the ANC regarding its position on last two conditions and to submit supplemental information to that effect. The ANC acknowledged the agreement the Applicant had reached with the neighbors and clarified the final two conditions and stated that the ANC "supports the Application, provided the third-story addition be set back from the front of the existing building a distance of *at least* five (5) feet. Therefore, the ANC

¹ The Board did not include the ANC's conditions in this order, having noted that the conditions dealt with non-zoning matters, the Applicant had already separately agreed to abide by them, thus making them part of a separate agreement between the ANC and the Applicant, and the Applicant had revised the plans to be compliant with the final two conditions.

supports the movement of the third-floor addition back to a distance which would be ten (10) feet back from the line of the front façade”. (Exhibit 46.) The Applicant revised the plans in keeping with this understanding. (Exhibit 39.)

The Office of Planning (“OP”) submitted a timely report, dated March 10, 2017, recommending approval of the application. (Exhibit 40.) The District Department of Transportation (“DDOT”) submitted a timely report, dated March 10, 2017, indicating that it had no objection to the grant of the application. (Exhibit 41.)

A nearby resident, Lauren S. Weldon of 1340 Randolph Street, N.W., filed a letter in opposition to the application. (Exhibit 36.) Two other nearby residents, Hilda Torres of 1821 Randolph Street, N.W. and Lily Boykin of 1328 Randolph Street, N.W. testified as to their concerns about parking and mid-block pop-ups.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the RF-use requirements of Subtitle U § 320.2, to expand an existing one-family dwelling into an apartment house in the RF-1 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle U § 320.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 39.**

VOTE: **4-0-1** (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Anthony J. Hood (by absentee ballot) to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

**BZA APPLICATION NO. 19458
PAGE NO. 2**

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: April 25, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

BZA APPLICATION NO. 19458

PAGE NO. 3

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19469 of 3123 Warder Street LLC¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RF-use requirements of Subtitle U § 320.2, to permit the expansion and conversion of an existing one-family dwelling into a three-unit apartment house in the RF-1 Zone at premises 3123 Warder Street, N.W. (Square 3049, Lot 48).

HEARING DATES: April 12 and April 19, 2017²
DECISION DATE: April 19, 2017

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 12.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. The ANC submitted a timely report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 12, 2017, at which a quorum was present, the ANC voted 9-1-0 to support the application. (Exhibit 48.)

The Office of Planning ("OP") submitted a timely report in support of the application. (Exhibit 46.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 39.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the RF-use requirements of Subtitle U § 320.2, to permit the

¹ The Applicant's name was updated to reflect the current owner of the property after it acquired the property from Wana Bishop Revocable Trust, the prior owner and Applicant. (Exhibit 45.) The caption has been changed accordingly.

² The case was postponed from April 12, 2017 to the hearing of April 19, 2017, at the Applicant's request. (Exhibit 34.)

expansion and conversion of an existing one-family dwelling into a three-unit apartment house in the RF-1 Zone. The only parties to the case were the Applicant and the ANC. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U § 320.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED UPDATED PLANS AT EXHIBIT 40.**

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Robert E. Miller, to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: April 25, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

BZA APPLICATION NO. 19469

PAGE NO. 2

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

441 4TH STREET, N.W.
SUITE 200-SOUTH
WASHINGTON, D.C. 20001

PUBLIC NOTICE OF CLOSED MEETINGS FOR MAY, 2017

In accordance with § 405(c) of the Open Meetings Act, D.C. Official Code § 2-575 (c), on April 19, 2017, the Board of Zoning Adjustment voted 4-0-1, to hold *closed meetings telephonically on Mondays, May 1st, May 8th, May 15th, and Tuesday, May 30th*, beginning at 3:00 p.m. for the purpose of obtaining legal advice from counsel and/or to deliberate upon, but not voting on the cases scheduled to be publicly heard or decided by the Board on the day after each such closed meeting, as those cases are identified on the Board's meeting and hearing agendas for May 3rd, May 10th, May 17th and May 31st.

FOR FURTHER INFORMATION, PLEASE CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

**Frederick L. Hill, Chairperson, Carlton E. Hart, Vice-Chairperson,
Lesylleé M. White, Board Member, one seat vacant, and a Member of the Zoning
Commission.**

**Clifford W. Moy, Secretary of the Board of Zoning Adjustment
Sara A. Bardin, Director, Office of Zoning.**

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**NOTICE OF FILING****Z.C. Case No. 06-120****(George Washington University and Boston Properties – Modification of Significance to 1st-Stage PUD, Second-Stage PUD, and Related Map Amendment @****Square 75, Lots 50 & 51)****April 25, 2017****THIS CASE IS OF INTEREST TO ANC 2A**

On April 13, 2017, the Office of Zoning received an application George Washington University and Boston Properties (together, the “Applicant”) for approval of a modification of significance to a first-stage planned unit development (“PUD”), a second-stage PUD, and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lots 50 and 51 in Square 75 in northeast Washington, D.C. (Ward 2), on property located at 2100 Pennsylvania Avenue, N.W. and 2121 I Street, N.W. The property is currently zoned MU-9. The Applicant is proposing a PUD-related map amendment to rezone Lot 50, for the purposes of this project, to the MU-30 zone.

The Applicant proposes to redevelop a strategic corner site along Pennsylvania Avenue into a signature mixed-use building, to include retail use that will significantly strengthen the development of the I Street retail corridor called for in the Campus Plan.

This case was filed electronically through the Interactive Zoning Information System (“IZIS”), which can be accessed through <http://dcoz.dc.gov>. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-07A
Z.C. Case No. 14-07A

1250 4th Street (EDENS), LLC and Union Market Apartments, LLC
(Minor Modification of Consolidated Planned Unit Development)
May 9, 2016

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on May 9, 2016 to consider the request of 1250 4th Street (EDENS), LLC and Union Market Apartments, LLC (collectively, the “Applicants”) for a modification of the consolidated planned unit development (“PUD”) approved in Z.C. Case No. 14-07. The property (Lot 9, Square 3587)¹ that is the subject of Z.C. Order No. 14-07 is located in the 1200 block of 4th Street, N.E. (“Property”). The instant Order relates to the “South Parcel Building” and Neal Place extension (i.e., Lots 823-828 and 7006-7013, Square 3587). The public meeting was held in accordance with the provisions of 11 DCMR § 3030 and the Commission considered the application pursuant to 11 DCMR §§ 2400 et seq.

FINDINGS OF FACT

1. Z.C. Case No. 14-07 included a consolidated PUD approval and a first-stage PUD approval. Z.C. Order No. 14-07 (“Order”), which became final and effective on June 8, 2015, approved a consolidated PUD for a building with approximately 465 residential units above approximately 29,042 square feet of retail space on the southern portion of the Property (“South Parcel Building”). The South Parcel Building’s retail and residential components have frontage along 4th Street, S.E., and the building will have a maximum height of 110 feet. A 400-550-space parking garage was also approved as part of the South Parcel Building. Z.C. Order No. 14-07 also approved a Zoning Map amendment for the Property from the C-M-1 Zone District to C-3-C Zone District.
2. The first-stage PUD approval included a building on the northern portion of the Property (“North Parcel Building”) with approximately 165 residential units and approximately 12,000 square feet of retail use, which will have a maximum height of 110 feet. A parking structure with 80-200 parking spaces was also included in the first-stage PUD approval. The first-stage PUD approval is effective until June 8, 2023. The North Parcel Building is not the subject of this Order.
3. On April 8, 2016, the Applicants filed an application for a minor modification in accordance with § 3030 of the Regulations. The specific elements of the minor modification are detailed in the record. (Exhibit [“Ex.”] 2, 2C.) The Applicants sought approval of the following modifications to the plans approved in Z.C. Case No. 14-07:
 - Façade modifications – The façades have been modified due to permissible changes made to the internal layout of the South Parcel Building.

¹ At the time of the issuance of Z.C. Order No. 14-07, the Property was known as Parcels 129/77, 129/95, and 129/96. The Applicants combined these three parcels into one single record lot, Lot 9, and then further created a set of assessment and taxation lots on Lot 9.

- Due to shifts in the quantity and layout of units in the South Parcel Building, the fenestration and balconies have been reconfigured. The proposed 4th Street elevation now contains balconies only on odd floors, as opposed to every floor, and the projection of the balconies has been reduced from four feet to one and one-half foot. Additionally, the South Parcel Building's western façade has been revised, including the refinements to the fenestration and balconies on the floors above the building's brick base and the addition of fenestration, louvers, and doors along the ground and second floors. The aesthetics and materials of the modified facades appear the same as those originally approved by Z.C. Order No. 14-07.
- Due to the changes in the South Parcel Building's internal configuration, the closed courts along the east and south elevation have been enlarged while the closed courts along the west elevation have been reduced. The original order approved flexibility for the construction of noncompliant courts. The instant minor modification retains such element of court relief, while increasing the degree of relief needed on the three courts on the western façade and decreasing the degree of relief needed along the southern façade, with modified dimensions as shown in the record. (Ex. 2C, p. 5.)
- The South Parcel Building's lot occupancy has been increased from 83.6% to 84.5%. There is no maximum lot occupancy in the C-3-C Zone District.
- Penthouse – The penthouse has been modified in compliance with § 411.24 of the Zoning Regulations. Subsection 411.24 allows for minor modification requests to add habitable penthouse space in a building approved by the Commission as a PUD.
 - The penthouse has been modified to be enlarged from up to approximately 16,834 square feet to up to approximately 22,250 square feet, including habitable space. In addition, two cores have been combined into one, the trellis at the covered pool deck has been reconfigured, and fenestration and doors have been added. The heights of the penthouse have been revised from 13 feet and 18 feet, six inches, to 11 feet, six inches for the habitable penthouse-level height; 17 feet, six inches for an elevator override height; and 20 feet for the mechanical-level height. A one-to-one setback has been provided from all exterior walls, complying with the penthouse regulations, as shown in the record. (Ex. 2C, pp. 8-9.) The Order approved flexibility to allow for multiple roof structure heights. The instant minor modification would retain such roof structure relief by allowing for a differing height for the elevator override shown in the record. (Ex. 2C, pp. 8-9.)

- The amount of the South Parcel Building's affordable housing has been increased as the result of the habitable space in the penthouse, in compliance with Inclusionary Zoning requirements. The modification of the penthouse, having a habitable area of up to approximately 15,280 square feet, requires a maximum of up to approximately 1,222 square feet of affordable housing (eight percent) at 50% of the Washington, D.C. Area Median Income ("AMI") pursuant to § 2603.2 of the Zoning Regulations. Such amount of Inclusionary Zoning units would be in addition to the Order's initial approval of the Inclusionary Zoning set aside. The additional Inclusionary Zoning units will be distributed throughout the South Parcel Building.
- Loading and parking garage – The design of the parking garage and the loading ramps and drive aisles have been modified. The express ramp originally intended for residential users of the garage has been eliminated and a shared ramp for residential and retail has been provided. Additionally, the width of the drive aisle has been reduced from 24 feet to 22 feet. Similarly, the layout of the garage has been reconfigured as areas such as the bicycle parking area have been relocated and revised on the B1 level. The loading facilities have been rotated from 90 degrees to 30 degrees allow for easier ingress and egress and more favorable vehicular turning radii.
- Timing of Neal Place extension construction – The timing of the construction of the Neal Place "extension" between 3rd and 4th Streets, N.E., has been modified to permit the construction prior to the issuance of the Certificate of Occupancy for the South Parcel Building. Condition B(4) of the Order contained a complex condition that described triggers for Neal Place's construction. Such condition has been deleted and replaced with a simpler condition providing a faster delivery of the "extension".

(Ex. 2-2C.)

4. The Applicants noted that otherwise, the proposed project remains the same as that approved by the Order. No other substantive changes to the benefits and amenities package was incorporated into this modification application. The Order approved a range of 415-510 dwelling units, and the modification provides approximately 430 units. The Order approved a range of 400-550 parking spaces and the modification provides approximately 400-430 spaces. (Ex. 2-2C.)
5. The Applicant served the application on Advisory Neighborhood Commission ("ANC") 5D.
6. At the Commission's May 9, 2016 public meeting, the Commission approved the Applicants' minor modification request on its consent calendar, specifically citing the project's "greater affordable housing requirement" as a beneficial feature. At the public meeting, the Commission voted to approve the application.

AGENCY REPORTS

7. The Office of Planning (“OP”) submitted its report on April 29, 2016. OP recommended approval of the proposed modifications of the approved PUD. OP noted that, “The proposed modifications are generally in character with the original approval, and would overall represent an improvement to the project, particularly with respect to the conditions relating to Neal Place. With the exception of minor court adjustments along the alley, none of the requested modifications would result in new or expanded nonconformities to the Zoning Regulations.” (Ex. 5.)
8. No other agency reports were received nor required in the record.

ADVISORY NEIGHBORHOOD COMMISSION

9. ANC Commissioner Peta-Gay Lewis of District 5D01 submitted a letter into the record on May 6, 2016. This letter noted that the ANC supported the proposed changes, stating “Overall, we support the modifications to the project approved under Z.C. Order No. 14-07 and believe that the proposed revisions constitute a minor modification that can be approved without delay.” (Ex. 6.)

PARTIES AND/OR PERSONS IN SUPPORT OR OPPOSITION

10. There were no other persons or parties in opposition to the PUD modification.

CONCLUSIONS OF LAW

Upon consideration of the record of this application, the Commission concludes that the Applicants’ modifications to the approved plans are consistent with the intent of the previous PUD approval made in the Order. The Commission agrees with the conclusions of OP that the proposed modifications are in many respects an improvement over the original project. The Commission acknowledges the increase in the amount of affordable housing provided by the project and the expediting of the construction of the Neal Place “extension” and finds that the project has been improved as the result of these modifications. The Commission concludes that the proposed modifications are in the best interest of the District of Columbia and are consistent with the intent, purpose, and integrity of the Zoning Regulations and the Zoning Act. The Commission also concludes that the approval of the modification application is not inconsistent with the Comprehensive Plan.

Subsection 2409.9 of the Zoning Regulations authorizes the Commission to approve proposed modifications to an approved PUD that are beyond the limited scope of authority granted to the Zoning Administrator. Furthermore, § 3030 of the Zoning Regulations provides for an expedited “Consent Calendar” procedure, allowing the Commission to make minor modifications and technical corrections to an approved PUD Order without need for a public hearing. Pursuant to § 3030.2, “minor modifications” are those modifications of little or no consequence. The Commission concludes the requested modification can be approved without a hearing because of the minor consequences of the proposed changes. The Applicants have redesigned the interior of

the South Parcel Building, resulting in minor exterior modifications, and otherwise implemented the recently adopted penthouse regulations and refined the proposal. The modifications described above do not affect the building height, density, or design concept that was approved by the Commission. Nor does it affect the benefits and amenities offered by the project.

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 the issues and concerns raised in the written report of the affected ANC. As noted above, ANC 5D01 submitted a letter in support of this application and the Commission concurs with its opinion. No other ANC correspondence was received nor required.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP recommended approval of this application and the Commission concurs in its recommendation.

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 the application for a minor modification of the approved consolidated PUD. The approval of this modification incorporates the conditions stated in Z.C. Order No. 14-07 and modifies the conditions as stated below:

Conditions A(1), A(2), and B(3) of the Order are revised to read as follows (new text shown in bold and underlined; deletions shown in strikethrough):

A. PROJECT DEVELOPMENT

1. The South Parcel shall be developed in accordance with the architectural drawings submitted into the record on March 6, 2015 as Exhibits 31A1-31A2 **in Z.C. Case No. 14-07**, as modified by the drawings submitted on March 26, 2015 as Exhibits 40A1-40A4 **in Z.C. Case No. 14-07** and the drawings submitted on April 9, 2015 as Exhibits 46D and 46E **in Z.C. Case No. 14-07, as amended by the plans and materials submitted as Exhibit 2C of Z.C. Case No. 14-07A**, and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").
2. The South Parcel shall include a mixed-use building containing **approximately** 384,351 square feet of gross floor area (5.68 FAR) consisting of **approximately** 29,042 square feet of retail use, **approximately** 355,309 of residential use with approximately 465 **430** residential units, and a parking garage containing approximately 400-~~550~~ **430** parking spaces for both commercial parking and accessory parking for the Project, as shown on the Plans.

B. PUBLIC BENEFITS

3. For so long as the project exists, and as required by the Inclusionary Zoning (“IZ”) Regulations (Chapter 26 of Title 11), the Applicant shall set aside a minimum of: (a) eight percent of the residential gross floor area of the South Parcel Building **not located in the structure’s penthouse**, i.e. 28,425 square feet (“South Parcel’s **Main Building Required Set Aside**”) for Inclusionary Units; ~~and~~ (b) the North Parcel 50% AMI Component (defined below) as Inclusionary Units in the South Parcel Building; **and (c) the South Parcel Building Penthouse Required Set Aside (defined below) in the South Parcel Building.**
- a. The South Parcel’s **Main Building Required Set-Aside** shall be broken down as follows:
- i. 20% of the South Parcel **Main Building Required Inclusionary Set-Aside**, i.e. 5,685 square feet shall be set aside for households earning up to 50% AMI; and
- ii. 80% of the South Parcel **Main Building Required Inclusionary Set-Aside**, i.e. 22,740 square feet shall be set aside for households earning up to 80% AMI;
- b. In addition to the South Parcel’s **Main Building Required IZ Set-Aside**, and for so long as the project exists, the Applicant shall set aside an additional 2,260 square feet of residential gross floor area in the South Parcel Building for units reserved for households earning up to 50% AMI (the “North Parcel 50% AMI Component”). This amount represents 20% of the 11,300 square feet of gross floor area that the North Parcel is required to set aside as Inclusionary Units pursuant to 11 DCMR § 2603 based on the proposed residential gross floor area of the North Parcel Building (141,249 square feet x eight percent). Because these units are in satisfaction of a portion of the North Parcel Building’s IZ requirements, the units, although located in the South Parcel Building, shall be deemed “inclusionary units” required under Chapter 26 of title 11, and therefore subject to all statues and regulations regulating Inclusionary Units; and
- c. **In addition to the South Parcel Main Building Required Set-Aside and the North Parcel 50% AMI Component, the Applicant shall demonstrate that it has set aside a minimum of eight percent of the residential gross floor of the penthouse habitable space located on the South Parcel Building (up to approximately 1,222 square feet), as Inclusionary Units reserved for households earning up to 50% AMI (“South Parcel Penthouse Required Set Aside”). These IZ units may be distributed throughout the South Parcel Building.**

Delete the entirety of Condition B(4) and replace it with the following:

4. Prior to the issuance of the certificate of occupancy (“C of O”) for the South Parcel Building, the Applicant shall complete construction of the final Neal Place extension as shown on the Plans and open the roadway to vehicular traffic;

On May 9, 2016, upon motion by Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** this application 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 approve).

In accordance with the provisions of 11-Z DCMR § 604.8, this Order shall become final and effective upon publication in the *D. C. Register* on May 5, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-10
Z.C. Case No. 16-10
EAJ 400 Florida Avenue, LLC
(Consolidated PUD and Related Map Amendment @ Square 3588)
January 30, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on October 27, 2016, to consider application for a consolidated planned unit development (“PUD”) and a related zoning map amendment filed by EAJ 400 Florida Avenue, LLC (“Applicant”). The Commission considered the application pursuant to Chapters 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”).¹ For the reasons stated below, the Commission **HEREBY APPROVES** the application.

FINDINGS OF FACT

The Application, Parties, Hearings, and Post-Hearing Filings

1. On May 10, 2016, the Applicant filed an application with the Commission for consolidated review and approval of a PUD and a related zoning map amendment from the C-M-1 Zone District to the C-3-C Zone District for property located at 400 Florida Avenue, N.E. (Lots 4, 25, and 803 in Square 3588) (“PUD Site”).
2. The PUD Site has a land area of approximately 20,455 square feet and is rectangular in shape, bounded by a 25-foot-wide public alley to the north, 5th Street, N.E. to the east, Florida Avenue, N.E. to the south, and 4th Street, N.E. to the west. The PUD Site is presently improved with two two-story structures and is otherwise unimproved.
3. The PUD Site is surrounded by a variety of uses, including warehouses and commercial uses to the northwest, residential and commercial uses to north and south, Gallaudet University to the east, and major large-scale mixed-use developments to the west in NoMa. The PUD Site is located one block south of Union Market and approximately two blocks to the northeast of the Uline Arena.
4. The Applicant proposes to raze the existing buildings on the PUD Site and construct a new mixed-use building composed of residential, hotel, and ground-floor retail uses (“Project”). The Project will have approximately 164,288 square feet of gross floor area (a density of 8.0 floor area ratio (“FAR”)) and a maximum building height of 120 feet, not including penthouses. Approximately 94,632 square feet of gross floor area will be devoted to residential use (110 units, plus or minus 10%); approximately 66,924 square

¹ Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016, and replaced with a Chapter 3 of Subtitle 11-X. However, because this application was set down for hearing prior to that date, the Commission’s approval was based upon the standards set forth in Chapter 24. Since the hearing was scheduled and held on October 27, 2016, the pre-hearing and hearing procedures of Title 11-Z, Chapter 4 applied.

feet of gross floor area will be devoted to hotel use (155 rooms, plus or minus 10%); and approximately 2,732 square feet of gross floor area will be devoted to ground-floor retail use. The Project will provide three off-street parking spaces (two car-share spaces and one electric vehicle charging space) and convenient off-street loading facilities, all accessed from the alley.

5. Pursuant to 11 DCMR § 2403.2, the Project is required to devote eight percent of the residential gross floor area to inclusionary zoning (“IZ”) units, set aside for households earning up to 80% of the area median income (“AMI”). The Applicant proposes to exceed that requirement by dedicating 12% of the residential gross floor area (approximately 11,356 square feet) as IZ units, with six percent set aside for households earning up to 50% of the AMI (approximately 5,678 square feet) and six percent set aside for households earning up to 80% of the AMI (approximately 5,678 square feet).
6. By report dated June 17, 2016 (Exhibit [“Ex.”] 14), the District of Columbia Office of Planning (“OP”) recommended that the application be set down for a public hearing. At its public meeting on June 27, 2016, the Commission voted to schedule a public hearing on the application.
7. The Applicant submitted a prehearing statement on July 8, 2016 and a public hearing was timely scheduled for the matter. (Ex. 17-17H.) On July 22, 2016, the notice of public hearing was mailed to all owners of property located within 200 feet of the PUD Site; Advisory Neighborhood Commission (“ANC”) 5D, the ANC in which the PUD Site is located; Commissioner Peta-Gay Lewis, the Single Member District representative for the PUD Site (5D01); ANC 6C, the ANC located across Florida Avenue from the PUD Site; and to Councilmembers Kenyan McDuffie and Charles Allen, of Wards 5 and 6, respectively. A description of the proposed development was included in the notice of the public hearing in this matter, which was published in the *D.C. Register* on July 29, 2016.
8. On October 7, 2016, the Applicant submitted a supplemental prehearing statement in response to comments raised by the Commission and OP at the setdown meeting. (Ex. 27-27D.) The supplemental submission included revised architectural plans and elevations, information on the proposed hotel brand/operator, an updated list of proposed public benefits and amenities, and a comprehensive transportation review (“CTR”) report prepared by Gorove/Slade Associates and submitted to the District Department of Transportation (“DDOT”) on September 12, 2016.
9. On October 17, 2016, OP and DDOT each submitted a report on the application. The OP report stated its general support for the Project, particularly since the “design ha[d] greatly improved since the initial submission.” (Ex. 29.) OP also asserted that “[t]he proposed height and density would be consistent with the maximum guidelines contemplated by the Comprehensive Plan and the Florida Avenue Market Study.” (Ex. 29, p. 1.) However, OP noted a number of outstanding items that needed resolution before it was willing to recommend approval of the Project.

10. On October 17, 2016, DDOT submitted a report indicating that it had no objection to the application with the following conditions: (i) implement the proposed TDM plan outlined in the Applicant's CTR; (ii) revise the site plan to include one additional 30-foot loading berth; (iii) provide interior connections from the long-term bicycle parking rooms to the hotel and residential lobbies; (iv) strengthen the loading management plan to include a contingency for trucks larger than 30 feet in length; (v) replace the proposed lay bys with a valet zone on 4th Street; and (vi) reconstruct the curb ramps and stripe highly visible crosswalks on Morse Street, N.E. at the intersections with 4th and 5th Streets, N.E., to provide pedestrian connections to the off-site parking, if not already constructed by others. (Ex. 30, p. 3.) The DDOT report also requested that the Applicant commit to providing a 240-volt charging station in the proposed EV-charging parking space. (Ex. 30, p. 7.)
11. On October 24, 2016, the Applicant submitted a motion to accept the late filing of the CTR, which was submitted to the record less than 30 days prior to the public hearing and thus inconsistent with the requirements of Subtitle Z §§ 401.7 and 401.8 of the 2016 Zoning Regulations. (Ex. 33.) On October 25, 2016, the Applicant submitted additional materials to the record, which responded to the issues raised in the OP and DDOT reports. (Ex. 34-36.)
12. On September 13, 2016, at a duly noticed, regularly scheduled monthly meeting of ANC 5D, with a quorum of commissioners and the public present, ANC 5D voted 6:0 to support the Project. (Ex. 26.) The ANC requested that the Applicant continue to work with Single Member District Commissioner Lewis (ANC 5D01) on the following issues prior to the public hearing: (i) confirming the public benefits and amenities; (ii) updating the building's massing, design, and materials, and (iii) finalizing the off-site parking provided for the Project.
13. On October 26, 2016, Commissioner Lewis submitted a letter that addressed each of the three outstanding issues and concluded that "as a result of the Applicant's continued work and coordination with the community, I am supportive of this project moving forward and urge the Commission to approve the application." (Ex. 37.)
14. On October 14, 2016, ANC 6C submitted a report stating that at a duly noticed, regularly scheduled monthly meeting of ANC 6C, with a quorum of commissioners and the public present, ANC 6C voted 4:0 to oppose the project because it "suffers from a large number of defects. These include:
 - a. Inferior, unattractive architecture, especially for the western half of the project;
 - b. A minimum amount of ground-floor retail offered on this 20,000 square feet ("sf") site on a major commercial corridor;

- c. The needless request to provide no onsite parking, when the floor area is more than adequate to allow at least one underground level with easy access from the 25-foot alley to the north;
 - d. Poor land use and transportation planning aspects, as described in (c) above; and
 - e. Insufficient truck loading facilities (one 30-foot dock that is not positioned to adequately serve the hotel use on the west side of the site).
(Ex. 28.)
15. ANC 6C's report also noted that the Project is located in ANC 5D and is adjacent to the boundaries of ANC 6C. (Ex. 28.)
16. The parties to the case were the Applicant, ANC 5D, and ANC 6C.
17. The Commission convened a public hearing on October 27, 2016, which was concluded that same evening. At the hearing, the Applicant presented four witnesses in support of the applications: Sheldon Stein on behalf of the Applicant; Cyril Aouizerate on behalf of the hotel owner/operator; Marius Radulescu of SK+I Architects, architect for the Project; and Erwin Andres of Gorove/Slade Associates, transportation consultant for the Project. Based upon their professional experience and qualifications, the Commission qualified Mr. Radulescu as an expert in architecture and Mr. Andres as an expert in transportation planning and engineering.
18. At the public hearing, the Applicant submitted a copy of its PowerPoint presentation, which included photographs of the materials that were presented at the public hearing. (Ex. 38.) As a preliminary matter, the Commission granted the Applicant's request to accept the CTR less than 30 days prior to the public hearing.
19. Joel Lawson and Matt Jesick testified on behalf of OP at the public hearing. Aaron Zimmerman testified on behalf of DDOT at the public hearing.
20. Commissioner Goodman, Single Member District Commissioner for ANC 6D06, testified at the public hearing regarding ANC 6C's continued concerns with the Project. (Ex. 39.)
21. The record was closed at the conclusion of the hearing except to receive additional submissions from the Applicant and responses thereto by OP, DDOT, ANC 5D, and ANC 6C.
22. On November 18, 2016, the Applicant filed a post-hearing submission. (Ex. 42-42E.) The post-hearing submission included the following materials and information: (i) a memorandum committing to provide 50 off-site parking spaces for the life of the Project; (ii) a conceptual site plan showing the infeasibility of providing an on-site parking garage

and a memorandum describing the extremely high cost of constructing an on-site parking garage; (iii) condition language committing to restrict residents from obtaining Residential Parking Permits (“RPPs”); (iv) a request for flexibility to provide a bar or restaurant in the hotel’s penthouse; (v) revised architectural plans and elevations responding to specific requests raised by the Commission at the public hearing and incorporating design changes to the building; (vi) responses to outstanding items from OP, including details on the business incubator space and the Applicant’s commitment to replace the previously proposed art gallery with a proffer to rebuild the sidewalks and curbs and install trees on the east side of 4th Street and the west side of 5th Street, N.E., from the alley to Morse Street, N.E.; and (vii) responses to outstanding items from ANC 6C, including parking, ground floor activation, bicycle parking, benefits and amenities, and building design.

23. On November 28, 2016, OP submitted a supplemental report. (Ex. 43.) The report included a table that identified the requests for information sought by the Commission, the Applicant’s response, and OP’s analysis. The report indicated that although the table “raises a few points that require some additional clarification prior to final action, OP can now recommend approval of the application. The applicant is also expected to provide a final outline of benefits and amenities, for the Commission to assess whether they are commensurate with the level of flexibility gained through the PUD.”
24. At the public meeting of December 12, 2016, the Commission reviewed the additional materials submitted by the Applicant, and OP, and took proposed action to approve the application while noting that it still had concerns about the parking arrangements, the design of the building’s bay projections, the justification for the requested rooftop setback relief, and the building’s signage, and requested that the Applicant address these concerns. The Commission invited additional input from ANC 6C before final action.
25. The proposed action was referred to the National Capital Planning Commission (“NCPC”) on December 15, 2016, pursuant to § 492 of the Home Rule Act.
26. On January 13, 2017, the Applicant filed its response to the concerns expressed by Commission at proposed action. (Ex. 47-47B.) The submission included updated architectural drawings that eliminated the need for penthouse setback relief, revised the bay projections so that they appear as separate structures, and provided details on the height of the letters for the hotel’s vertical signage.

The letter also provided an update on the Applicant’s outreach to ANC 6C by attaching a letter dated January 4, 2017 from Tony Goodman, the Single Member District representative for ANC 6C06 at the time the application was heard and whose area is located adjacent to the PUD Site. In his letter, Mr. Goodman stated that although he is “pleased with the improvements in retail, street presence, and amenities provided by the development team (though the overall amenities package is still extremely low compared with other similar nearby PUD[s].)” Mr. Goodman also expressed his disappointment

with the bulk of the building, which he considered to be “too high and rectangular.” (Ex. 47-47B.)

27. The Applicant noted that it increased the public benefits package following the public hearing by committing to rebuild the sidewalks and curbs and install trees on the east side of 4th Street and the west side of 5th Street, N.E., from the alley to Morse Street, N.E. Also, the Applicant asserted that the bulk of the building is consistent with: (i) the Comprehensive Plan’s designations for the PUD Site as mixed-use High-Density Commercial, Medium-Density Residential, and Production, Distribution and Repair; and (ii) the Florida Avenue Market Study, which is the small area plan for land encompassing the PUD Site, citing the OP Report (Ex. 14, pp. 1, 12.)
28. The Executive Director of NCPC, by delegated action dated December 29, 2016 found that the PUD and related map amendment not be inconsistent with the Comprehensive Plan for the National Capital or other federal interests. (Ex. 48.)
29. At the public meeting of January 30, 2017, the Commission considered the issues and concerns expressed in ANC 6C’s October 14th report. The report and the Commission’s responses thereto are discussed in detail below. The Commission also discussed the Applicant’s proposed signage plan. In response to the Commission’s comments, the Applicant agreed to amend its signage plan to remove one of the proposed signage locations. The Commission then took final action to approve the Project, with the condition that the Applicant would submit the revised signage plan as stated at the meeting.
30. On February 1, 2017, the Applicant submitted its revised signage plan. (Ex. 50.)

The PUD Site and Surrounding Area

31. The PUD Site is located at 400 Florida Avenue, N.E. (Square 3588, Lots 4, 25, and 803) and has a land area of approximately 20,455 square feet. The PUD Site is rectangular in shape and is bounded by a 25-foot-wide public alley to the north, 5th Street, N.E. to the east, Florida Avenue, N.E. to the south, and 4th Street, N.E. to the west. The PUD Site is presently improved with two two-story structures and is otherwise unimproved.
32. The PUD Site is surrounded by a variety of uses, including warehouses and commercial uses to the northwest, residential and commercial uses to north and south, Gallaudet University to the east, and major large-scale mixed-use developments to the west in NoMa. The PUD Site is located one block south of Union Market and approximately two blocks to the northeast of the Uline Arena.

Existing and Proposed Zoning

33. The PUD Site is presently zoned C-M-1. The Applicant proposes to rezone the PUD Site to the C-3-C Zone District. The requested zoning map amendment is consistent with the Comprehensive Plan's Future Land Use Map designation of the PUD Site as mixed-use: High-Density Commercial, Medium-Density Residential, and Production, Distribution and Repair. The requested map amendment is also consistent with the Comprehensive Plan's Generalized Policy Map designation of the PUD Site as a Multi-Neighborhood Center, and with the Florida Avenue Market Study ("FAMS") recommendations for medium-high density development for the PUD Site and the immediate area. (FAMS, p. 57.)
34. The C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) The Zoning Regulations note that "heavy truck traffic and loading and unloading operations are expected to be characteristic of C-M Districts." (11 DCMR § 800.2.) The C-M-1 Zone District prohibits residential development except as otherwise specifically provided. (11 DCMR § 800.4.) As a matter of right, property in the C-M-1 Zone District can be developed with a maximum density of 3.0 FAR. (11 DCMR § 841.1.) The maximum permitted building height in the C-M-1 Zone District is 40 feet and three stories. (11 DCMR § 840.1.)
35. The Applicant proposes to rezone the PUD Site to the C-3-C Zone District in connection with this application. The C-3-C Zone District permits medium-high density development, including office, retail, housing, and mixed-use development. (11 DCMR § 740.8.) As a matter of right, the C-3-C Zone District permits a maximum building height of 90 feet with no limit on the number of stories and a maximum density of 6.5 FAR for any permitted use, but a density of 7.8 FAR for projects subject to the IZ regulations. (11 DCMR §§ 770.71, 771.2, and 2604.1.) The maximum percentage of lot occupancy in the C-3-C Zone District for all uses is 100%. (11 DCMR § 772.1.) Rear yards in the C-3-C Zone District must have a minimum depth of two and one-half inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet. (11 DCMR § 774.1.) Buildings that front on three streets such as the PUD Site may measure the rear yard to the centerline of an abutting street. (11 DCMR § 774.11.) A side yard is generally not required in the C-3-C Zone District; however, when a side yard is provided, it must have a minimum width of two inches per foot of height of building, but not less than six feet. (11 DCMR § 775.5.)
36. The maximum permitted penthouse height in the C-3-C Zone District is 20 feet and one story plus a mezzanine, with a second story permitted for penthouse mechanical space. (11 DCMR § 770.6.) Enclosing walls of the penthouse shall be of equal, uniform height as measured from roof level, except that: (i) enclosing walls of penthouse habitable space

may be of a single different height than walls enclosing penthouse mechanical space; (ii) for a penthouse containing no habitable space, enclosing walls of penthouse mechanical space shall be of a single uniform height except walls enclosing an elevator override may be of a separate uniform height; and (iii) required screening walls around uncovered mechanical equipment may be of a single, different uniform height. (11 DCMR § 411.9.) A penthouse must be set back a distance equal to its height from: (i) front building walls; (ii) rear building walls; (iii) side building walls if it is on a building that is located adjacent to a property that has a lower permitted matter-of-right building height; and (iv) walls that border any court other than closed courts. (11 DCMR § 411.18.) A penthouse may house mechanical equipment or any use permitted within the zone, except that a nightclub, bar, cocktail lounge, or restaurant use shall only be permitted as a special exception if approved by the Board of Zoning Adjustment under 11 DCMR § 3104.

37. Consistent with the C-3-C development parameters, the Applicant will develop the PUD Site with a mix of residential, hotel, and retail uses. A tabulation of the PUD's development data is included on Sheet A006 of the Architectural Plans and Elevations dated January 11, 2017, and included in the record at Ex. 47A, with Sheet A221 modified as shown on the revised plan sheet dated January 31, 2017 and submitted as Ex. 50 (together, the "Plans").

Description of the PUD Project

38. As shown on the Plans, the Applicant proposes to raze the existing buildings on the PUD Site to construct the Project. The Project will have approximately 164,288 square feet of gross floor area (8.0 FAR) and a maximum building height of 120 feet, not including penthouses. Approximately 94,632 square feet of gross floor area will be devoted to residential use (110 units, plus or minus 10%); approximately 66,924 square feet of gross floor area will be devoted to hotel use (155 rooms, plus or minus 10%); and approximately 2,732 square feet of gross floor area will be devoted to ground floor retail uses. The Project will provide three on-site parking spaces (two car-share spaces and one electric vehicle charging space) and convenient off-street loading facilities, all accessed from the public alley at the rear of the PUD Site.
39. Pursuant to 11 DCMR § 2403.2, the Project is required to devote eight percent the residential gross floor area to IZ units, set aside for households earning up to 80% of the AMI. The Applicant proposes to exceed that requirement by dedicating 12% of the residential gross floor area (approximately 11,476 square feet) as IZ units, with six percent set aside for households earning up to 50% of the AMI (approximately 5,678 square feet) and six percent set aside for households earning up to 80% of the AMI (approximately 5,678 square feet).
40. The Project is sensitive to its varied context and responds in size, form, and in its use of materials. The Project consists of two distinctive architectural expressions that

correspond to its two different programs: residential use on the east side and hotel use on the west side. Both expressions relate to the Union Market vernacular of industrial warehouse style and address the street with welcoming, pedestrian-friendly storefronts.

41. The residential portion of the building presents a modern style metal façade that plays on the former warehouse and industrial backdrop reinterpreted with modernist elements. The residential portion is defined by the intersection of two masses rising from Florida Avenue and 5th Street. The building facades have a post-industrial/loft expression with large windows and metal and composite panels. The intersection of the two façades at the building's southeast corner is emphasized by bay projections that mirror the expressions from the adjoining street, such that each façade expresses itself as a bay projection on the adjacent side.
42. The hotel portion of the building has a more rigorous approach that follows the Union Market vernacular more closely, with dark, unrefined brick walls and tighter windows patterned by repetitive small panes of glass. This rigor forms the backdrop for the hotel's signature piece: a two-story high loggia facing Florida Avenue that is enlivened by landscaping and an active terrace program. This space is designed as both a window into the Project and a venue for the public to experience the changing neighborhood. Programmatically, the loggia offers a generous outdoor space at the front of the hotel that is sheltered from the traffic on Florida Avenue.
43. The street presence for both the residential and hotel programs is enhanced by a metal and glass storefront on Florida Avenue, 4th Street, and 5th Street. Residential and hotel amenities will be visible to pedestrian traffic, and individual retail space will line the Florida Avenue and 5th Street frontages, thus creating a vibrant streetscape and walkable pedestrian environment.
44. The entrances to both the residential and hotel uses are recessed from the surrounding storefronts to create an inviting space that is offset from the surrounding elevation. The residential entrance is located at the corner of Florida Avenue and 5th Street, which location will anchor Florida Avenue and provide a buzz of activity to improve pedestrian safety and comfort 24 hours a day. The entrance to an oversized bicycle storage room for the residential portion of the building is located on the alley near the corner of 5th Street, and a separate bicycle storage room for hotel use is located adjacent to the hotel loading facilities on the west side of the PUD Site. Also along the alley is a large landscaped courtyard.
45. The hotel portion of the Project will be occupied by MOB Hotels, which is a Paris-based hotel brand founded by Cyril Aouizerate. MOB Hotels is an affordable, social, and intellectually stimulating hotel brand that attracts an artistic and cultural network of individuals oriented in and around a dynamic casual bar and restaurant in a fun, eclectic atmosphere. The brand serves to connect the local community, neighbors, and international travelers, including innovative startups. The hotel's ground floor will feature

a variety of street-activating uses, including a 200-square-foot “business incubator” space that will be dedicated to start-up businesses. A restaurant will be located on the second floor (inside the building and outside on the loggia), on the rear patio, and on the roof of the hotel portion of the building. The restaurant will be open to the public and will stimulate additional community interaction.

46. The Project will incorporate a number of sustainable and environmentally friendly elements, such as new landscaping and street tree planting, green roofs, solar panels, energy efficient LED lighting, irrigation of landscaping from stormwater collection, daylight control with automatic shades and lighting controls, locally sourced products, an electric car charging station, car-sharing spaces, and significant bicycle facilities. Based on these features, the residential portion of the building will achieve LEED-Gold certification and the hotel portion of the building will achieve LEED-Silver certification. Moreover, the PUD Site is also located in a walkable, transit-oriented, and infill location, such that many residents, guests, retail patrons, and employees of the Project will not need to rely on a private vehicle to access the PUD Site.

Zoning Flexibility

47. The Applicant requested the areas of flexibility from the Zoning Regulations discussed below:
48. ***Flexibility from the Off-street Parking Requirements.*** Pursuant to 11 DCMR § 2101.1, the Project is required to provide a total of 67 on-site parking spaces. The Applicant proposes to provide three off-street parking spaces at the rear of the PUD Site, with one space dedicated to an electric charging station and two spaces dedicated to a car-share company. Based on the Applicant’s submissions, the Commission finds that an on-site parking garage would be highly inefficient on the narrow site, and would result in a maximum of 22 parking spaces per level. (Ex. 42.) The cost of constructing a single parking level would result in approximately \$145,485.00 per space, which is well beyond the typical cost budgeted for a single parking space, which is approximately \$48,888.00. The unusually high cost is a result of a variety of factors including the following:
- a. The PUD Site’s long and narrow shape is inefficient for sheeting and shoring, resulting in approximately \$23.46 per square foot, compared to approximately \$12.92 per square foot for a more regularly shaped site. This represents an 82% premium;
 - b. The size of the garage also carries a premium for the structure. The typical structure is approximately \$40 per square foot, compared to the PUD Site, which carries approximately \$62 per square foot; and

- c. The inefficient garage layout requires the ramp to run along the long side of the PUD Site, thus only allowing for one parking space per 931 square feet of garage area, instead of the average parking space per 444 square feet of garage area.

The Commission notes that other factors affecting the cost of adding a parking garage include the PUD Site's history as a former gas station, the need for dewatering, and significant additional fixed costs including elevator stops, a driveway ramp, and drainage systems. Therefore, the Commission credits the evidence in the record and concludes that that it would be practically difficult for the Applicant to provide on-site parking in a below-grade parking garage.

49. Moreover, the Commission finds that the parking flexibility is appropriate in this case because: (i) the residential portion of the Project is designed and will be marketed to a young demographic, which has little interest in owning a private vehicle in such an urban, walkable, and transit-rich area; (ii) the Applicant will restrict residents from obtaining RPPs through penalty of lease termination; and (iii) the hotel portion of the Project will attract guests who are unlikely to utilize an automobile during their stay. Additionally, the PUD Site's close proximity to the NoMa-Gallaudet Metrorail station, multiple Metrobus routes, and nearby employment opportunities makes walking to work more practical than commuting by car. An abundance of retail and grocery options, including Union Market, are also located in the surrounding blocks, such that vehicles will not be needed for daily errands.
50. In addition, the Applicant entered into an agreement with EDENS, the developer and owner of the approved PUD at Square 3587, Lots 827, 828, 7012, and 7013 (the "EDENS Site") for use of 50 parking spaces within in the parking garage at the EDENS Site.² (Ex. 42A.) The EDENS Site was "approved with the understanding that the excess parking would be used for other nearby projects." (See OP Report, p. 11.) The Applicant will provide 50 spaces at the EDENS Site for the life of the Project.
51. Based on the difficulty of constructing on-site parking, the anticipated low demand for on-site parking, the Applicant's commitment to restrict residents from obtaining RPP permits, and the Applicant's commitment to reserve 50 off-site parking spaces at the EDENS Site for the life of the Project, the Commission finds that flexibility to provide only three on-site parking spaces where 67 spaces are required is appropriate in this case. The lack of on-site parking will not result in adverse impacts, particularly since the PUD Site is located in a walkable, mixed-use neighborhood with convenient access to multiple public transportation options, bicycle lanes, car- and bike-share facilities, and an extensive pedestrian network. Moreover, the Commission finds that the Project's lack of parking is consistent with the Comprehensive Plan's goals of investing in transit-oriented development, improving pedestrian facilities, and transforming key District arterials into multi-modal corridors that incorporate and balance a variety of mode choices, including

² The EDENS Site was reviewed and approved in Z.C. Case No. 14-07.

public transportation, bicycle, pedestrian, and automobile. The Project will provide on-site bicycle parking and a variety of extensive TDM measures. Together, these measures and the ample nearby public transportation options will help further the Comprehensive Plan's goals of connecting District neighborhoods by creating more direct links between the various transit modes and managing the automobile capacity of principal arterials. Therefore, the Commission hereby approves the parking flexibility requested.

52. The Commission also notes that OP indicated at the public hearing that it had no concerns with the parking flexibility, given the ample parking already being developed in other PUDs in the immediately surrounding neighborhood.
53. ***Flexibility from the Loading Requirements.*** The Applicant requested flexibility from the loading requirements of 11 DCMR § 2201.1, which require the following loading facilities: one berth at 30 feet deep and one berth at 55 feet deep; one platform at 100 square feet and one platform at 200 square feet; and two service/delivery spaces at 20 feet deep each. The Applicant proposed to provide two loading berths at 30 feet deep, one platform at 100 square feet, and one platform at 200 square feet. Thus, the Applicant requests flexibility to provide a 30-foot berth instead of the 55-foot berth, and to eliminate the required service/delivery spaces.
54. The Commission notes that the Applicant originally proposed to provide a single, shared loading berth for the Project, plus a single service/delivery space. In response to a request from DDOT, the Applicant added a second berth and removed the service/delivery space. Doing so allows the residential and hotel components of the Project to have separate loading facilities, which will eliminate potential conflicts and allow for a streamlined loading process from the rear alley. The Commission is supportive of the flexibility to provide a 30-foot berth instead of a 55-foot berth for the residential use, since it is unlikely that building residents will need to use a tractor-trailer sized truck to move in and out of the building. In the event that a 55-foot truck is needed, the Applicant will load directly from 4th or 5th Streets. The Commission is also supportive of the flexibility to not provide the two required service/delivery spaces, since there is no need for the additional spaces given the addition of the second loading berth. Therefore, based on the above findings, including the Applicant's acquiescence to agree to DDOT's request to add a second loading berth, the Commission approves the Applicant's request for relief from the loading requirements of 11 DCMR § 2201.1.
55. ***Flexibility from the Penthouse Height Requirements.*** Pursuant to 11 DCMR § 411.9, enclosing walls of a penthouse shall be of an equal height, except that: (a) enclosing walls of penthouse habitable space may be of a single different height than walls enclosing penthouse mechanical space, and (c) required screening walls around uncovered mechanical equipment may be of a single, different uniform height. In addition, pursuant to 11 DCMR § 770.6, penthouses in the C-3-C Zone District may have a maximum height of 20 feet, with one story plus a mezzanine permitted, and a second story permitted for penthouse mechanical space. In this case, the Applicant proposes to provide

four heights for the penthouses on the residential and hotel portions of the building as follows: For the residential portion, the Applicant proposes to provide (i) 20 feet for the mechanical space; (ii) 18 feet for the elevator overrun; (iii) 12 feet for the habitable space; and (iv) 10 feet for the stair enclosure. For the hotel portion, the Applicant proposes to provide (i) 20 feet for the mechanical space and elevator overrun; (ii) 13 feet for the habitable space; (iii) 9 feet, four inches for the separate stair enclosure; and (iv) eight feet, 11 inches for the second elevator overrun.

56. The Commission finds that the multiple penthouse heights are acceptable in this case. The multiple heights are provided in order to meet the required 1:1 setback from the edges of the roof, thus minimizing visibility of the penthouses. Moreover, the Applicant could hypothetically provide a single 20-foot penthouse roof over each penthouse component in order to meet the strict letter of the regulations regarding penthouse height. However, to do so would add unnecessary massing to the roof, would increase visibility from the street, and would result in numerous locations where the penthouses would not be set back 1:1. Therefore, the Commission finds that flexibility from 11 DCMR § 411.9 is appropriate in this case.

Special Exception Use

57. ***Bar/Restaurant in the Penthouse.*** Pursuant to 11 DCMR § 411.1(c), a “nightclub, bar, cocktail lounge, or restaurant use shall only be permitted as a special exception if approved by the Board of Zoning Adjustment.” The Board of Zoning Adjustment (“BZA”) is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) to grant special exceptions where the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Pursuant to 11 DCMR § 2405.7, the Commission may approve uses that are permitted as special exceptions and would otherwise require the approval of the BZA. Although an applicant may request flexibility from the special exception standards, in this case, such flexibility was not requested or needed.
58. The Commission finds that the proposed use complies with the special exception standard, since the proposed bar/restaurant use is consistent with the goals of the penthouse regulations to provide habitable space in penthouses and to provide contributions to the Housing Production Trust Fund (“HPTF”) for the production of affordable housing. In this case, the Applicant would be required to make a total contribution of over \$31,000 to the HPTF, with no less than half of the contribution made prior to the issuance of a building permit for construction of the penthouse habitable space, and the balance of the contribution made prior to the issuance of a certificate of occupancy for any or all of the penthouse habitable space. (*See* 11 DCMR § 1505.16.)
59. Moreover, given that the PUD Site will be located in the C-3-C Zone District, commercial uses are anticipated, and will otherwise be provided in the ground and

second-floor levels of the hotel. Establishing a bar/restaurant in the penthouse will create a unique and enjoyable dining experience for hotel guests, visitors, and members of the public. Further, the bar/restaurant will simply incorporate a “warm-up” kitchen, and will not include installation of any stoves, air vents, or other large cooking equipment. The Applicant will also ensure that the bar/restaurant does not create any objectionable noise or light impacts on surrounding properties. Thus, the Commission finds that the requested use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, and will not tend to adversely affect the use of neighboring property. Therefore, the Commission approves the use.

Development Flexibility

60. The Applicant also requests flexibility in the following additional areas:
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To be able to provide a range in the number of residential units and hotel rooms of plus or minus 10%;
 - c. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the residential portion of the Project is not below the LEED-Gold rating standards and that the total number of LEED points achievable for the hotel portion of the Project is not below the LEED-Silver rating standards;
 - d. 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 without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes in order to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;
 - e. To vary the features, means and methods of achieving (i) the code-required Green Area Ratio (“GAR”) of 0.2, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control; and
 - f. In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project in order to comply with any applicable

District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area.

Project Benefits and Amenities

61. Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a)). The Project will have a positive impact on the visual and aesthetic character of the neighborhood and will therefore further the goals of urban design while enhancing the streetscape. The Project has a superior international design with a unique sensitivity to the Union Market aesthetic. The building includes a large open loggia fronting Florida Avenue, N.E., which will have the effect of introducing greenery and contrast in a highly visible location. Moreover, replacing the two existing buildings and associated vacant lots that currently lack any green or sustainable features with a new mixed-use infill development constitutes a significant urban design benefit. The Project includes new landscape, garden, and open space features. The streetscape will include permeable pavers and tree amenity panels, bio-retention planters and new trees, scored concrete pavers, and ADA-compliant sidewalks, consistent with DDOT standards and with the public space improvements being implemented for surrounding projects along Florida Avenue, N.E. New street furnishings will include benches, trash receptacles, LED lighting, bicycle racks, and a cell phone charging kiosk. Moreover, the ground floor of the building will be programmed with active retail uses, amenity spaces, and an engaged lobby design, and will employ a minimum of 50% transparent material, which together will further enliven the streetscape. Throughout the Project, open spaces are used to create programmed amenity areas, including the landscaped garden, hotel terrace, loggia, green roof, roof terrace, and roof dining/bar. Overall, the excitement of the Project will draw the public in from afar with an unusual and exciting venue and public events.
62. In response to ANC 6C's request, and in order to ensure active retail space at the ground level, the Applicant will also implement the following design techniques:
 - a. Devote not less than 50% of the surface area of the streetwall(s) at the ground level to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to the building;
 - b. Design the building so as not to preclude an entrance every 40 feet, on average, for the linear frontage of the building on Florida Avenue, including entrances to ground floor uses and the main lobby; and
 - c. At the ground-floor level of the building, provide a uniform minimum clear floor-to-ceiling height of at least 10 feet.

63. Housing and Affordable Housing (11 DCMR § 2403.9(f)). The Project will create new housing and affordable housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The PUD Site is presently zoned C-M-1; such that new residential uses are not permitted to be developed. Thus, the Applicant's proposal to develop the Project as a PUD under the C-3-C zone requirements, and to construct approximately 94,632 square feet of gross floor area dedicated to residential uses, including affordable units, is significant.
64. Pursuant to 11 DCMR § 2403.2, the Project is required to devote a minimum of eight percent of the residential gross floor area to IZ units. However, the Applicant proposes to devote a minimum of 12% of the residential gross floor area to affordable housing, with six percent set aside for households earning up to 50% of the AMI and six percent set aside for households earning up to 80% of the AMI. In contrast, under the existing zoning, there would be no housing or affordable housing at the PUD Site at all. The Applicant's affordable housing proffer includes significantly more square footage and a deeper subsidy than is required by the IZ regulations. The breakdown of affordable housing by gross floor area and level of affordability is set forth below:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	94,632 sf of GFA (100%)	110	NA	NA	NA
Market Rate	83,276 sf of GFA (88%)	96	Market Rate	NA	NA
IZ	5,678 sf of GFA (6%)	7	Up to 50% AMI	Life of the project	Rental
IZ	5,678 sf of GFA (6%)	7	Up to 80% AMI	Life of the project	Rental

65. Environmental Benefits (11 DCMR § 2403.9(h)). The Applicant will ensure environmental sustainability by implementing a variety of sustainable design features, materials, and systems that are consistent with the recommendations of 11 DCMR § 2403.9(h). These include landscaping, street tree planting and maintenance, use of energy efficient and alternative energy sources, implementing methods to reduce stormwater runoff, and establishing green engineering practices. The building will register to be certified as LEED-Gold for the residential portion of the Project and LEED-Silver for the hotel portion of the Project. The LEED features will include a green roof, solar panels, energy efficient LED lighting, irrigation of landscaping from stormwater collection, daylight control with automatic shades and lighting controls, use of locally sourced products, an electric charging station, car-sharing spaces, and bicycle parking facilities for the residential and hotel portions of the building.

66. Employment Benefits (11 DCMR § 403.9(j)). Development of the hotel portion of the Project will generate significant new employment opportunities, and the Applicant is committed to hiring locally. Accordingly, the Applicant will partner with the Goodwill Hospitality Training Program for the recruitment, screening, training, and referral of hotel employees, with a minimum of 51% of hotel employees being District residents.
67. In addition, the Applicant will submit to the Department of Consumer and Regulatory Affairs (“DCRA”) a First Source Employment Agreement executed by the Applicant, consistent with the First Source Employment Agreement Act of 1984.
68. Transportation Benefits (11 DCMR § 2403.9(c)). The Project includes a number of elements designed to promote effective and safe vehicular and pedestrian movement, transportation management measures, and connections to public transit services. For example, for the life of the Project, the Applicant will contract with EDENS to secure 50 parking spaces at the EDENS Site for the life of the Project. The Applicant will also contribute up to \$80,000 to DDOT for the purchase and one year of operation costs for a new Capital Bikeshare station, and will provide secure, long-term bicycle parking facilities on the ground level for the hotel and residential portions of the project. In addition, the Applicant will close existing curb cuts onto the PUD Site and replace them with a single entry point at the rear alley, with all access to the on-site parking and loading facilities located in the alley so as to reduce the impact on pedestrian travel. The Applicant will also improve the sidewalk connections by reconstructing the curb ramps and striping the crosswalks on Morse Street at the intersections of 4th and 5th Streets.
69. The Applicant will implement the following transportation demand management (“TDM”) strategies for the residential portion of the Project to reduce travel demand:
 - a. Dedicate two parking spaces along the alley for car-sharing services and one parking space along the alley as an EV-charging space (240 volt);
 - b. Install a Transportation Information Center display within the residential lobby containing information related to local transportation alternatives;
 - c. Prepare materials for residents that provide carpooling information and refers them to other carpool matching services;
 - d. Designate TDM leaders to work with residents to market transportation alternatives and options;
 - e. Prepare TDM materials to give to new residents in the Resident Welcome Package;

- f. Exceed zoning requirements for the provision of secure indoor and outdoor bicycle parking facilities;
 - g. Install a bicycle repair station within the long-term bicycle storage room;
 - h. Include in the residential leases a provision that the cost of residential parking is unbundled from the cost of lease or purchase of each residential unit. Parking shall be available on a monthly basis at market rate;
 - i. Record a covenant among the Land Records of the District of Columbia prohibiting any tenant of the residential portion of the Project from obtaining an RPP for so long as the PUD Site is used as an apartment building. The Applicant will also: (i) not seek or support any change to designate the PUD Site as becoming eligible for RPP; (ii) include in its residential leases a provision that prohibits tenants from obtaining an RPP for the PUD Site from the Department of Motor Vehicles (“DMV”), under penalty of lease termination and eviction; and (iii) obtain written authorization from each tenant through a required lease provision that allows the DMV to release to the Applicant every six months any and all records of that tenant requesting or receiving an RPP for the PUD Site; and
 - j. Offer either a one-year membership to Capital Bikeshare or a one-year membership to a car-sharing service to each residential unit for the initial lease up of each unit.
70. The Applicant will implement the following TDM strategies for the hotel portion of the Project to reduce travel demand:
- a. Install a Transportation Information Center display within the hotel lobby containing information related to local transportation alternatives;
 - b. Establish a TDM marketing program that provides detailed transportation information to hotel guests regarding parking and transportation options;
 - c. Prepare materials for hotel employees that provide carpooling information and refers them to other carpool matching services;
 - d. Designate TDM leaders to work with hotel employees and guests to market transportation alternatives and options;
 - e. Install shower and changing facilities for bicycle commuters;
 - f. Install a bicycle repair station within the long-term bicycle storage room;

- g. Provide free daily Capital Bikeshare passes to provide to hotel guests, available upon request; and
 - h. Offer either a one-year membership to Capital Bikeshare or a one-year membership to a car-sharing service to all hotel employees during the first year of hotel operation.
71. The Applicant will establish a hotel parking plan that includes valet services and provides information to hotel guests that no on-site parking is available. The Applicant will do the following to implement the hotel parking plan:
- a. Work with DDOT to establish a hotel valet zone in the public space on 4th Street, N.E.;
 - b. Hire a third-party valet service or designate a hotel staff member to manage valet operations, greet incoming hotel guests, and direct vehicles to the valet zone or a nearby local garage;
 - c. Install signage at the valet zone stating that there is no parking at the PUD Site and that valet service is offered upon request. If guests choose to valet their vehicles, the valet will transport the vehicles between the valet zone and the designated parking facility. The valet will provide tickets that will instruct guests on how to retrieve their vehicle. This may include contacting the valet stand directly, contacting the hotel front desk, and/or the ability to request the vehicle via text and/or smartphone app. The number of valets may be adjusted in order to achieve the most efficient and cost effective valet parking system; and
 - d. Establish the following system to inform hotel guests about parking and alternate modes of transportation at every step of the reservation process, through check-in, so that guests know what to expect when booking a reservation:
 - i. Display transportation and parking information on the hotel website, Online Travel Agency websites, other online booking and informational websites with which the hotel partners (including rating review websites), email booking confirmations and reminders, printed brochures, and verbally via reservationists. All information will emphasize and encourage alternate modes of travel and will indicate off-site parking locations; and
 - ii. Ensure that all hotel confirmations contain notice to guests that no parking is available on-site and that the hotel encourages and emphasizes alternative modes. The reservation email will provide the alternative transportation options and the locations of off-site parking facilities, in the event guests decide to drive, and the Applicant will assist guests in planning ahead to use alternative methods of transportation.

72. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403.9(i)). The Applicant will provide the following additional public benefits as part of the Project:
- a. Contribute \$25,000 annually to Edens Realty, Inc. an entity formed by EDENS, to provide security and street cleaning services in the surrounding neighborhood. If an official Business Improvement District (“BID”) is created for the Florida Avenue Market area, then the Applicant will contribute \$25,000 annually to the BID instead;
 - b. Dedicate a minimum of 200 square feet of professional office space on the ground floor of the hotel portion of the building to support start-up companies. The office space will include desks, chairs, printers, free wi-fi, and will be free of charge for one year, after which a new group of start-ups will be selected;
 - c. Rebuild the sidewalks and curbs and install trees on the east side of 4th Street and the west side of 5th Street, N.E., to the immediate north of the PUD Site, from the alley to Morse Street, N.E. These improvements will be designed and constructed to match the sidewalks adjacent to the PUD Site and will be consistent with DDOT standards; and
 - d. Incorporate deaf-space principles into the design of the building’s ground floor and adjacent public spaces by implementing multiple design strategies. These include: (i) establishing wide pedestrian sidewalks free of barriers; (ii) providing good sightlines and space for signers to maintain full view of visual language while comfortably circulating the site; (iii) incorporating additional pedestrian streetlights to enable clear visual communication and a safer space for travel at night; (iv) planting street trees that provide shaded relief and reduced glare and understory plantings with bold color palettes, textures, and fragrance for seasonal interest and heightened sensory; and (v) providing fixed casual seating areas with conversation tables to enable signers to rest carried objects and face each other while communicating.

Comprehensive Plan

73. The Commission finds that the PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map and Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. The Project significantly advances these purposes by promoting the social, physical, and economic development of the District through the provision of a high-quality mixed-use development on the PUD Site without generating any adverse impacts. The Project will create new neighborhood-serving retail opportunities to meet the demand for basic goods and services, and will promote the vitality, diversity, and economic development of the surrounding area.

74. The District of Columbia Comprehensive Plan Future Land Use Map designates the PUD as mixed-use: High-Density Commercial, Medium-Density Residential, and Production, Distribution and Repair (“PDR”).
75. The High-Density Commercial designation is used to define the central employment district of the city and other major office employment centers on the downtown perimeter. It is characterized by office, mixed residential/retail, and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings, including historic buildings, are interspersed. The corresponding zone districts are generally C-2-C, C-3-C, C-4, and C-5, although other districts may apply. (10A DCMR § 225.11.)
76. The Medium-Density Residential designation is used to define neighborhoods or areas where mid-rise (four-seven stories) apartment buildings are the predominant use. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone Districts are generally consistent with the Medium-Density designation, although other zones may apply. (10A DCMR § 225.5.)
77. The PDR category is used to define areas characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services, food services, printers and publishers, tourism support services, and commercial, municipal, and utility activities which may require substantial buffering from noise, air pollution, and light-sensitive uses such as housing. The PDR designation is not associated with any industrial zone and therefore permits a building height of up to 90 feet with 6.0 FAR. (10A DCMR § 225.12.)
78. The Applicant's proposal to rezone the PUD Site to the C-3-C Zone District to construct the major new mixed-use Project is consistent with the Comprehensive Plan's designations. The proposed C-3-C zoning classification is specifically identified to accommodate major business and employment areas and to provide substantial amounts of employment, housing, and mixed uses. (11 DCMR §§ 740.1-2.) The C-3-C Zone District permits medium and high-density development, including retail, housing, and mixed-use development. (11 DCMR §§ 740.8.) The Project incorporates all of these elements into a single, high-density building with a mix of residential and hotel uses and significant new employment opportunities.
79. Moreover, in evaluating a proposed map amendment, the Commission views a subject property within its context and not as an isolated parcel. When taken in context with the surrounding neighborhood, the Applicant's proposal to rezone the PUD Site from the C-M-1 Zone District to the C-3-C Zone District is consistent with the Comprehensive Plan designation of the PUD Site. The proposed C-3-C zoning classification and associated PUD designation will enable the PUD Site to be developed as with a mixed-

use building constructed to a maximum density of 8.0 FAR, which is consistent with the amount of density permitted in high-density commercial zones. For example, the C-3-C Zone District permits 6.0 FAR as a base density and up to 8.0 FAR as a PUD. The Project will be constructed to a maximum height of 120 feet, which is consistent with the medium-high density classifications and the PDR designation, and is appropriate given the location of the PUD Site along a major corridor. Furthermore, the PUD Site is surrounded by other recently approved PUDs, many of which received a rezoning from the C-M-1 Zone District to the C-3-C Zone District. (*See* Z.C. Case Nos. 15-01, 14-19, 14-07, 06-40, and 06-14).

80. The District of Columbia Comprehensive Plan Generalized Policy Map designates the PUD Site as a Multi-Neighborhood Center. Multi-Neighborhood Centers contain many of the same activities as Neighborhood Commercial Centers³ but in greater depth and variety. Multi-Neighborhood Centers' service areas are typically one to three miles. These centers are generally found at major intersections and along key transit routes, and they might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers may also include office space for small businesses, although their primary function remains retail trade. Mixed-use infill development should be encouraged to provide new retail and service uses, and additional housing and job opportunities. (10A DCMR § 223.18.)
81. The Commission finds that the proposed rezoning and PUD designation of the PUD Site is consistent with the policies indicated for Multi-Neighborhood Centers. The existing C-M-1 Zone District is inconsistent with the Policy Map's designation of the PUD Site, since C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) In contrast, the proposed mix of new residential and hotel uses at the PUD Site will help to improve the overall neighborhood fabric and bring new residents and retail uses to the area, in compliance with the goals and objectives of Multi-Neighborhood Centers.
82. The Commission finds that the PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to education and employment, and building green and healthy communities, as discussed in the findings below.
83. ***Managing Growth and Change.*** In order to manage growth and change in the District, the Comprehensive Plan encourages, among other goals, the growth of both residential

³ Neighborhood Commercial Centers meet the day-to-day needs of residents and workers in the adjacent neighborhoods. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and child care. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. (10A DCMR § 223.15.)

and non-residential uses. Non-residential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income. (10A DCMR § 217.4.) The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods.

84. The Project is fully consistent with these goals. Redeveloping the PUD Site as a vibrant new mixed-use development with residential and hotel uses will further the revitalization of the surrounding neighborhood. The proposed hotel will create overnight lodging opportunities for visitors to the District in an area where overnight accommodations are not readily available. The Project will also create significant new jobs for District residents, further increase the city's tax base, and help to reinvigorate the existing neighborhood fabric.
85. ***Creating Successful Neighborhoods.*** One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development – from development of the Comprehensive Plan to implementation of the Plan's elements. The Project furthers this goal since, as part of the PUD process, the Applicant worked closely with ANC 5D and the abutting ANC 6C to ensure that the Project provides a positive impact on the immediate neighborhood and is consistent with the community's goals.
86. ***Increasing Access to Education and Employment.*** Increasing access to jobs and education by District residents is fundamental to improving the lives and economic well-being of District residents. (10A DCMR § 219.1.) Land development policies should be focused to create job opportunities for District residents, and a mix of employment opportunities to meet the needs of residents with varied job skills should be provided. (*Id.* at § 219.6.) Moreover, providing more efficient, convenient, and affordable transportation for residents to access jobs in the District is critical. (*Id.* at § 219.7.) The Project is consistent with these goals since the new hotel use will create significant new jobs in the hospitality industry for District residents. The Applicant will partner with the Goodwill Hospitality Training Program for the recruitment, screening, training, and referral of hotel employees, and will ensure that a minimum of 51% of hotel employees are District residents. Moreover, given the PUD Site's location in close proximity to a variety of public transportation options, the proposed hotel use also provides an employment setting that can be conveniently accessed by affordable public transportation options.
87. ***Building Green and Healthy Communities.*** A major objective for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. In this case, the PUD will include a substantial number of sustainable design features and the building will be designed to achieve LEED-Gold for the residential portion and LEED-Silver for the hotel portion.

88. The Commission also finds that the PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements, as set forth in the Applicant's Statement in Support and in the OP setdown and hearing reports. (Ex. 3, 14, 29.)

Office of Planning Reports

89. On June 17, 2016, OP submitted a report recommending setdown of the application. (Ex. 14.) The OP report stated that the "proposed height and density would not be inconsistent with the Comprehensive Plan and the small area plan known as the Florida Avenue Market Study subject to a determination that the requested flexibility to permit the PUD is balanced by the public benefits" and that the PUD and map amendment are "not inconsistent with the Comprehensive Plan, to allow approximately 70 and 80' of additional building height above the C-M-1 limits, as well as a density increase of 5.0 FAR or 103,011 sf." (Ex. 14, pp. 1, 12.)
90. On October 17, 2016, OP submitted a second report, which stated its general support for the project, particularly since the "design ha[d] greatly improved since the initial submission." OP also asserted that "[t]he proposed height and density would be consistent with the maximum guidelines contemplated by the Comprehensive Plan and the Florida Avenue Market Study." (Ex. 29, p. 1.) However, OP made the following requests regarding several outstanding items that needed resolution before it was willing to recommend approval of the Project: (i) update the plans to more clearly show the meaningful connection between the portions of the building; (ii) remove the "retail" label from the art gallery space and provide more detail about the operations of the gallery; (iii) provide more detail on how the ground floor is used and configured; (iv) clarify how residential loading occurs; (v) clarify whether the alley is intended to be repaved and where lighting fixtures would be located in the alley; (vi) revise the floor plans to be consistent with renderings of the loggia; (vii) ensure that the design fully complies with Construction Code regulations that would limit the width of bays; (viii) provide more detail about the jobs program discussed in the list of amenities, and examine a more robust jobs commitment for District residents; (ix) specify that the parking agreement is for the life of the project and that it would survive a change of ownership, should either building be sold; (x) redesign the penthouse to ensure that the mechanical penthouse space conforms to the 1:1 required setback; (xi) provide more detail about the proffered office space; (xii) clarify if streetscape elements above and beyond DDOT standards are proposed; (xiii) clarify who would have access to the public bike storage area and how it would be managed; (xiv) propose conditions that would clearly spell out the project's minimum sustainability levels; and (xv) clarify who administers the Life Quality Enhancement Fund. The OP report also noted that the proposed cell phone charging station would not be considered a benefit or amenity, and that the Applicant should commit to a First Source Employment or LSDBE Agreement, or else present a rationale for a lack of commitment.

91. On October 25, 2016, the Applicant submitted materials that responded to each of OP's concerns set forth in the hearing report. (Ex. 34-36). The Applicant's response included updated architectural drawings that provided more details on the meaningful building connection; ground floor uses and layout; use of the loading facilities; proposed alley improvements; loggia design; compliance with the Construction Code regarding bay projections; a revised penthouse plan showing compliance with the 1:1 setback requirement in all but one location; and a revised bicycle parking layout that eliminated the public bicycle room and added a separate bicycle room in the hotel portion of the building. (Ex. 36.)
92. The Applicant's response also provided more detailed information on the art gallery space; the Applicant's commitment to partner with the Goodwill Hospitality Training Program to hire District residents; the off-site parking agreement; the business incubator space; the extent of proposed streetscape improvements; the Applicant's commitment to LEED and GAR for the Project; and a description of the Life Quality Enhancement Fund. The Applicant also acknowledged that the cell phone charging station would not be considered a benefit or amenity, and also agreed to enter into a First Source Employment Agreement for the PUD.
93. The Commission finds that the Applicant's post-hearing submission adequately addressed and responded to each of the concerns raised by OP in their hearing report.
94. On November 28, 2016, OP submitted a supplemental report. (Ex. 43.) The report included a table that identified the requests for information sought by the Commission, the Applicant's response, and OP's analysis. The report indicated that although the table "raises a few points that require some additional clarification prior to final action, OP can now recommend approval of the application. The applicant is also expected to provide a final outline of benefits and amenities, for the Commission to assess whether they are commensurate with the level of flexibility gained through the PUD."

DDOT Report

95. On October 17, 2016, DDOT submitted a report indicating that it had no objection to the application with the following conditions: (i) implement the proposed TDM plan outlined in the Applicant's CTR; (ii) revise the site plan to include one additional 30 foot loading berth; (iii) provide interior connections from the long-term bicycle parking rooms to the hotel and residential lobbies; (iv) strengthen the loading management plan to include a contingency for trucks larger than 30 feet in length; (v) replace the proposed lay bys with a valet zone on 4th Street; and (vi) reconstruct the curb ramps and stripe highly visible crosswalks on Morse Street, N.E. at the intersections with 4th and 5th Streets, N.E., to provide pedestrian connections to the off-site parking, if not already constructed by others. (Ex. 30.) The DDOT report also requested that the Applicant commit to providing a 240-volt charging station in the proposed EV-charging parking space. (Ex. 30, p. 7.) The Applicant responded to each of these items in its response to the DDOT report and

agreed to each of DDOT's conditions at the public hearing. (Ex. 34.) Therefore, the Commission finds that the Applicant adequately consented to and addressed each of DDOT's requests.

ANC Reports

96. On September 13, 2016, at a duly noticed, regularly scheduled monthly meeting of ANC 5D, with a quorum of commissioners and the public present, ANC 5D voted 6:0 to support the Project. (Ex. 26.) The ANC requested that the Applicant should continue to work with Single Member District Commissioner Lewis (ANC 5D01) on the following issues prior to the public hearing: (i) confirming the public benefits and amenities; (ii) updating the building's massing, design, and materials, and (iii) finalizing the off-site parking provided for the Project.
97. On October 26, 2016, Commissioner Lewis submitted a letter that addressed each of the three outstanding issues and concluded that "as a result of the Applicant's continued work and coordination with the community, I am supportive of this project moving forward and urge the Commission to approve the application." (Ex. 37.)
98. On October 14, 2016, ANC 6C submitted a report stating that at a duly noticed, regularly scheduled monthly meeting of ANC 6C, with a quorum of commissioners and the public present, ANC 6C voted 4:0 to oppose the project because it "suffers from a large number of defects. These include:
 - a. Inferior, unattractive architecture, especially for the western half of the project;
 - b. A minimum amount of ground-floor retail offered on this 20,000 sf site on a major commercial corridor;
 - c. The needless request to provide no onsite parking, when the floor area is more than adequate to allow at least one underground level with easy access from the 25-foot alley to the north;
 - d. Poor land use and transportation planning aspects, as described in (c) above; and
 - e. Insufficient truck loading facilities (one 30-foot dock that is not positioned to adequately serve the hotel use on the west side of the site). (Ex. 28.)
99. ANC 6C's report also noted that the Project is located in ANC 5D and is adjacent to the boundaries of ANC 6C. (Ex. 28.)
100. The report further indicated the vote included designation of Commissioner Tony Goodman, Single Member District Commissioner for ANC 6D06, to work with the developer and continue the dialog with the community.

101. Commissioner Goodman testified at the public hearing regarding ANC 6C's continued concerns with the Project. (Ex. 39.) The primary concerns related to insufficient on-site parking, including bicycle parking, and the need for clear valet zones if on-site parking is not provided; inadequate ground floor activation; the building's architectural design and lack of historical character; and the benefits and amenities package as it relates to the flexibility requested.
102. In a letter dated January 4, 2017, Mr. Goodman, whose term as Commissioner had since expired, indicated he was "pleased with the improvements in retail, street presence, and amenities provided by the development team though the overall amenities package is still extremely low compared with other similar nearby PUD[s]." Mr. Goodman also expressed his disappointment with the bulk of the building, which he considered to be "too high and rectangular." (Ex. 47B.)
103. On November 18, 2016, the Applicant submitted a post-hearing submission, which included the following materials and information: (i) a memorandum committing to provide 50 off-site parking spaces for the life of the Project; (ii) a conceptual site plan showing the infeasibility of providing an on-site parking garage and a memorandum describing the extremely high cost of constructing an on-site parking garage; (iii) condition language for the PUD order committing to restrict residents from obtaining RPPs; (iv) a request for flexibility to provide a bar or restaurant in the hotel's penthouse; (v) revised architectural plans and elevations responding to specific requests raised by the Commission at the public hearing and incorporating design changes to the building; (vi) responses to outstanding items from OP, including details on the business incubator space and the Applicant's commitment to replace the previously proposed art gallery with a proffer to rebuild the sidewalks north of the PUD Site on east side of 4th Street and the west side of 5th Street, N.E., from the alley to Morse Street, N.E.; and (vii) responses to outstanding concerns raised by ANC 6C, including vehicle and bicycle parking, ground floor activation, building design, and the benefits and amenities proffer. (Ex. 42-42E.)
104. On January 13, 2017, the Applicant submitted its post proposed action submission. (Ex. 47-47B.) The submission included updated architectural drawings that eliminated the need for penthouse setback relief, revised the bay projections so that they appear as separate structures, and provided details on the height of the letters for the hotel's vertical signage. The Applicant also noted that it increased the public benefits package following the public hearing by committing to rebuild the sidewalks and curbs and install trees on the east side of 4th Street and the west side of 5th Street, N.E., from the alley to Morse Street, N.E.
105. The Commission finds that the Applicant adequately responded to the concerns raised by ANC 5D and 6C, including Commissioner Goodman's testimony at the public hearing and his subsequent letter. With respect to the issues and concerns expressed in ANC 6C's written report, the Commission finds as follows.

- a. Inferior, unattractive architecture, especially for the western half of the project;

The Commission finds that the Applicant made significant changes and improvements to the building's design, layout, and materials in direct response to specific comments from ANCs 5D and 6C, and also replaced the white metal panel with grey metal panel in response to comments from the Commission. Thus, the Commission finds that the Applicant fully addressed all stated concerns with the building's design;

- b. A minimum amount of ground-floor retail offered on this 20,000 sf site on a major commercial corridor;

The Commission finds the amount of retail included in this project is adequate. The surrounding area will be developed with an abundance of retail. In addition, the Applicant revised the ground floor plan after the hearing, and added additional information about its efforts to achieve a vibrant pedestrian environment on hotel's ground floor, and this Order includes a condition requiring the Applicant to take certain steps to ensure an active retail space at the ground level of the building;

The Commission finds that this is adequate to address the ANC's concern;

- c. A needless request to provide no onsite parking, when the floor area is more than adequate to allow at least one underground level with easy access from the 25-foot alley to the north;

The Commission finds that the Applicant presented a compelling case for parking relief due to limitations of the site's long narrow shape, and the resulting difficulty in providing underground parking;

The Commission finds that the Applicant's proposal to provide 50 off-site parking spaces at the EDENS site for the life of the Project will adequately accommodate all parking needs for the PUD Site, and that the Applicant is committed to working with DDOT to establish appropriate valet zones for drop-off and pick-up. In response to ANC 6C's concern with the lack of adequate bicycle parking, the Applicant more than doubled the number of spaces provided, which the Commission finds is appropriate;

The Commission, therefore, finds that the Applicant has adequately addressed this concern. The request of parking relief is justified, and the Applicant has adequately addressed any potential adverse effects of the Project related to parking;

- d. Poor land use and transportation planning aspects, as described in c. above;

As noted above, the Commission finds that the Applicant adequately justified its request for parking relief, and put in place adequate measures to mitigate any adverse effects of the Project related to parking; and

- e. Insufficient truck loading facilities (one 30-foot dock that is not positioned to adequately serve the hotel use on the west side of the site);

The Commission finds that while the Applicant originally proposed to provide a single, shared loading berth for the Project, plus a single service/delivery space, the Applicant added a second berth and removed the service/delivery space, in response to a request from DDOT. The Commission finds that this revised loading design is adequate to address the ANC's concern.

Finally, with respect to the public benefits and amenities package, the Applicant committed to additional public benefits at the public hearing, including the rebuilding of sidewalks to the north of the PUD Site, increasing the percentage of hotel employees required to be District residents, and further defining the business incubator space proffer, which is valued at approximately \$21,600 per year for the life of the Project (\$648,000 for the 30-year Project). The Commission finds that these additional benefits, combined with the previously proposed benefits, results in an overall benefits and amenities package that is commensurate with the degree of development incentives requested.

106. The Commission finds that the evidence presented in the Applicant's post-hearing submission adequately responded to each of the outstanding concerns raised by the Commission, OP, ANC 5D, and ANC 6C, and that the PUD was significantly improved as a result of doing so.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (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 of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and 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.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
 4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mixed uses for the Project are appropriate for the PUD Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.
 5. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
 6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
 7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the Project's benefits and amenities are reasonable tradeoffs for the requested development flexibility.
 8. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
 9. The Commission is required under § 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 (2012 Rep.)), to give great weight to OP recommendations. The Commission carefully considered the OP report and testimony at the public hearing and finds its recommendation to grant the applications persuasive.
 10. 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 the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered ANC 5D's recommendation for approval and concurs in its recommendation. The Commission also considered ANC 6C's recommendation to deny the application, and carefully considered all of the issues and concerns in the report. The Commission commends the Applicant for continuing to work with ANC 6C following the hearing to address its concerns. For the reasons discussed in Findings of Fact No. 105, the Commission believes the Applicant has adequately addressed all of ANC 6C's issues and concerns.

11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2- 1401 et seq. (2007 Repl.)).

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 the application for consolidated review and approval of a planned unit development and related Zoning Map amendment from the C-M-1 Zone District to the C-3-C Zone District for property located at 400 Florida Avenue, N.E. (Lots 4, 25, and 803 in Square 3588). The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The Project shall be developed in accordance with the Architectural Plans and Elevations dated January 7 (Exhibit 47A), with Sheet A221 modified as shown on the revised plan sheet dated January 31, 2017 submitted as Exhibit 50 (together, the “Plans”), and as modified by the guidelines, conditions, and standards of this Order. The materials shown on Sheets A-401 through A-404 of the Plans shall be used as indicated on those sheets. All landscape, park, open space, and streetscape designs shall be developed in accordance with the landscape plans included as Sheets L-001, L-002, L-02B, L-02C, L-02D, L-003 of the Plans. The hotel and residential signage shall be limited to the size and locations depicted on Sheet A221 of Exhibit 50.
2. In accordance with the Plans, the Project shall be a mixed-use building with residential, hotel, and ground-floor retail uses. The Project shall have a total of approximately 164,288 square feet of gross floor area (8.0 FAR) and a maximum building height of 120 feet, not including penthouses. Approximately 94,632 square feet of gross floor area shall be devoted to residential use (110 units, plus or minus 10%), approximately 66,924 square feet of gross floor area shall be devoted to hotel use (155 rooms, plus or minus 10%), and approximately 2,732 square feet of gross floor area shall be devoted to ground-floor retail use.
3. The Project shall provide three on-site parking spaces (two car-share spaces and one EV-charging space) and off-street loading facilities accessed from the public alley. The Project shall also provide a minimum of 50 off-site parking spaces located at Square 3587, Lots 827, 828, 7012, and 7013 for the life of the Project, as set forth in Exhibit 42A.
4. **Prior to issuance of a Certificate of Occupancy for the applicable residential or hotel portion of the Project, respectively,** the Applicant shall demonstrate to

the Zoning Administrator that it has ensured active retail space at the ground level of the building by implementing the following design techniques:

- a. Devote not less than 50% of the surface area of the streetwall(s) at the ground level to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to the building;
 - b. Design the building so as not to preclude an entrance every 40 feet, on average, for the linear frontage of the building on Florida Avenue, including entrances to ground-floor uses and the main lobby; and
 - c. At the ground-floor level of the building, provide a uniform minimum clear floor-to-ceiling height of at least 10 feet.
5. The Applicant is granted flexibility from the parking requirements of 11 DCMR § 2101.1; the loading requirements of 11 DCMR § 2201.1; and the penthouse height requirements of 11 DCMR § 411.9.
6. The Applicant is permitted to establish a bar/restaurant in the penthouse of the hotel portion of the building of 11 DCMR § 411.1(c). The use is consistent with the approved Plans and as discussed in the Special Exception Use section of this Order.
7. The Applicant shall also 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, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To be able to provide a range in the number of residential units and hotel rooms of plus or minus 10%;
 - c. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the residential portion of the Project is not below the LEED-Gold rating standards and that the total number of LEED points achievable for the hotel portion of the Project is not below the LEED-Silver rating standards;
 - d. 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 without reducing the quality of the materials; and to make

minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes in order to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;

- e. To vary the features, means and methods of achieving (i) the code-required Green Area Ratio (“GAR”) of 0.2, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control; and
- f. In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area.

B. Public Benefits

- 1. **Prior to issuance of a Certificate of Occupancy for the residential portion of the Project and for the life of the residential portion of the Project**, the Applicant shall demonstrate to the Zoning Administrator the following:

- a. For the life of the Project, the Applicant shall:
 - i. Provide a total of approximately 94,632 square feet of residential gross floor area (“GFA”) of housing;
 - ii. Devote no less than 12% of the residential GFA equaling not less than 11,356 square feet of GFA as inclusionary units pursuant to 11 DCMR Chapter 26;
 - iii. Set aside no less than seven units (50% of the inclusionary units), equaling not less than 5,678 square feet of GFA as inclusionary units for eligible households earning equal to or less than 50% of the AMI; and
 - iv. Set aside no less than seven units (50% of the inclusionary units), equaling not less than 5,678 square feet of GFA as inclusionary units for eligible households earning equal to or less than 80% of the AMI;

- b. The affordable housing units shall be distributed in accordance with Sheets A103 – A109A of the Plans marked as Exhibit 47A of the record, and shall be provided in accordance with the chart below; and
- c. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this Condition.

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	94,632 sf of GFA (100%)	110	NA	NA	NA
Market Rate	83,276 sf of GFA (88%)	96	Market Rate	NA	NA
IZ	5,678 sf of GFA (6%)	7	Up to 50% AMI	Life of the project	Rental
IZ	5,678 sf of GFA (6%)	7	Up to 80% AMI	Life of the project	Rental

- 2. **Prior to issuance of a Certificate of Occupancy for the applicable residential or hotel portion of the Project, respectively,** the Applicant shall demonstrate to the Zoning Administrator that it has registered that portion of the Project with the USGBC to commence the LEED certification process under the USGBC’s LEED 2009 for New Construction rating system.
- 3. **Prior to the issuance of a Certificate of Occupancy for the applicable residential or hotel portion of the Project,** the Applicant shall also furnish a copy of its LEED certification application submitted to the USGBC to the Zoning Administrator. The application shall indicate that the residential portion of the building has been designed to include at least the minimum number of points necessary to achieve LEED-Gold certification under the USGBC’s LEED for New Construction v2009 standards, and that the hotel portion of the building has been designed to include at least the minimum number of points necessary to achieve LEED-Silver certification under the USGBC’s LEED for New Construction v2009 standards.
- 4. **Prior to issuance of a Certificate of Occupancy for the hotel portion of the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has executed a memorandum of understanding with the Goodwill Hospitality Training Program governing the recruitment, screening, training, and referral of hotel

employees. **For the life of the hotel portion of the Project**, a minimum of 51% of hired hotel employees shall be District residents.

5. **Prior to issuance of a Building Permit for either portion(s) of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has executed and submitted a First Source Employment Agreement to DOES, consistent with the First Source Employment Agreement Act of 1984.
6. **Prior to issuance of a Certificate of Occupancy of either the residential or hotel portion of the Project (whichever is first) and for the life of either portion of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has: contributed \$25,000 to Edens Realty, Inc. an entity formed by EDENS, to provide security and street cleaning services in the surrounding neighborhood, and that these funds have been or are being used for that purpose. The contribution shall be provided annually. If an official Business Improvement District (“BID”) is created for the Florida Avenue Market area, then the Applicant shall contribute \$25,000 annually to the BID instead.
7. **Prior to issuance of a Certificate of Occupancy for the hotel portion of the Project, and for the life of the hotel**, the Applicant shall demonstrate to the Zoning Administrator that it has dedicated a minimum of 200 square feet of professional office space on the ground floor of the hotel portion of the building to support start-up companies. The office space shall include desks, chairs, printers, free wi-fi, and shall be free of charge for one year, after which a new group of start-ups will be selected.
8. **Prior to issuance of a Certificate of Occupancy of either the residential or hotel portion of the Project (whichever is first)**, the Applicant shall demonstrate to the Zoning Administrator that it has rebuilt the sidewalks and curbs and installed trees on the east side of 4th Street and the west side of 5th Street, N.E., from the alley to Morse Street, N.E. These improvements shall be designed and constructed to match the sidewalks adjacent to the PUD Site and shall be consistent with DDOT standards.
9. **Prior to issuance of a Certificate of Occupancy of either the residential or hotel portion of the Project (whichever is first)**, the Applicant shall demonstrate to the Zoning Administrator that it has installed or otherwise constructed the Project to be consistent with the deaf-space design principles, set forth in Finding of Fact No. 72(d) of this Order.

C. **Transportation Incentives**

1. **Prior to issuance of a Certificate of Occupancy for either the residential or hotel portion of the Project (whichever is first), and for the life of either**

portion of the Project, Applicant shall demonstrate to the Zoning Administrator that it has contracted with the owner of Square 3587, Lots 827, 828, 7012, and 7013, to provide 50 dedicated parking spaces for the Project. The 50 parking spaces shall be available for use prior to issuance of a Certificate of Occupancy.

2. **Prior to issuance of a Certificate of Occupancy for either the residential or hotel portion of the Project (whichever is first)**, the Applicant shall demonstrate to the Zoning Administrator that it has contributed \$80,000 to DDOT for the operations and maintenance for one year of a new Capital Bikeshare station.
3. **Prior to issuance of a Certificate of Occupancy for either the residential or hotel portion of the Project (whichever is first)**, the Applicant shall demonstrate to the Zoning Administrator that it has reconstructed the curb ramps and striped the crosswalks on Morse Street, N.E., at the intersections of 4th and 5th Streets, N.E.
4. **Prior to issuance of a Certificate of Occupancy for the residential portion of the Project, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has undertaken the following actions with respect to implementation of the TDM plan:
 - a. Dedicated two parking spaces along the alley for car-sharing services and one parking space along the alley as an EV-charging space (240 volt);
 - b. Installed a Transportation Information Center display within the residential lobby containing information related to local transportation alternatives;
 - c. Prepared materials for residents that provide carpooling information and refers them to other carpool matching services;
 - d. Designated TDM leaders to work with residents to market transportation alternatives and options;
 - e. Prepared TDM materials to give to new residents in the Resident Welcome Package;
 - f. Exceeded zoning requirements for the provision of secure indoor and outdoor bicycle parking facilities;
 - g. Installed a bicycle repair station within the long-term bicycle storage room;

- h. Included in the residential leases a provision that the cost of residential parking is unbundled from the cost of lease or purchase of each residential unit. Parking shall be available on a monthly basis at market rate; and
 - i. Recorded a covenant among the Land Records of the District of Columbia prohibiting any tenant of the residential portion of the Project from obtaining an RPP for so long as the PUD Site is used as an apartment building. **For the life of the residential portion of the Project**, the Applicant shall: (i) not seek or support any change to designate the PUD Site as becoming eligible for RPP; (ii) include in its residential leases a provision that prohibits tenants from obtaining an RPP for the PUD Site from the DMV, under penalty of lease termination and eviction; and (iii) obtain written authorization from each tenant through a required lease provision that allows the DMV to release to the Applicant every six months any and all records of that tenant requesting or receiving an RPP for the PUD Site;
5. **Prior to issuance of a Certificate of Occupancy for the hotel portion of the Project, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has undertaken the following actions with respect to implementation of the TDM plan:
- a. Installed a Transportation Information Center display within the hotel lobby containing information related to local transportation alternatives;
 - b. Established a TDM marketing program that provides detailed transportation information to hotel guests regarding parking and transportation options;
 - c. Prepared materials for hotel employees that provide carpooling information and refers them to other carpool matching services;
 - d. Designated TDM leaders to work with hotel employees and guests to market transportation alternatives and options;
 - e. Installed shower and changing facilities for bicycle commuters;
 - f. Installed a bicycle repair station within the long-term bicycle storage room; and
 - g. Purchased free daily Capital Bikeshare passes to provide to hotel guests, available upon request.

6. **Prior to issuance of a Certificate of Occupancy for the residential portion of the Project, and for the initial lease-up of each residential unit**, the Applicant shall offer each unit's incoming residents either a one-year Capital Bikeshare membership or a one-year membership to a car-sharing service.
7. **Prior to issuance of a Certificate of Occupancy for the hotel portion of the Project, and for the first year of hotel operations**, the Applicant shall offer all new hotel employees either a one-year Capital Bikeshare membership or a one-year membership to a car-sharing service.
8. **Prior to issuance of a Certificate of Occupancy for the hotel portion of the Project, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has done the following with respect to hotel parking and valet services:
 - a. Established a hotel valet zone in the public space on 4th Street, N.E., subject to DDOT approval;
 - b. Hired a third-party valet service or designated a hotel staff member to manage valet operations, greet incoming hotel guests, and direct vehicles to the valet zone or a nearby local garage;
 - c. Installed signage at the valet zone stating that there is no parking at the PUD Site and that valet service is offered upon request. If guests choose to valet their vehicles, the valet shall transport the vehicles between the valet zone and the designated parking facility. The valet shall provide tickets that will instruct guests on how to retrieve their vehicle. This may include contacting the valet stand directly, contacting the hotel front desk, and/or the ability to request the vehicle via text and/or smartphone app. The number of valets may be adjusted in order to achieve the most efficient and cost effective valet parking system; and
 - d. Established and implemented the following system to inform hotel guests about parking and alternate modes of transportation at every step of the reservation process, through check-in, so that guests know what to expect when booking a reservation:
 - i. Display transportation and parking information on the hotel website, Online Travel Agency websites, other online booking and informational websites with which the hotel partners (including rating review websites), email booking confirmations and reminders, printed brochures, and verbally via reservationists. All information shall emphasize and encourage alternate modes of travel and will indicate off-site parking locations; and

- ii. Ensure that all hotel confirmations contain notice to guests that no parking is available on-site and that the hotel encourages and emphasizes alternative modes. The reservation email shall provide the alternative transportation options and the locations of off-site parking facilities, in the event guests decide to drive, and the Applicant shall assist guests in planning ahead to use alternative methods of transportation.

The Applicant shall continually adapt the hotel parking plan in order to streamline the process based on continued experience and feedback.

D. Miscellaneous

1. 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, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 16-10. Within such time, an application must be filed for a building permit, with construction to commence within three years of the effective date of this Order.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning

Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On December 12, 2016, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at its public meeting by a vote of **3-1-1** (Anthony J. Hood, Robert E. Miller, and Michael G. Turnbull to approve; Peter G. May to oppose, Peter A. Shapiro, not present, not voting).

On January 30, 2017, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, not having participated, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on May 5, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-11
Z.C. Case No. 16-11
Park View Community Partners and the District of Columbia
(Consolidated PUD and Related Map Amendment
@ Square 2890, Part of Lot 849)
March 13, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on December 5 and December 8, 2016, to consider applications for a consolidated planned unit development (“PUD”) and a related Zoning Map amendment filed by Park View Community Partners and the District of Columbia (“Applicant”). The Commission considered the applications pursuant to Chapters 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”)¹. The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 400. For the reasons stated below, the Commission **HEREBY APPROVES** the applications.

FINDINGS OF FACT

The Applications, Parties, Hearings, and Post-Hearing Filings

1. On May 13, 2016, the Applicant filed applications with the Commission for consolidated review of a PUD and a related Zoning Map amendment from the R-4 and C-2-A Zone Districts to the R-5-B and C-2-B Zone Districts for Part of Lot 849 in Square 2890 (“PUD Site”).
2. Concurrent with filing the subject applications, the Applicant and the District of Columbia Housing Authority together filed applications for a PUD and related Zoning Map amendment for the Park Morton public housing site, located at Lots 124-126 and 844 in Square 3040, Lots 128-134 and 846 in Square 3039, and Lots 18-20 in Square 3043.
3. The PUD Site has a land area of approximately 77,531 square feet and is bounded by Irving Street, N.W. to the north, Georgia Avenue, N.W. to the east, Columbia Road, N.W. and the southern portion of Lot 849 to the south, and private property to the west. At the time of filing the applications, the eastern portion of the PUD Site along Georgia Avenue was zoned C-2-A and the western portion of the PUD Site was zoned R-4. The Applicant proposes to rezone the eastern portion of the PUD Site to the C-2-B Zone District and the western portion of the PUD Site to the R-5-B Zone District.
4. The PUD Site is presently improved with a temporary park. The Applicant proposes to replace the existing facilities with a new mixed-income development that includes an

¹ Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016, and replaced with a Chapter 3 of Subtitle 11-X. However, because these applications were set down for hearing prior to that date, the Commission’s approval was based upon the standards set forth in Chapter 24. Since the hearing was held on December 5, 2016, the procedural requirements of the 2016 Zoning Regulations were applied to this case.

- apartment house, a senior building, and eight townhomes (“Project”). Approximately 44,000 square feet will remain and will be developed by the District for park and recreation uses.
5. The PUD Site is surrounded by a variety of uses, including retail, service, and dining opportunities along Georgia Avenue; a variety of elementary, middle, and high schools; Howard University; and dense residential urban development that includes townhomes, low-rise multi-family buildings, and medium-density apartment homes. The PUD Site is also well served by public transportation: the Columbia Heights Metrorail station is located approximately 0.5 miles to the west of the PUD Site, the Petworth Metrorail station is located approximately 0.5 mile to the north of the PUD Site, and there are a variety of Metrobus routes running along the surrounding corridors.
 6. The Project will establish a mixed-income community with diverse housing options. The Project will include a total of 273 residential units, with 189 units in the apartment house, 76 units in the senior building, and eight townhomes. Ninety units will be public housing replacement units, 109-113 units will be workforce affordable units, and 70-74 units will be market rate.
 7. The Project will also include approximately 4,545 square feet of community service/retail space in the apartment house with frontage on Georgia Avenue. The PUD Site and proposed development will serve as the “build-first” site for the Park Morton public housing site, a site that is targeted as part of the District’s New Community’s Initiative.
 8. The overall PUD Site will be developed with approximately 275,747 square feet of gross floor area with a density of 3.6 floor area ratio (“FAR”). The apartment house will contain approximately 191,333 square feet of gross floor area and a maximum height of 90 feet; the senior building will contain approximately 70,817 square feet of gross floor area and a maximum height of 60 feet; and each townhome will contain approximately 1,685 square feet of gross floor area and a maximum height of 40 feet. The total lot occupancy for the PUD Site will be approximately 53%.
 9. Ninety-nine on-site parking spaces will be provided in a parking garage below the apartment house and senior building. Sixteen surface parking spaces will be provided on a new 22-foot-wide private street that will be created as part of the PUD, connecting Columbia Road to Irving Street. The new street will enhance circulation through and to the PUD Site, decrease traffic congestion in the surrounding neighborhood, and significantly improve the experience for pedestrians and bicyclists. Loading facilities for the apartment house and senior building will also be accessed from the new private street.
 10. By report dated July 15, 2016, the District of Columbia Office of Planning (“OP”) recommended that the applications be set down for a public hearing. (Exhibit [“Ex.”] 14.) At its public meeting on July 25, 2016, the Commission voted to schedule a public hearing on the application.

11. The Applicant filed a prehearing submission on August 5, 2016 and a public hearing was timely scheduled for the matter. (Ex. 16-17.) On September 22, 2016, the notice of public hearing was sent to all owners of property located within 200 feet of the PUD Site; Advisory Neighborhood Commission (“ANC”) 1A, the ANC in which the PUD Site is located; ANC 1B, the ANC located adjacent to the PUD Site; Commissioner Rashida Brown, the Single Member District commissioner for ANC 1A10, and to Councilmember Brianne Nadeau. A description of the proposed development and the notice of the public hearing in this matter were published in the *DC Register* on September 30, 2016.
12. On November 4, 2016, the Applicant filed its Transportation Impact Study. (Ex. 33.) On November 15, 2016, the Applicant filed its supplemental prehearing submission. (Ex. 34-35.) The supplemental prehearing submission included: (i) revised architectural plans and elevations, and (ii) an analysis describing how the Project is not inconsistent with the Comprehensive Plan’s designation for the PUD Site as a Local Public Facility.
13. On November 28, 2016, OP submitted a hearing report. (Ex. 43.) The OP hearing report recommended approval of the application and advised that, at the public hearing, the Applicant should: (i) document flexibility for the provision of eight non-garage compact parking spaces for the townhomes; (ii) provide additional enlarged details for the townhomes and apartment house demonstrating their residential character; and (iii) provide additional information on the proposed façade materials. The OP report also noted that the application is not inconsistent with the Comprehensive Plan and would further many of its policies, while also realizing the Council-approved Park Morton Redevelopment Initiative Plan (“Park Morton Plan”). (Ex. 43, p. 1.)
14. On November 25, 2016, the District Department of Transportation (“DDOT”) submitted a hearing report. (Ex. 44.) The DDOT hearing report indicated no objection to the application subject to the conditions set forth in Finding of Fact (“FF”) No. 183 of this Order.
15. ANC 1A submitted a resolution in support of the Project, indicating that at its regularly scheduled and duly noticed public meeting of September 14, 2016, at which a quorum of commissioners was present, ANC 1A voted 10-0-0 to support the applications. (Ex. 32-32A.) The resolution stated that ANC 1A “supports the request for flexibility from zoning regulations and the community benefits,” and that the PUD “has offered a number of project amenities and public benefits commensurate with the development incentives and flexibility requested.” (Ex. 32-32A, pp. 3, 5.)
16. ANC 1B, the ANC located adjacent to the PUD Site, submitted a resolution in support of the Project, indicating that at its regularly scheduled and duly noticed public meeting of October 6, 2016, at which a quorum of commissioners was present, ANC 1B voted 7-0-0 to support the applications. (Ex. 28.) ANC 1B also noted its support for the requested zoning flexibility, and stated that the Applicant had offered a number of benefits and amenities commensurate with the development incentives and flexibility requested. (Ex. 28, pp. 2, 3.)

17. On November 21, 2016, the Park Morton Resident Council, the resident council for the individuals currently living at the Park Morton public housing site, submitted a request for party status in support of the application. (Ex. 37-38.) The Commission granted party status for the Park Morton Resident Council at the public hearing. The Resident Council stated that the redevelopment of Park Morton is long overdue, is necessary to improve the living conditions and long-term opportunities for existing Park Morton residents, and that redevelopment of the PUD Site is the way forward in order to make the redevelopment of Park Morton a reality. (Ex. 38, p. 1.) The Resident Council asserted that its residents need quality housing that is clean, safe, and a place to call home, and indicated that because the Project provides housing opportunities for both low- and moderate-income earners, it will ensure that existing Park Morton residents and others in the community will have an opportunity to live in a place that they can afford. (*Id.*)
18. The Project also received over 100 letters of support for the Project, and many individuals attended the public hearing to testify in support of the Project. (Ex. 28, 45-109, 111-147, 150, 164-165, 172-180, 193-195, 199-219.)
19. On November 14, 2016, a group of owner-residents located within 200 feet of the PUD Site (“Park Neighbors”) submitted a request for party status in opposition to the applications. (Ex. 36.) The Commission granted party status for the Park Neighbors at the public hearing.
20. On November 21, 2016, the Georgia Avenue Corridor Neighbors (“GAN”), a group of individuals that “live and work and play along the Georgia Avenue corridor” also submitted a request for party status in opposition to the applications. (Ex. 39.) The Commission denied party status for GAN at the public hearing because there was no evidence in the record indicating that GAN was more uniquely affected by the Project than others in the surrounding neighborhood.
21. The Project received several letters in opposition to the Project, which are included in the record. (Ex. 20-21, 40, 148, 151-163, 166-167, 168, 170-171, 187-188, 191, and 220-229.)
22. The parties to the case were the Applicant, ANC 1A, ANC 1B, the Park Morton Resident Council, and the Park Neighbors.
23. The Commission convened a public hearing on December 5, 2016, which was continued to December 8, 2016, and concluded that evening. At the December 5, 2016 hearing, the Applicant presented five witnesses in support of the applications: Robert Fossi and Buwa Binitie on behalf of the Applicant; Angie Rogers on behalf of the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”); Sarah Alexander of Torti Gallas + Partners, architect for the Project; and Nicole White of Symmetra Design, transportation consultant for the Project. Based upon their professional experience and

qualifications, the Commission qualified Ms. Alexander as an expert in architecture and Ms. White as an expert in transportation planning and engineering.

24. At the December 8, 2016 hearing, the Applicant presented its rebuttal and closing testimony through four witnesses: Angie Rogers of DMPED; Sarah Alexander of Torti Gallas + Partners; Shane Dettman, Director of Planning Services at Holland & Knight LLP, land use and planning consultant for the Project; and Marcelo Lopez of Wiles Mensch, civil engineer for the Project. Based upon his professional experience and qualifications, the Commission qualified Mr. Dettman as an expert in land use, planning, and zoning.
25. Stephen Mordfin of OP and Jonathan Rogers of DDOT testified in support of the applications at the public hearing.
26. At the conclusion of the public hearing on December 8, 2016, the Commission closed the record except for the limited purposes of allowing: (i) the Applicant to submit the specific post-hearing items filed in Exhibit 237, including an update of the Applicant's continued discussions with the Park Neighbors; and (ii) the Park Neighbors to submit an update on their continued discussions with the Applicant.
27. On January 10, 2017, the Applicant filed its post-hearing submission, which included the following materials and information requested by the Commission at the public hearing: (i) updated architectural plans and elevations responding to comments raised at the public hearing; (ii) details and confirmation on development of the adjacent park and maintenance of the private street; (iii) updates regarding the residential use of the PUD Site; (iv) summary of the Applicant's discussions with the Park Neighbors following the public hearing; (v) confirmation of the Applicant's employment proffer; (vi) additional information regarding the Applicant's request for flexibility to provide compact parking spaces on the PUD Site; (vii) a commitment to withdraw the market-rate units from residential parking permit ("RPP") eligibility; and (viii) copies of approval letters from the District Department of Housing and Community Development ("DHCD"), the District Department of Energy and the Environment ("DOEE"), the District Fire and EMS Department ("FEMS") and DC Water. (Ex. 237-237H.)
28. On January 10, 2017, the Park Neighbors filed its post-hearing submission, which reiterated its opposition to the Project. (Ex. 236.)
29. On January 17, 2017, the Park Neighbors submitted its proposed findings of fact and conclusions of law (Ex. 239.)
30. On January 16, 2017, ANC 1A Chairman Kent Boese submitted a letter stating a concern about the Project. (Ex. 238.) The contents of the letter and the Commission's response are discussed below.

31. On January 18, 2017, the Applicant submitted its proposed findings of fact and conclusions of law and a response to the Park Neighbor's filing of January 10, 2017. (Ex. 240-240A.)
32. On January 18, 2017, the Park Morton Residents Council submitted a letter in support of the Project, that responded to the Park Neighbors submission. (Ex. 241.)
33. At the public meeting of January 30, 2017, the Commission reviewed the additional materials submitted to the record and took proposed action to approve the applications. The Commission considered the letter submitted by the ANC 1A Chairman, and as described more fully below, agreed with his contention that the Commission should reject the proposed restriction on RPP-eligibility for the market-rate units. The Commission requested revised drawings showing views into and out of the courtyard, and building elevations.
34. The proposed action was referred to the National Capital Planning Commission ("NCPC") on February 2, 2017, pursuant to § 492 of the Home Rule Act. (Ex. 242.)
35. On February 6, 2017, the Applicant submitted its proposed proffers and conditions. (Ex. 243-244.)
36. On February 16, 2017, the Applicant submitted updated drawings responding the requests made by the Commission when it took proposed action. (Ex. 245-246.)
37. On February 28, 2017, the Applicant submitted revised proffers and conditions. (Ex. 247-248.)
38. The Executive Director of NCPC, by delegated action dated February 24, 2017, found that the Project would not be inconsistent with the Comprehensive Plan and other federal interests. (Ex. 249.)
39. The Commission took final action to approve the PUD on March 13, 2017.

The PUD Site and Surrounding Area

40. The PUD Site consists of a portion of Lot 849 in Square 2890. The PUD Site has a land area of approximately 77,531 square feet and is bounded by Irving Street, N.W. to the north, Georgia Avenue, N.W. to the east, Columbia Road, N.W. and the southern portion of Lot 849 to the south, and private property to the west.
41. The Applicant requested a zoning map amendment to rezone the eastern portion of the PUD Site from the C-2-A Zone District to the C-2-B Zone District, and to rezone the western portion of the PUD Site from the R-4 Zone District to the R-5-B Zone District. As detailed in FF Nos. 105-128, the Commission finds that the requested map

amendment is consistent with the Comprehensive Plan Future Land Use Map designation of the PUD Site as a Local Public Facility.

42. The PUD Site is located within a diverse mosaic of neighborhoods with strong identities and rich historic fabric. The PUD Site is also located adjacent to the dynamic Georgia Avenue corridor, which is one of the most rapidly changing areas of the city, but still includes significant pockets of concentrated poverty where residents lack quality housing, supportive services, and access to quality open space, healthcare, and recreation. (*See* Park Morton Plan, p. 6.)
43. The Park Morton Plan is a plan developed by DMPED and DCHA that seeks to create a healthy, mixed-income community with integrated services that offer families better housing, employment, and educational opportunities. The Park Morton Plan protects affordable housing, improves economic integration, engages residents in community decision making, decreases crime through proven crime reduction strategies, and creates opportunity through better jobs, education, training, human services and other programs. (*Id.* at 2.)
44. As part of the District's Great Street Initiative, the vision for the Georgia Avenue corridor is a revitalized, pedestrian friendly corridor anchored by mixed-use development at key sites. This vision for Georgia Avenue was conceived through the Georgia Avenue-Petworth Metro Station Area Plan, which was completed in 2004. A number of planned and under-construction private developments are leading to the revitalization of the broader neighborhood, and several public investments are being made on the Georgia Avenue corridor. (*Id.* at 7.)
45. The Georgia Avenue-Petworth Metro Station Area Plan provides a framework to guide growth and development on Georgia Avenue while preserving and enhancing the quality of life in the community. To ensure that neighborhood and city-wide concerns were balanced, the Plan is designed to leverage the public investment of the Georgia Avenue-Petworth Metro Station and employ transit-oriented development principles; balance growth and development by identifying and guiding opportunities for redevelopment; identify strategies to encourage a better mix of uses, including quality neighborhood-serving retail and housing; maintain and enhance neighborhood character; and prioritize when and where public investment should occur. See Overview of Georgia Avenue-Petworth Metro Station Area Plan at OP's website, available at <http://planning.dc.gov/page/georgia-avenue-petworth-metro-station-and-corridor-plan-ward-1-and-ward-4>.

Existing and Proposed Zoning

46. The eastern portion of the PUD Site along Georgia Avenue is presently zoned C-2-A, and the western portion of the PUD Site is presently zoned R-4. As a matter of right, property in the C-2-A Zone District can be developed to a maximum building height of 50 feet, a maximum density of 2.5 FAR, and a maximum lot occupancy of 60%. (11 DCMR

- §§ 770.1, 771.2 and 772.1.) As a matter of right, property in the R-4 Zone District can be developed to a maximum building height of 40 feet and three stories. (11 DCMR § 400.1.) The maximum lot area and width for a row dwelling or flat in the R-4 Zone District is 1,800 square feet and 18 feet, respectively. (11 DCMR § 401.3.)
47. The Applicant proposes to rezone the PUD Site to the C-2-B and R-5-B Zone Districts. The C-2-B Zone District is designated to serve commercial and residential functions similar to the C-2-A Zone District, but with high-density residential and mixed uses. (11 DCMR § 720.6.) The C-2-B Zone Districts shall be compact and located on arterial streets, in uptown centers, and at rapid transit stops. (11 DCMR § 720.7.) In the C-2-B District, building use may be entirely residential or a mixture of commercial and residential uses. (11 DCMR § 720.8.)
48. The C-2-B Zone District permits, as a matter of right, a maximum building height of 65 feet, a maximum density of 3.5 FAR, and a maximum lot occupancy of 80%. (11 DCMR §§ 770.1, 771.2 and 772.1.) For projects subject to the Inclusionary Zoning (“IZ”) regulations, a maximum height of 70 feet and a maximum density of 4.2 FAR is permitted. (11 DCMR § 2604.1.) For a PUD in the C-2-B Zone District, a maximum building height of 90 feet and a maximum density of 6.0 FAR is permitted. (11 DCMR §§ 2405.1 and 2405.2.)
49. The R-5-B Zone District permits, as a matter of right, a maximum building height of 50 feet with no limit on the number of stories, a maximum density of 1.8 FAR, and a maximum lot occupancy of 60%. (11 DCMR §§ 400.1, 402.4, and 403.2.) For projects subject to the IZ regulations, a maximum density of 2.16 FAR is permitted. (11 DCMR § 2604.1.) For a PUD in the R-5-B Zone District, a maximum building height of 60 feet and a maximum density of 3.0 FAR is permitted. (11 DCMR §§ 2405.1 and 2405.2.)
50. Consistent with the C-2-B and R-5-B development parameters, the Applicant will develop the PUD Site with a mixed-income community comprised of an apartment house, a senior building, and eight townhomes. A tabulation of the PUD’s development data is included on Sheets G11-G13 of the Architectural Plans and Elevations dated January 10, 2017 (the “Plans”). (Ex. 237A.)

Description of the PUD Project

51. As shown on the Plans, the Applicant is seeking a consolidated PUD and Zoning Map amendment to redevelop the PUD Site with a mixed-income community with a variety of residential unit types and new public open space. The Project will have superior design that has a contemporary identity while contributing to the spirit of the emerging growth along the Georgia Avenue corridor.
52. The Project will include a total of 273 residential units, with 189 units in the apartment house, 76 units in the senior building, and eight townhomes. The new residential units will be as follows: 90 units will be public housing replacement units, 109-113 units will

be workforce affordable units, and 70-74 units will be market rate. The Project will also include approximately 4,545 square feet of community service/retail space with frontage on Georgia Avenue. The PUD Site and proposed development will serve as the “build-first” site for the Park Morton public housing site, a site that is targeted as part of the District’s New Community’s Initiative. “Build-first” is the principle of developing new housing prior to the demolition of existing housing stock in order to minimize displacement and disruption of existing residents.

- 53. Due to the extensive amount of public and affordable housing developed on the PUD Site, the Project is exempt from the IZ Regulations. The public and affordable housing will be provided as set forth below:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	275,747 sf of GFA (100%)	273			Rental
Market Rate	71,694 sf of GFA (26%)	70-74	Market Rate	NA	Rental
Public Housing Replacement Units	90,997 sf of GFA (33%)	90	HUD Requirements/ LIHTC Rules	Life of the Project	Rental
Affordable Housing	113,056 sf of GFA (41%)	109-113	Up to 60% AMI	Life of the Project	Rental

- 54. The overall PUD Site will be developed with approximately 275,747 square feet of gross floor area (3.6 FAR). The apartment house will contain approximately 191,333 square feet of gross floor area and a maximum height of 90 feet; the senior building will contain approximately 70,817 square feet of gross floor area and a maximum height of 60 feet; and each townhome will contain approximately 1,685 square feet of gross floor area and a maximum height of 40 feet. The total lot occupancy for the PUD Site will be approximately 53%.
- 55. Ninety-nine on-site parking spaces will be provided in a parking garage below the apartment house and senior building. Sixteen surface parking spaces will be provided on a new 22-foot-wide private street that will be created as part of the PUD, connecting Columbia Road to Irving Street. The new street will provide access to parking, loading, and trash facilities for the apartment house and senior building; it will enhance circulation through and to the PUD Site, decrease traffic congestion in the surrounding neighborhood, and significantly improve the experience for pedestrians and bicyclists. Shared loading facilities for the apartment house and senior building will also be accessed from the new private street.
- 56. The Project will serve as “off-site” replacement public housing for the Park Morton site, in order to meet the Guiding Principles of the New Communities Initiative and the Park

Morton Plan. In particular, the Project helps the District to achieve the principle of “build-first,” wherein new housing is built in the immediate neighborhood of public housing prior to its demolition. To date, 27 replacement public housing units have already been built for Park Morton residents at The Avenue, located at 3506 Georgia Avenue, N.W., which delivered in 2012. The Project will provide an additional 90 replacement public housing units, thus creating a true “build-first” experience. The remaining 57 replacement public housing units will be reconstructed at Park Morton. Development of the PUD Site and Park Morton will be implemented by the same master development team.

57. As indicated by DMPED, implementation of the build-first principle through the Project serves several key purposes. First, it minimizes displacement and the need for temporary relocation of Park Morton residents, while maximizing the opportunities for one-time, permanent moves. Second, it allows for the phased redevelopment of Park Morton while keeping existing residents on-site. Third, the Project spreads the density of the total Park Morton redevelopment, as conceived under the Park Morton Plan, across multiple land parcels in order to achieve the New Communities Initiative’s Guiding Principles of one-for-one replacement of public housing units and mixed-income development. The development program for the PUD Site, paired with the redevelopment of Park Morton, incorporates a unit mix that accommodates the housing needs of current families of Park Morton.
58. The apartment house and the senior building will each have a private courtyard for use by building residents. The apartment house’s courtyard will be bounded on three sides by the building itself, and will be open on the fourth side to adjacent property that will be developed as a park. The senior building’s courtyard will be bounded on two sides by the building, on one side by the apartment house, and on the fourth side by Irving Street to the north. Both courtyards will be extensively landscaped. The townhomes will each have a front yard, rear yard, and a path connecting the sidewalk to the front stoop. The townhomes will have frontage along the new north-south private street developed as part of the Project.
59. The apartment house’s residential lobby entrance will be located at the corner of Georgia Avenue and Irving Street, and the ground-floor community/retail space will be located along Georgia Avenue to activate the street and enhance the pedestrian experience. The senior building’s residential lobby entrance will be located on the corner of Irving Street and the new private street.
60. The landscape design for the Project will include significant public space enhancements and ample outdoor green space. The Applicant will improve the sidewalks along Georgia Avenue, Irving Street, and Columbia Road through new plantings, street trees, and sidewalk connections to the new public park. The new private street will provide a mid-block pedestrian connection with trees lining both sides.

61. The Project's design contains various features to provide a superior quality of architecture and break up the buildings' massings into distinct elements. The apartment house will include bay windows and a corner glass element to create an iconic presence on Georgia Avenue. The senior building will respond to its context by stepping down in height along Irving Street to respect the lower density of the adjacent rowhouses. The townhomes will relate in massing to the surrounding rowhouse context while also mimicking the character of the multi-family buildings to create a unified language of architecture on the PUD Site.
62. The Project will incorporate durable and time-tested materials in a contemporary language for a design that will endure and enhance the identity of the neighborhood. The distinct architectural styles of the apartment house and senior building will follow a consistent color scheme through the use of contrasting colors. Large display windows, corner entrances, varied materials, and balcony and bay elements will create a residential, human-scaled design and enhance the pedestrian experience.
63. In addition, the Project will integrate a host of sustainable, environmentally friendly features, such that the apartment house and senior building will be certified with a minimum of 57 points under the Enterprise Green Communities ("EGC") standards, and the townhomes will be certified with a minimum of 50 points under the EGC standards. *See* Conceptual Enterprise Green Communities scorecards included with the Plans. Certification under the EGC standards only requires a minimum of 30 points.

Zoning Flexibility

64. The Applicant requested the areas of flexibility from the Zoning Regulations discussed below.
65. Multiple Buildings on a Single Record Lot. Pursuant to 11 DCMR § 2516, the Applicant requests flexibility to permit multiple buildings on a single record lot, with some buildings having no frontage on a public street. The eight townhomes, which consist of two semi-detached dwellings (the end units) and six row dwellings (the middle units) will be located on a single record lot fronting the new private street. Although the south side of the lot has frontage on Columbia Road, allowing the southernmost semi-detached dwelling to front a public street, the remaining seven units will front a private street. Thus, the Applicant proposes dividing the lots into theoretical building sites, thus necessitating relief pursuant to 11 DCMR § 2516.
66. The Applicant provided a thorough analysis of how the Project complies with the standards set forth in 11 DCMR §§ 2516.2-2516.11 and 3104.1. (Ex. 6D.) OP also reviewed the flexibility and found that the request was reasonable given that each townhome would "face a street that would be open to vehicular and pedestrian traffic, allowing for vehicular and pedestrian access to those units." (Ex. 43, p. 7.) Based upon the Applicant's detailed analysis and OP's review and support for the flexibility, the Commission finds that locating multiple townhomes on a single record lot, and

permitting seven of the townhomes to have no street frontage, is appropriate in this case and will be in harmony with the general purpose and intent of the Zoning Regulations and zoning map and will not tend to affect adversely the use of neighboring property.

67. Side and Rear Yards. The Applicant proposes to incorporate a new north-south private street through the PUD Site in order to create small, walkable blocks and an enhanced sense of community. Given these constraints, as well as the desire to have reasonable footprints and layouts for the proposed buildings, the Applicant requests side yard relief for the apartment house, senior building, and the two end townhomes, and rear yard relief for the apartment house and the senior building.
68. The apartment house has a side yard of 10 feet along Georgia Avenue; the senior building has a side yard of four feet along the new private street; and the two end townhomes have side yards of three feet (northern-most townhome) and nine feet, three inches (southern-most townhome). Although the Applicant is seeking flexibility, side yards are not required by the Zoning Regulations. However, the Applicant is providing the side yards to create additional open space, light, air, and ventilation for the occupants of the buildings.
69. Rear yard relief is necessary for the apartment house, which has a rear yard depth of five feet, and the senior building, which has a rear yard depth of eight feet. Granting flexibility for the rear yards will not result in any adverse impacts because the rear yards are located adjacent to the proposed new public park, which will provide significant light and air to building residents, despite the substandard rear yard depth. Moreover, both the senior building and the apartment house have large courts at the ground level that can be accessed for exterior use and provide additional light and air.
70. Based on the foregoing, the Commission finds that the reduced side and rear yard dimensions will allow for an improved site layout over what is permitted as a matter of right, and will not result in any adverse impacts. Providing the minimum required side and rear yards would adversely impact the layout and design of the Project and would hinder the Applicant's ability to provide a reasonable footprint and layout for the proposed buildings. As noted by OP, reducing the width of the side yards will "allow for more continuity in the street walls, consistent with existing development," and increasing the size of the new public park at the expense of the rear yard depth will "benefit the entire community as a whole, allowing additional open space not associated with the apartment buildings. As the two apartment buildings back onto the [] park the reduce[d] size of their rear yards would not be readily apparent." (Ex. 43, p. 7.) Thus based on the Applicant's submission to the record and the support from OP, the Commission approves the requested side yard and rear yard relief.
71. Loading. Subsection 2201.1 of the Zoning Regulations requires one loading berth at 30 feet deep and one loading berth at 55 feet deep; one loading platform at 100 square feet and one loading platform at 200 square feet; and one service/delivery space at 20 feet deep for the Project. The Applicant proposes to provide two loading berths at 30 feet

deep, one loading platform at 100 square feet, and one service/delivery space at 20 feet deep, thus necessitating flexibility.

72. The Commission finds that the proposed loading facilities are appropriate for the type of residential development provided, and that the requested flexibility is consistent with the Comprehensive Plan's recommendations to consolidate loading areas within new developments, minimize curb cuts to the greatest extent possible, and provide shared loading spaces. The Applicant proposes to provide shared loading facilities for the apartment house and senior building, which will limit the amount of space dedicated to loading and minimize the number and extent of curb cuts. Given the nature and size of the residential units, residents are not anticipated to need a 55-foot berth to move in and out of the buildings. Moreover, the Commission agrees with OP that because the buildings are designed to share one garage, "the sharing of the loading facilities is logical and in an amount sufficient to serve those buildings." (Ex. 43, p. 7.) Thus, the Commission concludes that the loading facilities as proposed will not create any adverse impacts and will adequately serve the proposed residential development on the PUD Site.
73. Lot Occupancy. The Applicant requests flexibility from the lot occupancy requirements for the senior building. Pursuant to 11 DCMR § 772.1, 60% lot occupancy is required, but the Applicant proposes to provide 68% lot occupancy.
74. The senior building is surrounded by Irving Street to the north, a large open court and the apartment house to the east, the community park to the south, and the newly created private street to the west. Thus, although the Applicant proposes to increase the lot occupancy to eight percent more than permitted, there is still significant open space surrounding the building. Together, the court, park, and surrounding streets will provide significant light, air, and ventilation to building residents, and the court and park will provide high-quality exterior amenity spaces. Moreover, the overall lot occupancy for the PUD Site is 53%, which is well within the 60% lot occupancy permitted. Therefore, the Commission finds that the non-compliant lot occupancy for the senior building will not result in any negative impacts to building residents or surrounding properties.
75. Compact Parking Spaces. Subsection 2116.1 of the Zoning Regulations requires parking spaces to be located on the same lot as the building that it serves. Subsection 2115.1 provides that all required parking spaces must be a minimum of nine feet width and 19 feet in length. Subsection 2115.2 provides that any accessory parking area containing 25 or more required parking spaces may designate up to 40% of the parking spaces for compact cars. In this case, the Applicant proposes to provide 16 surface parking spaces located on the private street within the PUD Site, eight of which will be reserved for the eight townhome units, and all of which will be compact in size and measure 7'x20'. Thus, flexibility from §§ 2116 and 2115 is required because the parking spaces are not located on the same lot as the townhomes that they serve, the parking area contains less than 25 spaces, and because all 16 spaces will be compact in size and measure 7' x 20'.

76. The Commission finds that flexibility is appropriate in this case. Locating an off-street parking space on each townhome lot is not practical because the townhomes do not have rear vehicular access. The Applicant designed the townhomes without a rear alley in order to minimize traffic adjacent to the existing row dwellings to the west of the PUD Site. Providing a parking space at the front of the townhomes is also not practical because doing so would create an unwanted physical and visual barrier between the townhomes, the public park, and the other buildings on the PUD Site, thus upsetting the PUD Site's continuity. Providing parking on the private street in front of the townhomes will be convenient to its occupants and will not have any adverse impacts on the neighborhood, and results in more spaces being provided than would be if all spaces were full size.
77. Moreover, the Commission finds that providing all of the 16 spaces as compact spaces will maximize efficiency of the private street. The compact spaces are only compact in terms of their width, not their length, which is necessary in order to meet the drive aisle width requirements for the new private street. Decreasing the street width in order to increase the width of the compact spaces would have the adverse effect of: (i) reducing the rear yard depths for the adjacent townhomes (to the west of the street), and/or (ii) reducing the width of the sidewalk adjacent to the park (to the east of the street). Therefore, the Commission finds that the requested flexibility allows for the most efficient use of the PUD Site, will not have any adverse effects, and will allow the Applicant to most effectively provide parking for the project's residents.
78. Phasing. Pursuant to 11 DCMR § 2408.8, PUDs approved by the Commission are valid for a period of two years, within which time an applicant must file for a building permit. Pursuant to 11 DCMR § 2408.9, construction of a PUD must begin within three years of the date of final approval. The Applicant proposes that the final PUD should be valid for a period of six years, and that construction must begin within seven years of the date of final approval.
79. The Commission finds that this request is appropriate in this case because extending the PUD approval timeline will minimize displacement for current Park Morton residents. As set forth in the Applicant's Phasing Plan, the Applicant proposes to redevelop the PUD Site and the Park Morton site in phases (Bruce Monroe first, and Park Morton second), which will allow for a true "build-first" scenario and properly respect the living conditions of the existing Park Morton residents. (Ex. 6B.) Thus, the Commission finds that the proposed PUD Phasing is appropriate and necessary in this case.

Development Flexibility

80. The Applicant also requests flexibility in the following additional areas:
- a. To be able to provide a range in the number of residential units of plus or minus 10%;

- b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
 - c. To vary or reduce the number, location and arrangement of parking (vehicular and bicycle) spaces, provided that the total is not reduced below the number required under the Zoning Regulations;
 - d. To vary the sustainable design features of the Project, provided the total number of points achievable for the apartment house and senior building is not below 57 points, and the points achievable for the townhomes is not below 50 points utilizing the EGC rating standards;
 - e. 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 without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes in order to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit; and
 - f. To vary the features, means and methods of achieving: (i) the code-required Green Area Ratio (“GAR”) of 0.3 for the apartment house and 0.4 for the senior building; and (ii) storm water retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.
81. The Commission does not approve the requested flexibility related to parking spaces for three reasons. First, the Applicant did not adequately explain why it needs the flexibility. Second, the flexibility requested contradicts several conditions the Applicant proposed to mitigate potential adverse effects of the project on neighborhood parking, made in response to testimony at the hearing. And third, the flexibility undermines the justification of the finding the Commission makes in this Order that the project would not result in increased demand for parking on existing public streets, which was based on the number of spaces included in the Project. The Commission also only partially granted the Applicant’s request for flexibility in the final selection of the exterior materials because it believes the Applicant’s request was overly broad.

Project Benefits and Amenities

82. Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a)). The Project will implement a number of best planning practices within a site that has not seen significant improvement or redevelopment for decades. These practices include creating density to

establish a renewed neighborhood, incorporating a variety of building heights and residential unit types, introducing a new private street that will enhance circulation, and establishing new open green spaces that are adequately lit and easily surveyed. The proposed architecture is appropriately scaled to match the diverse mixed-use character of the surrounding neighborhood, and the buildings will be made of high quality materials that will blend well with the surrounding urban context. The landscape design includes large courtyards, significant public space enhancements, and ample outdoor green space. Improved sidewalks along Georgia Avenue, Irving Street, and Columbia Road will provide for a better pedestrian experience through the use of street trees, landscaping, and sidewalk connections to the park and the new private street will provide a pedestrian mid-block connection with trees lining both sides.

83. Housing and Affordable Housing (11 DCMR § 2403.9(f)). The Project's most significant benefit is the creation of new housing, including public housing replacement units and additional new affordable housing units, consistent with the goals of the Zoning Regulations, the Comprehensive Plan, the New Communities Initiative, and the Mayor's housing initiative. The Project will provide 90 off-site replacement public housing units for Park Morton, allowing new public housing to be built prior to the demolition of existing public housing. Coordinated redevelopment of the PUD Site and Park Morton will minimize displacement, maximize opportunities for permanent moves, allow for phased redevelopment of Park Morton to keep existing residents on-site, and spread the density of Park Morton across multiple land parcels in order to achieve a one-for-one replacement of public housing units and mixed-income development.
84. Pursuant to Chapter 26 of the Zoning Regulations, the Project is only required to dedicate eight percent or 10% of its residential gross floor area to households earning up to 80% of the AMI.² In this case, the Project includes a significantly greater amount of affordable housing and at a much steeper subsidy level.
85. The Project includes a total of 273 residential units, of which 90 units will be public housing replacement units, 109-113 units will be workforce affordable units, and 70-74 units will be market rate. Thus, approximately 74% of the units in the Project will be devoted to affordable housing.
86. The Project also includes a variety of housing types to serve households of all sizes. The townhomes will each have three bedrooms; the apartment building will have studio, one-bedroom, two-bedroom, and three-bedroom units; and the senior building will have one-bedroom units. This housing mix is carefully designed to meet local demand and to contribute to a vibrant, diverse, safe, and functional neighborhood.

² In the C-2-B Zone District, eight percent of residential gross floor area is required to be devoted to households earning up to 80% of the AMI. In the R-5-B Zone District, 10% of residential gross floor area is required to be devoted to households earning up to 80% of the AMI. (11 DCMR §§ 2603.1 and 2603.2.)

87. The breakdown of affordable housing by gross floor area and level of affordability is set forth below:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	275,747 sf of GFA (100%)	273			Rental
Market Rate	71,694 sf of GFA (26%)	70-74	Market Rate	NA	Rental
Public Housing Replacement Units	90,997 sf of GFA (33%)	90	HUD Requirements/ LIHTC Rules	Life of the Project	Rental
Affordable Housing	113,056 sf of GFA (41%)	109-113	Up to 60% AMI	Life of the Project	Rental

88. Environmental Benefits (11 DCMR § 2403.9(h)). The Project promotes environmental sustainability by implementing a variety of sustainable design features. The proposed site plan opens the PUD Site to the surrounding community by creating a new private street, ensuring increased pedestrian access to public transportation options, and maximizing green park space. The Project also provides environmental benefits consistent with the recommendations of 11 DCMR § 2403.9(h), including new landscaping, street tree planting and maintenance, energy efficient and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices. The Project will be designed to integrate a host of sustainable features, such that the apartment house and senior building will be certified with a minimum of 57 points under the EGC standards, and the townhomes will be certified with a minimum of 50 points under the EGC standards. *See* Conceptual EGC scorecard included with the Plans.

89. Employment and Training Opportunities (11 DCMR § 2403.9(e)). The Applicant has indicated that expanding employment opportunities for residents and local businesses is a priority of the Applicant. Therefore, the Applicant will: (i) enter into a Certified Business Enterprise (“CBE”) Agreement with the District Department of Small and Local Business Development (“DSLBD”); (ii) enter into a First Source Employment Agreement with the District Department of Employment Services (“DOES”), consistent with the First Source Employment Agreement Act of 1984; and (iii) meet the U.S. Department of Housing and Urban Development’s (“HUD”) Section 3 requirements by providing job training, employment, and contract opportunities for low- or very-low income residents in connection with development of the Project. The Commission finds that execution of these agreements constitutes a public benefit under 11 DCMR § 2403.9(e).

90. Transportation Benefits (11 DCMR §2403.9(c)). The Applicant incorporated a number of elements into the Project that will promote effective and safe access to the PUD Site, convenient connections to public transit services, and on-site amenities that encourage pedestrian and bicycle activity. The Project includes a new north-south private street that connects Irving Street to Columbia Road, thus creating new access points and enhanced

circulation in the square. The new street will have sidewalks on both sides, incorporate pedestrian-oriented streetscape features, establish improved facilities for vehicles, bicyclists, and pedestrians, and increase community safety. The overall Project incorporates designs for enhanced sidewalks and streetscapes, which will encourage pedestrian activity and improve walkability.

91. Vehicle parking will primarily be provided below-grade to preserve green space and minimize spill-over parking onto the surrounding streets. Access to the parking and loading facilities will be made from the private street. Ample and secure long- and short-term bicycle parking will be provided.
92. The Applicant will also install the following infrastructure improvements, as requested by DDOT:
 - a. Install pavement marking enhancements to a stop bar on Georgia Avenue at Hobart Place to better delineate stopping locations as a means to manage queue lengths; and
 - b. Install pavement markings (i.e., “puppy tracks”) at the study area intersections along Georgia Avenue, subject to DDOT approval.

Transportation Demand Management

93. In addition to the transportation amenities described above, the Applicant will implement the following transportation demand management (“TDM”) strategies to reduce travel demand:
 - a. Offer each apartment unit and townhome an annual carsharing membership or an annual Capital Bikeshare membership for a period of three years;
 - b. Provide, as a one-time incentive, 189 helmets for apartment building occupants and eight helmets for townhome occupants;
 - c. Offer a pre-loaded \$10 SmarTrip card for each residential unit in the apartment house, senior building, and townhome, at the initial sale or lease of each unit;
 - d. Unbundle the cost of parking spaces from the cost of lease or purchase of the market-rate units;
 - e. Provide two on-street carsharing spaces on the new private street;
 - f. Provide a bicycle repair station in the apartment building;
 - g. Install a transit screen in the lobby of the apartment house and senior building (two total);

- h. Post all TDM commitments online;
- i. Designate a TDM leader;
- j. Provide 90 long-term and 16 short-term bicycle parking spaces; and
- k. Provide six shopping carts for multi-family residential tenants to run daily errands.

Consistency with District Plans and Policies

94. As set forth below, the Commission finds that the Project is consistent with the Generalized Policy Map and Future Land Use Map, advances the purposes of the Comprehensive Plan, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. The Commission also finds that the Project is consistent with the Petworth Metro Station Area and Corridor Plan Revitalization Strategy (the "Strategy Plan"), the Park Morton Plan, and the District's New Communities Initiative.

Interpretation of the Comprehensive Plan

95. The Comprehensive Plan guides the District's development, both broadly and in detail. (10A DCMR § 103.2.) The Comprehensive Plan includes detailed maps and policies for the physical development of the District, and addresses social and economic issues that affect and are linked to the development of the city and its citizens. The Plan allows the District to ensure that its resources are used wisely and efficiently and that public investment is focused in the areas where it is needed most. (10A DCMR § 100.14.)
96. The Comprehensive Plan "is a broad framework intended to guide future land use planning decisions for the District." (*Tenley & Cleveland Park Emer. Comm. v. D.C. Bd. of Zoning Adjustment*, 550 A.2d 331, 337 (D.C. 1988).) It has several purposes, including "[d]efin[ing] the requirements and aspirations of District residents, and accordingly influenc[ing] social, economic, and physical development" and "[a]ssist[ing] in the conservation, stabilization, and improvement of each neighborhood and community in the District." (D.C. Code § 1-306.01(b)(1), (6).)
97. The Comprehensive Plan includes Citywide Elements that each address a topic that is citywide in scope, and Area Elements that focus on issues that are unique to particular parts of the District. (10A DCMR §§ 104.4-104.5.) It also includes a Generalized Policy Map and a Future Land Use Map, which are incorporated as part of the plan and provide the foundation for land use decision-making and zoning. (10A DCMR § 108.3.) Subsection 226.1(d) of the Comprehensive Plan provides that the "zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements,

as well as approved Small Area Plans.” In this case, the Commission finds that the Future Land Use Map designations, combined with the text of the Comprehensive Plan, have appropriately guided the proposed use and development of the PUD Site.

98. The Commission notes that the Comprehensive Plan, including the Future Land Use Map and the Generalized Policy Map, is not a code of compulsory requirements. (10A DCMR § 226.1; *Durant I v. Dist. Of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013).) Rather the Comprehensive Plan is "an interpretative guide, which the Commission must consider holistically." (*Durant I*, 65 A.3d at 1168; *cf. Tenley & Cleveland Park*, 550 A.2d at 338 ("[a]lthough the Plan serves as an important policy guide, its legal mandate is more limited. Except as provided by other law or the Plan itself, the District elements are advisory").)
99. Moreover, even if a PUD application arguably "conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole." (*Durant I*, 65 A.3d at 1168.) The Comprehensive Plan reflects numerous "occasionally competing policies and goals," and, "[e]xcept where specifically provided, the Plan is not binding." (*Id.* at 1167, 1168 (internal quotation marks omitted).) Thus "the Commission may balance competing priorities" in determining whether a PUD is consistent with the Comprehensive Plan as a whole. (*D.C. Library Renaissance Project/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013).)

Generalized Policy Map

100. **The Project is Consistent with the Generalized Policy Map.** The Comprehensive Plan Generalized Policy Map designates the eastern portion of the PUD as a Main Street Mixed Use Corridor and the western portion of the PUD Site as a Neighborhood Conservation Area. Main Street Mixed Use Corridors are traditional commercial business corridors with a concentration of older storefronts along the street. Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper-story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment. (10A DCMR § 223.14.)
101. The Commission finds that the proposed rezoning and redevelopment of the PUD Site is consistent with the policies indicated for Main Street Mixed Use Corridors. The proposed C-2-B Zone District for the eastern portion of the PUD Site is consistent with the physical character and development objectives established for Main Street Mixed-Use Corridors. For example, the Project is sensitive to Georgia Avenue as a traditional commercial business corridor. Georgia Avenue includes commercial properties, older storefronts, and sidewalks on both sides of the street. The PUD will conserve this existing character by bringing new developed frontage to Georgia Avenue, improving the

pedestrian experience through streetscape enhancements and pedestrian-oriented amenities, and increasing safety by putting additional eyes and ears on the street. Moreover, the PUD will bring significant new housing to the area, which will foster economic development for the existing businesses along Georgia Avenue and will attract new business and investment to the corridor. For these reasons, the Commission concludes that the eastern portion of the PUD Site is consistent with the Main Street Mixed-Use Corridor designation on the Generalized Policy Map.

102. The Framework Element describes Neighborhood Conservation Areas as areas that “have very little vacant or underutilized land. They are primarily residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will be modest in scale and will consist primarily of scattered site infill housing, public facilities, and institutional uses. Major changes in density over current (2005) conditions are not expected but some new development and reuse opportunities are anticipated.” (10A DCMR § 223.4.) “The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. Limited development and redevelopment opportunities do exist within these areas but they are small in scale. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map. (10A DCMR § 223.5.)
103. The Commission finds that the proposed zoning map amendment to the R-5-B Zone District and the corresponding residential development on the western portion of the PUD Site is consistent with the objectives set forth for Neighborhood Conservation Areas. The western portion of the PUD Site will replace an underutilized portion of the PUD Site with lower-scale residential uses that respect the neighborhood’s existing architectural character and scale. The southwestern-most portion of the PUD Site (closest to the existing row dwellings on the north side of Columbia Road) will be developed with corresponding new townhomes, built to a maximum height of 40 feet and set back from the existing dwellings. The new townhomes will front onto the new private street and will be sited along traditional sidewalks and landscaping. The Commission finds that the proposed development on this portion of the PUD Site will enhance the established neighborhood and, as described in more detail below, the new development will be compatible with the general existing scale and character of the area.
104. The northwestern-most portion of the PUD Site (near the existing row dwellings on the south side of Irving Street) will be developed with the 60-foot tall senior building. The senior building will be separated from the closest existing row dwellings by a new private street, sidewalks, and landscaping, such that approximately 60 linear feet will be provided between the senior building and the closest row dwellings, thus creating a setback distance that is equal to the height of the senior building. The senior building mimics many other apartment houses that have been built as infill developments in the area. Thus, because the townhomes and senior building respect and maintain the existing

scale and character of the surrounding neighborhood, the Commission concludes that this portion of the Project is consistent with the Neighborhood Conservation Area designation on the Generalized Policy Map.

Future Land Use Map

105. The Future Land Use Map shows the general character and distribution of recommended and planned uses across the city. (10A DCMR § 200.5.) The Future Land Use Map is “intended to provide generalized guides for development and conservation decisions.” (10A DCMR § 206(a).) The land use category definitions on the Future Land Use Map describe the general character of development in each area, citing typical building heights (in stories) as appropriate. (10A DCMR § 226.1(c).) However, the granting of density bonuses (for example, through PUDs) may result in heights that exceed the typical ranges cited. (*Id.*) The densities within any given area on the Future Land Use Map “reflect all contiguous properties on a block,” but there may be “individual buildings that are higher or lower than these ranges within each area.” (*Id.*)
106. The Comprehensive Plan does not require that each block “strictly correspond” with the general description of the associated land use designation on the Future Land Use Map. (*See* Z.C. Order No. 08-15, Finding of Fact No. 74(a) (stating that each block need not strictly correspond with the general description).) Indeed, the “Future Land Use Map is not a zoning map. Whereas zoning maps are parcel-specific, and establish detailed requirements for setbacks, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. By definition, the Map is to be interpreted broadly.” (10A DCMR § 226.1(a); Ex. 233, p. 4.)
107. The District of Columbia Comprehensive Plan Future Land Use Map designates the PUD Site in the Local Public Facilities land use category. The Local Public Facilities designation includes the following:
- “land and facilities occupied and used by the District of Columbia government or other local government agencies (such as WMATA), excluding parks and open space. Uses include public schools including charter schools, public hospitals, government office complexes, and similar local government activities. Because of the map scale, local public facilities smaller than one acre—including some of the District’s libraries, police and fire stations, and similar uses—may not appear on the Map. Zoning designations vary depending on surrounding uses.” (10A DCMR § 225.15.)
108. **Interpretation of the Local Public Facilities Designation.** The Commission credits the testimony of Mr. Dettman, who was qualified as an expert in land use, planning, and zoning at the public hearing, and who asserted that the PUD Site’s Future Land Use Map designation, combined with the text of the Comprehensive Plan, have appropriately guided the planning and design of the PUD. (Ex. 233, p. 4.)

109. The Comprehensive Plan states that the intent of the Future Land Use Map is to show use rather than ownership. The Local Public Facilities designation includes high-impact uses such as solid waste transfer stations and stadiums, as well as low-impact uses such as schools. (10A DCMR § 226(g).) Importantly, the Future Land Use Map does not show density or intensity on Local Public Facilities sites. Therefore, the Comprehensive Plan states that if a change in use occurs on these sites in the future (for example, a school becomes surplus or is redeveloped), the new designations should be comparable in density or intensity to those in the vicinity. (10A DCMR § 226(h) (*emphasis added*); Ex. 233, p. 3.)
110. This Commission has previously applied the standard of 10A DCMR § 226(h) in approving PUDs and zoning map amendments for properties designated in the Local Public Facilities category on the Future Land Use Map as follows:
- a. In Z.C. Order No. 06-31, the Commission granted a consolidated PUD and a Zoning Map amendment from the R-5-B Zone District to the C-2-B Zone District for property located at 5220 Wisconsin Avenue, N.W. The Commission found that the PUD and map amendment applications were not inconsistent with that site's partial designation as a Local Public Facility based on (i) the "general character of the area," (ii) the existing surrounding zone districts, (iii) the existence of many surrounding projects developed as PUDs, and (iv) because "the project is located and designed in a way that provides for a transition from the height and density of the project to the nearby lower scale neighborhoods"; (Z.C. Order No. 06-21, FF Nos. 21-22 and 29.)
 - b. In Z.C. Order No. 11-02/11-02A, in approving a new Campus Plan and further processing of an approved Campus Plan for construction of a new student center, the Commission found that the proposed Campus Plan was not inconsistent with the Local Public Facilities designation because it "called for building heights that are complimentary to the surrounding residential context." (Z.C. Order No. 11-02/11-02A, FF Nos. 34 and 37.) The height of the student center would be 56 feet, which was consistent with the Moderate-Density Commercial designation adjacent to that site; and
 - c. In Z.C. Case No. 11-10, the Commission granted an application for a Zoning Map amendment from the R-4 Zone District to the R-5-B Zone District for properties designated as a Local Public Facility. In approving that application, the Commission noted that the Comprehensive Plan "indicates that the zoning designations for these areas vary depending on surrounding uses. The Future Land Use Map recommends moderate density residential land uses for the areas immediately adjacent to the Subject Property. (Z.C. Order No. 11-10, FF No. 40.)
111. The Commission applies the standard of 10A DCMR § 226(h) in this case by comparing the proposed PUD Site density to the surrounding neighborhood context, including

existing and approved PUDs, and to the surrounding Future Land Use Map designations. Based on this analysis, and as testified to by Mr. Dettman at the public hearing, the Commission finds that the proposed R-5-B and C-2-B Zone Districts proposed for the PUD Site are appropriate for the PUD Site and consistent with the Local Public Facilities designation. (Ex. 233.)

112. **The Project is Consistent with the Surrounding Neighborhood Context.** The neighborhood surrounding the PUD Site is mixed-use, with a variety of housing types and densities that include both apartment houses and townhomes. Commercial buildings are also located along Georgia Avenue with ground-floor retail uses. As shown on the Development Map and New Development Along Georgia Avenue Sheets of the Plans, there are a number of existing and approved apartment buildings in the immediate vicinity of the PUD Site that have heights within the 72-90-foot range. For example, pursuant to Z.C. Order No. 13-10, the Commission approved a PUD at 3212-3216 Georgia Avenue (one block to the north of the PUD Site) to have a maximum height of 87 feet, eight stories, and 5.95 FAR. Pursuant to Z.C. Order No. 10-26, the Commission approved a PUD for 3221-3335 Georgia Avenue (two blocks to the northeast of the PUD Site) to have a maximum height of 90 feet, eight stories, and 5.37 FAR. Pursuant to Z.C. Order No. 08-26, the Commission approved a PUD at 3232 Georgia Avenue (two blocks north of the PUD Site) to have a maximum height of 80 feet, six stories, and 4.54 FAR.³
113. It is within this context that the Applicant proposes to develop the PUD Site with an apartment house at 90 feet and 5.9 FAR, a senior building at 60 feet and 3.9 FAR, and eight townhomes at 40 feet and FAR ranging from 1.2 FAR to 1.7 FAR. The Commission finds that these proposed building heights and densities are equal to or less than the heights and densities approved for PUDs within the immediate neighborhood. The Commission also credits the testimony of Mr. Dettman, who asserted that the proposed rezoning is “appropriate, given the (i) surrounding FLUM designations and corresponding zone districts, and (ii) nearby PUDs with similar heights and densities.” (Ex. 233, p. 4.) Therefore, the Commission finds that the Project is consistent with the surrounding neighborhood context.
114. **The Project is Consistent with the Surrounding Future Land Use Map Designations.** The Commission finds that the Project is consistent with the Future Land Use Map designations for properties surrounding the PUD Site. The Future Land Use Map designates properties to the immediate north and east of the proposed C-2-B portion of the PUD Site as mixed-use: Moderate-Density Commercial and Medium-Density Residential. The Future Land Use Map designates properties to the immediate north and west of the proposed R-5-B portion of the PUD Site as Medium-Density Residential.
115. The corresponding zone districts for the Moderate-Density Commercial designation are C-2-A, C-2-B, and C-3-A (10A DCMR § 225.9), which permit the following PUD

³ The buildings at 3212-3216 Georgia Avenue and 3221-3335 Georgia Avenue have been approved; the building at 3232 Georgia Avenue has been approved and constructed.

- heights and densities (i) a maximum height of 65 feet and 3.0 FAR (C-2-A); (ii) a maximum height of 90 feet and 6.0 FAR (C-2-B); and (iii) a maximum height of 90 feet and 4.5 FAR (C-3-A). The corresponding zone districts for the Medium-Density Residential designation are R-5-B and R-5-C (10A DCMR § 225.5), which permit the following PUD heights and densities: (i) a maximum height of 60 feet and 3.0 FAR (R-5-B); and (ii) a maximum height of 75 feet and 4.0 FAR (R-5-C). (11 DCMR §§ 2405.1 and 2405.2.)
116. Because the portion of the PUD Site proposed to be designated in the C-2-B Zone District is within the stated heights and densities for the Moderate-Density Commercial designation, the Commission finds that this portion of the Project is consistent with the surrounding Future Land Use Map designations. Similarly, because the portion of the PUD Site proposed to be designated in the R-5-B Zone District is within the stated heights and densities for the Medium-Density Residential designation, the Commission finds that this portion of the Project is consistent with the surrounding Future Land Use Map designations.
117. Moreover, the mixed-use Moderate-Density Commercial and Medium-Density Residential designation extends on both sides of Georgia Avenue, including across from the PUD Site, such that the Commission finds no reason to believe that this designation would have been cut off at the PUD Site if it were not already designated as a Local Public Facility.
118. The Comprehensive Plan also notes that mixed-use categories on the Future Land Use Map are used for “[c]ommercial corridors or districts which may not contain substantial amounts of housing today, but where more housing is desired in the future.” (10A DCMR § 225.19(b) (*emphasis added*)). In this case, the Applicant proposes increased height and density on the PUD Site for the specific purpose of providing new housing and affordable housing along the Georgia Avenue commercial corridor. Doing so is also specifically encouraged by the Comprehensive Plan’s Housing Element (*see, e.g. Policy H-1.1.4 – “Promote mixed use development, including housing, on commercially zoned land, particularly... along Main Street mixed-use corridors”*). Moreover, as described in more detail below, the Commission finds that the additional height and density are necessary to achieve the goals of the build-first principle, which will minimize displacement, maximize one-time, permanent moves, and implement the phased redevelopment of Park Morton.
119. The Commission finds that reviewing the Comprehensive Plan’s Citywide Elements is appropriate in this context, given the guidance of 10A DCMR § 226.1(d), which provides that “the zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans.” (10A DCMR § 226.1(d); *see also, e.g. Z.C. Order Nos. 14-19 and 15-14.*) Therefore, the Commission finds that the surrounding Future Land Use Map designations specifically call for development of housing in the future.

120. The Comprehensive Plan also states that the “general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown. If the desired outcome is to emphasize one use over the other (for example, ground floor retail with three stories of housing above), the Future Land Use Map may note the dominant use by showing it at a slightly higher density than the other use in the mix.” (10A § DCMR 225.19.) In this case, the PUD Site is surrounded by Moderate Density Commercial and Medium Density Residential designations, which indicates the District’s intent in emphasizing the residential use over the commercial use on the properties surrounding the PUD Site (Medium Density being a higher density designation than Moderate Density). The Commission finds that the Project is consistent with that interpretation because the majority of the uses constructed on the PUD Site will be residential, with only a small area on the ground floor of the apartment house devoted to commercial use.
121. **The Project is Consistent with Corresponding Zone Designations.** In order to maintain consistency with the surrounding land uses, building heights, and densities, the Applicant proposes to rezone the eastern portion of the PUD Site along Georgia Avenue to the C-2-B Zone District, and the western portion of the PUD Site to the R-5-B Zone District. Because these zone districts are specifically listed within the Moderate-Density Commercial and Medium-Density Residential designations (the land use designations for the areas surrounding the PUD Site), the Commission finds that they are not inconsistent with the Comprehensive Plan.
122. **The Proposed Height and Density for the PUD Site is Consistent with the Surrounding Future Land Use Map Designations and Proposed Zone Designations.** The Commission finds that the proposed heights and densities for the buildings within the PUD Site are consistent with the development parameters of the C-2-B and R-5-B Zone Districts as follows:
- a. The C-2-B Zone District (which is the district on which the apartment house will be located) permits as a PUD a maximum height of 90 feet and a maximum density of 6.0 FAR. The Applicant proposes to construct the apartment house to 90 feet and 5.9 FAR, which is consistent with the C-2-B Zone District; and
 - b. The R-5-B Zone District (which is the district on which the townhomes and senior building will be located) permits as a PUD a maximum height of 60 feet and 3.0 FAR. The Applicant proposes to construct the townhomes to a maximum height of 40 feet and 1.7 FAR, and the senior building to 60 feet and 3.9 FAR. Although senior building’s FAR is not within the development parameters for the R-5-B Zone District, the portion of the PUD Site that will be rezoned to R-5-B will have an average density of 1.9 FAR, which is significantly less than the maximum permitted density of 3.0 FAR and less than the 4.0 FAR which is permitted in the R-5-C Zone District. As described in FF No. 73-74, the Commission concludes that flexibility from the lot occupancy requirements for the senior building are appropriate in this case.

123. In addition to the proposed heights and densities being consistent with the applicable zone designations, the Commission also finds that the proposed height and density is appropriate for the PUD Site due to the PUD Site's location along the Georgia Avenue corridor and its close proximity to Metrorail. The scale, height, and design of this Project does not overpower the surrounding context. The proposed design orients the higher height and density portion of the Project towards Georgia Avenue, where similarly sized buildings exist or have been approved, and steps down to relate to the existing lower-scale residential neighborhood to the north and west. In addition to the lower building heights proposed along the western portion of the PUD Site, the scale and density of the Project is further reduced through the massing and articulation of the proposed buildings, separation provided by existing and proposed streets, substantial streetscape improvements, and the future public park that will be developed adjacent to the PUD Site. (Rebuttal Testimony of Mr. Dettman, Ex. 233 and testimony of Ms. Alexander regarding the various options considered for the scale, height, design, and layout of the PUD Site.)
124. Mr. Dettman and Ms. Alexander were qualified as expert witnesses at the public hearing. The Commission notes that “[w]hile agencies are not always bound to accept expert testimony over lay testimony,” (*Marjorie Webster Jun. C., I. v. Dist. of Columbia Bd. of Zoning Adjustment*, D.C.App., 309 A.2d 314, 319 (1973)), “the opinions of qualified experts are not to be lightly disregarded and the probative value of lay opinions is often doubtful.” (*Goldstein v. Zoning Board of Review, City of Warwick*, 101 R.I. 728, 227 A.2d 195 (R.I.1967); *see also Shay v. Dist. of Columbia Bd. of Zoning Adjustment*, D.C. App., 334 A.2d 175, FN10 (1975).) Therefore, based on the evidence in the record, including the testimony of expert witnesses presented at the public hearing, the Commission finds that the proposed height and density for the PUD Site are appropriate in this case.
125. **The Proposed Number of Stories is Consistent with the Surrounding Future Land Use Map Designations and Permitted Zone Designations.** The Applicant proposes to construct the 60-foot senior building with six stories and the 90-foot apartment house with eight stories plus a mezzanine. The Medium-Density Residential designation, which surrounds the PUD Site is “used to define neighborhoods or areas where mid-rise (four to seven) apartment buildings are the predominant use,” and “also may apply to taller residential buildings surrounded by large areas of permanent open space.” (10A DCMR § 225.5.) Buildings within the Moderate-Density Commercial designation are “larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height.” (10A DCMR § 225.) Although the Moderate-Density Commercial designation states that buildings generally do not exceed five stories, the Commission finds that this limitation is inconsistent with the Moderate-Density Commercial's corresponding zone districts, which specifically permit building heights of up to 90 feet. At 90 feet, approximately seven-nine stories could be achieved, assuming an average ceiling height of 10 feet. The proposed apartment house on the PUD Site will have eight stories and significant step-downs, which the Commission finds is consistent with the

number of stories that could be built in the zone districts listed as being consistent with the Medium Density Commercial designation.

126. Moreover, the Commission finds that the language of the Comprehensive Plan refers to *existing* buildings when discussing number of stories. (*See* 10A DCMR § 225.5, stating that “[a]reas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height.”) Based upon our interpretation and application of the Comprehensive Plan, the Commission finds that this language could not reasonably be read to permit 90-foot buildings that are limited to five stories.
127. This analysis is true for the Medium-Density Residential designation as well, which also surrounds the PUD Site, and which states that which mid-rise (four-seven stories) apartment buildings are the predominant use. This limitation is inconsistent with the Medium Density Residential’s corresponding zones, which allow buildings of up to 75 feet in height. At 75 feet, approximately seven-eight stories could be achieved, assuming an average ceiling height of 10 feet. The proposed senior building will have six stories, which the Commission finds is consistent with the realistic number of stories that could be built in the zone districts listed as being consistent with the Medium-Density Residential designation.
128. The language of the Comprehensive Plan also refers to *existing* buildings within the land use category of having four-seven stories. (*See* 10A DCMR § 225.5 stating that “[t]his designation is used to define neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low and moderate density housing may exist within these areas.”) The Commission finds that this language could not reasonably be read to permit 75-foot buildings that are limited to five stories.

The Project is Consistent with the Comprehensive Plan’s Goals for Housing and Open Space

129. Housing. The Comprehensive Plan includes many policies that encourage development of new housing and affordable housing, as well as policies that encourage the preservation of open space. The Commission finds that the Applicant’s proposal to develop the PUD Site primarily with housing, and thus reduce some of the open space that currently exists on the PUD Site, is still consistent with the Comprehensive Plan.
130. The Land Use Element of the Comprehensive Plan requires a balancing of priorities to accommodate a multiplicity of land uses within the boundaries of the District of Columbia. (10A DCMR § 300.1.) Land use policies must “ensure that all neighborhoods have adequate access to commercial services, parks, educational and cultural facilities, and sufficient housing opportunities while protecting their rich historic and cultural legacies.” (10A DCMR § 309.1.)

131. Because the Land Use Element integrates the policies and objectives of all the other District Elements, “it should be given greater weight than the other elements as competing policies in different elements are balanced.” (10A DCMR § 300.3.)
132. As stated in the Applicant’s response to opposition filings, the Land Use Element cites a number of policies that specifically aim to establish new housing and affordable housing. (Ex. 196, 197.) (*See, e.g. Policy LU-1.2.1: Reuse of Large Publicly-Owned Sites; Policy LU-1.2.5: Public Benefit Uses on Large Sites; and Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods.*) *Policy LU-1.4* provides that “infill development on vacant lots is strongly supported by the District of Columbia, provided that such development is compatible in scale with its surroundings and consistent with environmental protection and public safety objectives. In residential areas, infill sites present some of the best opportunities in the city for "family" housing and low-to-moderate-density development. In commercial areas, infill development can fill gaps in the streetwall and create more cohesive and attractive neighborhood centers.” (10A DCMR § 307.2.) The Project is consistent with these and other policies in the Land Use element because it involves the reuse and development of a large publicly-owned infill site that will be developed with appropriately scaled housing that will fill gaps in the street wall and create a more attractive and cohesive neighborhood. The Commission finds that developing the PUD Site in this manner meets the Land Use element’s important goals of building new housing.
133. The Commission finds that the Project is also consistent with other elements of the Comprehensive Plan that encourage the production of quality affordable housing. (*See, e.g. Policy H-1.2.1: Affordable Housing Production as a Civic Priority; Policy H-1.2.3: Mixed Income Housing; Policy H-1.2.5: Workforce Housing; Policy H-1.2.7: Density Bonuses for Affordable Housing; Policy H-1.3.1: Housing for Families; Policy H-1.4.4: Public Housing Renovation; and Action H-1.4.A: Renovation and Rehabilitation of Public Housing.*) The Commission agrees with the evidence and testimony submitted by the Applicant stated that the Project is a direct response to these policies, which call for the development of low and moderate-income housing through a variety of housing types and sizes, as well as the transformation of distressed public housing projects into viable, mixed-income neighborhoods. The Project is consistent with these goals because it proposes an equal number of public housing, workforce affordable housing, and market-rate housing, and does so through development of one-, two-, and three-bedroom units that can accommodate a wide range of households. The Project also involves the one-for-one replacement of the Park Morton public housing units through private sector support, which fulfils the goals of the New Communities Initiative, which the Comprehensive Plan specifically highlights as a program that should be supported in order to rehabilitate and rebuild the city’s public housing units. (Action H-1.4.A: Renovation and Rehabilitation of Public Housing.) Moreover, the Project is consistent with policies in the Housing Element that specifically encourage development of housing for seniors (*Policy H-4.2.2: Housing Choice for Seniors*) because the Project includes an entire building devoted to affordable senior housing.

134. The Commission also finds that the Project is consistent with the Mid-City Element, which states a number of policies that encourage the development of affordable housing. Issues that are relevant to the Mid-City Area “must be addressed to protect the quality of life, balance growth and conservation, and provide economic opportunity and stability for all members of the community.” (10A DCMR § 2000.10.)
135. The Mid-City Element highlights the dire need for new housing opportunities for all income levels. (*See, e.g.* 10A DCMR § 2007.2, stating that “housing opportunities should be increased for people at all income levels so that Mid-City can remain a diverse neighborhood...” *See also Policy MC-1.1.7: Protection of Affordable Housing*: “[s]trive to retain the character of Mid-City as a mixed income community by protecting the area’s existing stock of affordable housing units and promoting the construction of new affordable units.”)
136. The Mid-City Element calls for Park Morton to be redeveloped as a “new community,” replacing the existing public housing development with an equivalent number of new public housing units, plus new market-rate and workforce housing units, to create a new mixed income community. The Mid-City Element also values the importance of ensuring that “every effort possible is made to avoid permanent displacement of residents if this action is followed.” (10A DCMR § 2011.12.) The Commission finds that the Project embodies these and other policies of the Mid-City element by providing an equivalent number of new public housing units, workforce housing units, and market-rate units at the PUD Site, and avoiding entirely the permanent displacement of existing Park Morton residents through the careful phasing of the PUD Site and the Park Morton site.
137. In addition to finding that development of the PUD Site is consistent with the Comprehensive Plan’s goals for housing, the Commission also finds that the amount of housing density proposed for the PUD Site is appropriate, given testimony and evidence submitted by DMPED. DMPED testified that the proposed housing density allows for the implementation of the build-first principle, which will minimize displacement, maximize one-time, permanent moves, and implement the phased redevelopment of Park Morton. DMPED is the District office charged with executing the Mayor’s economic development strategy, which includes increasing affordable housing as a primary goal. Through partnerships with the District’s housing agencies, DMPED is tasked with producing, preserving, and protecting affordable housing through several key initiatives, including land disposition and the New Communities Initiative.
138. The Commission agrees with and adopts DMPED’s view that the density proposed for the PUD Site is necessary to successfully implement the build-first principle for three primary reasons: (i) the PUD Site’s close proximity to Park Morton, which allows residents to remain in the neighborhood in which they currently reside and maintain their existing networks and relationships; (ii) the PUD Site’s size (approximately three acres) and condition (relatively unimproved land), which allows for development of a large number of replacement units in the first phase, thus reducing the number of families who

- will have to wait for housing in phases 2 or 3 at Park Morton and/or face temporary relocation to support such development; and (iii) the PUD Site's location along Georgia Avenue where the Comprehensive Plan supports a higher density zoning designation, and thus development at-scale, consistent with other completed and planned projects along the corridor. (DMPED's January 10, 2017 letter (Ex. 237D).)
139. Moreover, the Commission credits language in the Mayor's September 16, 2016 transmittal letter of the Bruce Monroe Surplus Declaration and Approval Resolution of 2016 and the Bruce Monroe Disposition Approval Resolution of 2016, which states that the project "will provide replacement public housing units, much needed additional affordable housing units, market-rate units, and commercial or community space," and that "approval of the proposed resolutions will declare surplus and allow for the disposition of the Property to the Developer to redevelop the space into a vibrant mixed-use development where residents have quality affordable housing options, economic opportunities, and access to appropriate human services in a manner consistent with the NCI guiding principles." (Mayor's transmittal letter (included in Ex. 197, p. 2).)
140. Thus, the Commission finds that the PUD Site's proposed building heights and density will enable the successful relocation of public housing residents and fulfil the important goals and policies for housing development in the Comprehensive Plan.
141. Open Space. The Commission acknowledges the many policies within the Comprehensive Plan that encourage the preservation of open space. (*See, e.g.* 10A DCMR § 2000.8, stating that the Mid-City Area has a "severe shortage of parkland. As the densest part of the city, and one with many young children, recreational needs are among the highest in the city. Most of the areas's parks lack the land and amenities to meet these needs." *See also* 10A DCMR §§ 2007.2(e) and (j).)
142. The Commission finds that the Project is consistent with the goals of preserving open space, even though the PUD Site will be developed with housing and will result in the net reduction of open space currently on the PUD Site. This finding is based on the District's commitment to develop approximately 44,000 square feet of land adjacent to the PUD Site as a public park, such that the Applicant's proposal to developing the PUD Site with housing creates a balanced approach to development of Lot 849 that is consistent with the Comprehensive Plan.
143. The District, which will retain ownership of the 44,000 square foot parcel, is committed to the park's development as evidenced by (i) the Mayor's submission of the Bruce Monroe Surplus Declaration and Approval Resolution of 2016 and the Bruce Monroe Despoliation Approval Resolution of 2016 to the Council (both included at Ex. 197); and (ii) DMPED's November 23, 2015 Open Letter to Park Morton and Bruce Monroe Community Residents and Stakeholders (the "DMPED Open Letter"), which detailed the District's commitment to maintaining park and recreation uses on the PUD Site. (DMPED letter dated December 7, 2016, and DMPED's Open Letter, both included in Ex. 232.)

144. Following public outreach, DMPED recognized the desire for continued park and recreation space at the PUD Site. (*See, e.g. Notice of Public Meeting Regarding Surplus Resolution Pursuant to D.C. Official Code § 10-801.*) Prior to selecting the PUD Site as the build-first site for Park Morton, DMPED decided that a reprogrammed and reconfigured park would be established at the PUD Site, and that the remaining portion of the PUD Site was most suitable for mixed-use development, and primarily mixed-income residential development. (*Id.* at 3.) DMPED found that the size and location of the PUD Site presented an excellent opportunity to meet critical District priorities of developing new affordable housing and open space. Indeed, using public land for the creation of affordable housing “is one of the most effective strategies a municipality can use to leverage the creation and preservation of affordable housing.” (*Id.* at 4.)
145. As set forth in the DMPED Open Letter (included in Ex. 232), DMPED “looked at many possibilities for Build First options, including... sites proposed by community groups. In addition, a review of the corridor was performed to determine if [DMPED] missed any viable parcels. These potential sites included government owned parcels in Wards 1 and 4, and ten privately owned parcels, most of which were along the Georgia Avenue corridor. [DMPED] looked for sites that were in the neighborhood and would yield enough replacement public housing units (60+ family-sized units) to allow us to implement ‘Build-First.’ The Bruce Monroe site was viewed as the best option to facilitate the Build First concept and move the Park Morton project forward for the following reasons:
- a. No Displacement. Allows for replacement of all public housing units without having to move Park Morton residents out of the neighborhood;
 - b. Accelerates Redevelopment. Facilitates Park Morton redevelopment on the fastest timeline, as it is a single site versus multiple sites that would need to be purchased and developed over time;
 - c. Site Ownership Already. DC government owned site, therefore no need to acquire other sites; and
 - d. Cost Effective. Government owned site where the value can be used to subsidize affordability, a District priority for use of public parcels.” (DMPED Open Letter (included in Ex. 232, p. 1).)
146. In addition to evaluating the PUD Site as the best option for build-first, DMPED acknowledged the community’s priority to maintain park and recreation use on the PUD Site. DMPED stated that it is “supportive of a plan only if it includes park and recreational space returning to the site. The current proposal preserves half of the site as a park, which would allow all of the site’s current uses including courts, playground, and garden, to be brought back to the site. In addition, the proposal provides for some amount of park space to be open and operational for most of the construction period and for the

- permanent park space to be brought back to the site first. This plan will maximize the public and community value of the site by creating significant affordable housing capacity and improving on existing park space at the same time.” (*Id.* at 2.)
147. DMPED testified regarding its work with partner agencies to determine the process for designing, building, and operating the proposed park, and its commitment to engaging the community to receive feedback on proposed park plans. The Applicant also testified at the public hearing that the design and programming of the park will occur during a public engagement process initiated in early 2017.
 148. Moreover, development of the park is a condition of this Order, thus ensuring that the 44,000-square-foot parcel will be preserved as a park. Therefore, the Commission agrees with DMPED’s findings that the PUD Site “allows for both the development of housing AND the opportunity to provide improved urban park land in perpetuity,” and that the Project will include “a first class urban park of approximately one acre.” (DMPED’s January 10, 2017 letter (Ex. 237D).)
 149. The Commission also accepts the Applicant’s and DMPED’s testimony that the PUD Site was never intended to remain a park in its entirety. The PUD Site previously housed the Bruce Monroe Public School, which was closed in 2008 and demolished in 2009. In response to community feedback, DMPED committed funds to improve the PUD Site as a temporary public park, with permanent improvements intended to be pursued in the future. (*See* Building Permit and solicitation/award for the “interim” use of Bruce Monroe included in Ex. 197.) The fact that the PUD Site has been slated for redevelopment since the Bruce Monroe School was demolished “has been reiterated publicly in the community discussions around this project that have taken place over the last year.” (January 10, 2017 DMPED Letter (Ex. 237D, p. 1).) Thus, although the PUD Site is presently used as a public park, the Commission credits DMPED’s testimony that the site has not operated in this manner for long, and that it was never intended to be preserved as a park in its entirety in perpetuity.
 150. The Commission also accepts the District Council’s intentions for the PUD Site, as set forth in the Bruce Monroe Surplus Declaration and Approval Resolution of 2016 and the Bruce Monroe Despoliation Approval Resolution of 2016 (both included at Ex. 197). These resolutions provide evidence of the District’s determination that the “intended use of the Property is a mixed-use development providing for affordable housing, residential market rate housing, commercial or community amenities space and any ancillary uses.” (Bruce Monroe Disposition Approval Resolution of 2016, p. 2.) The resolutions also call for establishing “approximately 44,404 square feet of land area [to be] devoted to a park or other public uses.” (*Id.* at 2-3.)
 151. Based on the foregoing, the Commission finds that the Project, including the Applicant’s work with the District to develop the park, is consistent with the Comprehensive Plan’s goals of developing new housing and affordable housing, while also preserving open space. The Commission values and accepts DMPED’s position that the housing density

proposed for the PUD Site is consistent with the Comprehensive Plan and is necessary to achieve the important goals of the New Communities Initiative.

Purposes, Guiding Principles, and Major Elements of the Comprehensive Plan.

152. **The Project is Consistent with the Purposes of the Comprehensive Plan.** The purposes of the Comprehensive Plan are six-fold: (1) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; (2) to guide executive and legislative decisions on matters affecting the District and its citizens; (3) to promote economic growth and jobs for District residents; (4) to guide private and public development in order to achieve District and community goals; (5) to maintain and enhance the natural and architectural assets of the District; and (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. D.C. Official Code §1-245(b) (§ 1-301.62).
153. The Commission finds that the Project advances these purposes by promoting the social, physical, and economic development of the District through the provision of a vibrant new mixed-income community that includes a variety of housing types for households of varying income levels. The Project will achieve District goals by providing new affordable housing that respects the character of the surrounding neighborhood, enhances the natural and architectural assets of the District, and improves the community.
154. **The Project is Consistent with the Guiding Principles of the Comprehensive Plan.** The Comprehensive Plan establishes guiding principles that express cross-cutting goals for the District's future that guide the Comprehensive Plan's policies and actions. (10A DCMR § 200.4.) Based on evidence in the record, the Commission finds that the Project is consistent with many of the guiding principles for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as discussed in the paragraphs below.
155. **Managing Growth and Change.** The guiding principles of this element are focused on ensuring that the benefits and opportunities of living in the District are equally available to everyone in the city. The Commission finds that the Project is fully consistent these principles. Specifically, the Project will help to attract a diverse population through the provision of a mix of housing types available for households of different incomes. (10A DCMR §§ 217.2 and 217.3.) The Project will help connect the PUD Site to the rest of the neighborhood and the overall urban fabric by creating a new street, enhancing the pedestrian experience with new streetscape improvements and facilities, and building new open park spaces for the use and enjoyment of the public. (10A DCMR § 217.6.)
156. **Creating Successful Neighborhoods.** One of the guiding principles for creating successful neighborhoods is improving the residential character of neighborhoods. (10A DCMR § 218.1.) Moreover, the production of new affordable housing is essential to the success of neighborhoods. (10A DCMR § 218.3.) Another guiding principle for creating

successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (10A DCMR § 218.8.) The Commission finds that the Project furthers each of these guiding principles by constructing replacement public housing units, affordable housing units, and market-rate housing, all located within a single mixed-income development. As part of the PUD process, the Applicant has worked closely with ANC 1A, 1B, and a variety of other community stakeholders and organizations to ensure that the Project provides a positive impact to the surrounding neighborhood and is designed to be consistent with community goals.

157. Connecting the City. The Commission finds that the Project advances a number of the guiding principles stated within the Connecting the City Element. For example, the Project includes streetscape improvements that will improve mobility and circulation through the PUD Site, within the square, and throughout the neighborhood. (10A DCMR § 220.2.) The access points for the required parking and loading facilities are designed to appropriately balance the needs of pedestrians, bicyclists, transit users, vehicles and delivery trucks, as well as the needs of residents to move around and through the city. (*Id.*) Together, the Commission finds that these improvements will help to reinforce and improve the surrounding community. (10A DCMR § 220.3.)
158. Building Green and Healthy Communities. The Commission finds that the Project is fully consistent with the guiding principles of the Building Green and Healthy Communities element, since the Project will increase the District's tree cover, minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (11 DCMR §§ 221.2 and 221.3.) The proposed streetscape improvements will help to facilitate pedestrian and bicycle travel, and new green roofs will reduce stormwater runoff and create a more sustainable environment on the PUD Site.
159. The Project is Consistent with the Major Elements of the Comprehensive Plan. The Comprehensive Plan includes Citywide Elements that each address a topic that is citywide in scope, and Area Elements that focus on issues that are unique to particular parts of the District. (10A DCMR §§ 104.4-104.5.) The Commission finds that the PUD advances the objectives and policies from many elements of the Comprehensive Plan, as set forth in detail in the Applicant's Statement in Support (Ex. 6), the Applicant's Comprehensive Plan Analysis (Ex. 35B); the OP reports (Ex. 14, 43); the Applicant's response to opposition filings (Ex. 196 and 197); and Mr. Dettman's rebuttal testimony (Ex. 233). The Commission finds that the Project is consistent with policies ranging from:
 - a. Land use policies that promote infill development on large sites with a range of uses, transit oriented development, and context sensitive design and neighborhood beautification;

- b. Transportation policies that also promote transit oriented development, improved connectivity, and improvements to pedestrian and bicycle facilities;
 - c. Environmental policies that promote streetscape enhancement, increased tree canopy, energy efficiency, and sustainable stormwater management;
 - d. Housing policies that promote private sector support in addressing the critical need for more affordable housing, mixed-income development and neighborhoods, and advancement of the District's housing initiatives such as the New Communities Initiative; and
 - e. Mid-City Area policies that promote the protection of affordable housing in this particular area of the city, and the continued revitalization of the Lower Georgia Avenue corridor.
160. Therefore, taken together, and based on all of the evidence in the record, including the testimony of expert witnesses, and consistent with the Findings of Fact above, the Commission concludes that the Project is consistent with the Generalized Policy Map and Future Land Use Map, advances the purposes of the Comprehensive Plan, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. (Mr. Dettman's Rebuttal Testimony (Ex. 233).)

The Project is Consistent with the Georgia Avenue – Petworth Metro Station Area and Corridor Plan Revitalization Strategy

161. The Comprehensive Plan requires zoning to be “interpreted in conjunction with... approved Small Area Plans.” (10A DCMR § 266.1(d).) The Zoning Regulations further require consistency with “other adopted public policies and active programs related to the subject site.” (11 DCMR § 2403.4.) Small area policies appear in “separately bound Small Area Plans for particular neighborhoods and business districts. As specified in the city's municipal code, Small Area Plans provide supplemental guidance to the Comprehensive Plan and are not part of the legislatively adopted document.” (10A DCMR § 104.2.)
162. As set forth below, the Commission finds that the Project is consistent with the goals and priorities of the Georgia Avenue – Petworth Metro Station Area and Corridor Plan Revitalization Strategy (the “Strategy Plan”), which is the Small Area Plan applicable to the PUD Site. Similar to the Comprehensive Plan, the Strategy Plan discusses the importance of balancing development priorities, which include “the critical need to preserve and create affordable housing” (*see* Strategy Plan, p. 17) and the development of “some form of public green space or civic space as new redevelopment projects are constructed.” (*Id.* at 27.)
163. The Strategy Plan emphasizes the need for quality housing and affordable housing by encouraging “a mix of residential development along [the Georgia Avenue] corridor...

[that] should be targeted in blocks that have high vacancies and/or underutilized properties.” (*Id.* at 23.) In order to ensure that existing residents receive opportunities to acquire affordable housing, the Strategy Plan aims to create a “vibrant, mixed income community, as well as potentially mak[ing] a significant contribution to providing housing for District of Columbia’s working families.” (*Id.* at 25.) The Strategy Plan strives to advance diversification of the housing stock by “encouraging redevelopment opportunities with multi-family buildings for families [and] senior citizens,” and to increase affordability by “encouraging development opportunities with a variety of housing types.” (*Id.* at 27.)

164. The Strategy Plan notes that the Park Morton site “contains poor physical layout and design. The existing suburban-style physical design contributes to the lack of safety and adds to a visible exclusion from the surrounding community. It also lacks the private space, which leads to attracting and fostering negative activity in and around the corridor.” (*Id.* at 34.) The Strategy Plan also references a “lack of public land for new development” since the “majority of lots are small and privately held.” (*Id.* at 34 and 36.)
165. The Commission finds that the Project is consistent with these and other policies set forth in the Strategy Plan because it will satisfy the great need for new housing and affordable housing in the District, particularly along the Georgia Avenue corridor. Through the District’s development of the 44,000 square foot parcel adjacent to the PUD Site, the Project also advances the Strategy Plan’s priority of preserving and protecting public parks and green space. Therefore, the Commission finds that the Project is consistent with the Strategy Plan.

The Project is Consistent with the Park Morton Plan

166. The Park Morton Plan is a plan developed by DMPED and DCHA that seeks to create a healthy, mixed-income community with integrated services that offer families better housing, employment, and educational opportunities. The Park Morton Plan protects affordable housing, improves economic integration, engages residents in community decision making, decreases crime through proven crime reduction strategies, and creates opportunity through better jobs, education, training, human services and other programs. (Park Morton Plan, p. 2.) The Park Morton Plan is relevant in this case because the PUD Site serves as a build-first site for 90 Park Morton replacement public housing units.
167. The Commission finds that the Project is consistent with many of the goals set forth in the Park Morton Plan. A key component of the Park Morton Plan is the one-for-one replacement of existing publicly subsidized housing at Park Morton. (*Id.* at 4.) The Commission finds that the Project advances this goal because the application was submitted in conjunction with the PUD application for Park Morton. In both applications, the PUD Site was specifically identified as the build-first site for Park Morton, thus creating an opportunity to provide one-for-one replacement units. The Project establishes a true build-first scenario because it provides for a critical mass of 90 replacement public

housing units, and its development will be coordinated and phased with development of Park Morton, as both sites will be implemented by the same master development team.

168. The Park Morton Plan also calls for the redevelopment of “a public housing site into a mixed-income community with an improved quality of life for families,” and for the reduction in economic segregation by “protecting existing affordable housing and building more units at workforce and market-rates.” (*Id.* at 4, 28.) The Commission finds that the Project is consistent with these objectives because it incorporates 90 new replacement public housing units, 109-113 workforce affordable units, and 70-74 market-rate units, such that a true mixed-income community will be created at the PUD Site. The housing units will range from one-, two-, and three-bedroom units in order to accommodate diverse household sizes and types that will be moving into the Project.
169. Another hallmark of the Park Morton Plan is a focus on the redevelopment of human capital through linkages to job training, asset building training and other support services. The Commission finds that the Project helps to embody this vision through the Applicant’s commitments to: (i) entering into a First Source Employment Agreement with the DOES, to ensure that District residents are given priority for new jobs created by municipal financing and development programs; (ii) entering into a CBE Agreement with DSLBD to ensure that a preference is made to District-based firms pursuing District government issued procurement opportunities; and (iii) involving economically disadvantaged communities by meeting the HUD Section 3 requirements by providing job training, employment, and contract opportunities for low- or very-low income residents in connection with development of the Project.
170. Based on the foregoing, the Commission finds that the Project is consistent with many key features of the Park Morton Plan.

The Project is Consistent with the New Communities Initiative

171. The New Communities Initiative is a District government program designed to revitalize severely distressed subsidized housing and redevelop communities plagued with concentrated poverty, high crime, and economic segregation. The vision for the New Communities Initiative is for vibrant mixed-income neighborhoods that address both the physical architecture and human capital needs, where residents have quality affordable housing options, economic opportunities and access to appropriate human services. Four guiding principles lay the framework for New Communities:
 - a. One for One Replacement to ensure that there is no net loss of affordable housing units in the neighborhood;
 - b. The Opportunity for Residents to Return/Stay in the Community to ensure that current residents will have a priority for new replacement units in an effort to remain in their neighborhood;

- c. Mixed-Income Housing to end the concentration of low-income housing and poverty; and
- d. Build First, which calls for the development of new housing to begin prior to the demolition of existing distressed housing to minimize displacement.

See <http://dcnewcommunities.org/about-nci/>.

172. The Commission finds that the proposed heights, densities, unit mix, and affordability levels advance the guiding principles and general goals of the New Communities Initiative. The PUD Site will serve as the build-first site for Park Morton’s replacement public housing units.
173. The Commission credits the Applicant’s testimony and evidence that the density proposed for the PUD Site is a result of the phasing plan for development of the PUD Site together with Park Morton. As set forth in DMPED’s January 10, 2017 letter, the PUD Site is the build-first off-site location for Park Morton redevelopment. (Ex. 237D.) The Project achieves 273 new housing units, split between public housing, workforce affordable, and market rate housing. This unit count is achieved under the proposed R-5-B and C-2-B rezoning, which “would be obtained via the PUD process and is permitted in the Comprehensive Plan.” (*Id.* at 2.) The Commission credits DMPED’s testimony that the unit density proposed for the PUD Site allows the District to “preserve housing equity in the project and to meet the diverse household sizes of Park Morton families.” *Id.* It also allows the District to “accommodate everyone from single seniors to 2-person households and families with children who require 3-bedroom townhome units.” (*Id.*)
174. The availability of a proximate, off-site, at-scale development parcel for Park Morton replacement public housing units is “essential to fulfilling the [New Communities Initiative’s] principles and ensuring timely completion of Park Morton revitalization. As such, Bruce Monroe is THE KEY component to delivering on the District’s promise made to Park Morton residents a decade ago, by supporting the delivery of a critical mass of replacement units at Bruce Monroe within a mixed-income context consistent with overarching community development goals.” (*Id.*) The development program and phasing for the PUD Site and the Park Morton site were designed to “take into account the inter-connected relationship among 1:1 replacement, creating/maintaining true income integration, minimizing resident displacement, utilizing economies of scale, [] staying within a reasonable development timeline, complying with the Comprehensive Plan policies regarding the need for additional affordable housing, among many other factors.” (*Id.* at 2-3.)
175. The Commission credits the testimony presented that if the PUD Site’s density was reduced, it would also reduce unit count, thus “precipitat[ing] a considerable delay in project completion [that] would only be feasible via: 1) control of an additional off-site parcel to absorb the loss (at significant expense, if such a proximate site were even

available), or 2) less dense Bruce Monroe reprogrammed as 100% affordable, in conflict with NCI mixed-income principle (90 replacement units on a less dense Bruce Monroe site would cause investors to discount any market rate component at or below tax credit rents, with a calamitous impact on financing structure, necessitating change which would maximize LIHTC equity).” (*Id.* at 3.) Following this proposal, Park Morton residents would find themselves “once again being told to ‘wait for their turn’ while priorities of other neighbors are addressed to their satisfaction first.” (*Id.*) Thus, the Commission finds that reducing density at the PUD Site, including removing any of the proposed residential units, “entirely removes equitable housing options for larger families at Park Morton and is inconsistent with the very principles under which the New Communities program operates.” (*Id.*)

176. The Commission also finds that none of the units proposed for the PUD Site can be shifted to Park Morton in order to achieve the desired number of replacement units overall. Unlike the PUD Site, Park Morton is located within a residential neighborhood and is situated off of Georgia Avenue. Accordingly, it is prescribed a lower-density zoning designation under a PUD than that of the PUD Site, and a lower zoning designation results in a lower unit yield. (*Id.*)
177. Therefore, the Commission finds that the proposed housing density and unit mix at the PUD Site allows for the important accommodation of a variety of household types and sizes at Park Morton, which would otherwise be frustrated by the need to develop more apartment buildings with smaller units at Park Morton. Reducing density at the PUD Site would result in additional relocation of existing Park Morton residents, since greater numbers of 1-for-1 replacement units would be dependent on sites currently housing Park Morton residents, since there would be the lost opportunity to build additional units at Bruce Monroe first. (*Id.* at 4.) Therefore, the Commission finds that the Project is consistent with the New Communities Initiative.

Office of Planning Reports

178. On July 15, 2016, OP submitted a report recommending setdown of the application. (Ex. 14.) The OP setdown report stated that the Project is “consistent with major policies from various elements of the Comprehensive Plan, including the Land Use, Transportation, Housing, Environmental Protection and Urban Design citywide elements, and the Mid-City Area Element” because the Project will: (Ex. 14, p. 5.)
- a. “[R]euse this site, formerly a public elementary school and now a temporary park, as a mixed-income site, providing a range of housing from replacement housing for the Park Morton site, housing for senior citizens to market rate housing. Although not part of the application, a private park, open to the public, would be provided”; (*Id.*)
- b. “[P]rovide a pedestrian-oriented development along Georgia Avenue, a major corridor. The proposed building heights would taper down from east to west, from

Georgia Avenue to the row house neighborhood to the west, with a row of townhouses adjacent to the row houses on Columbia Road”; (*Id.* at 6.)

- c. Provide bicycle parking “within the parking garage for the two multi-family buildings”; (*Id.*)
 - d. “[P]rovide for a mix of replacement public housing and a mixture of affordable and market rate housing. Housing types would include a mix of one-family homes and apartments in higher density multi-family buildings”; (*Id.* at 6.)
 - e. “[P]rovide the planting of trees, including street trees, green roofs and would be Enterprise Green Communities certifiable”; (*Id.* at 7.)
 - f. “[I]nclude a mixture of housing types, from family to senior citizen housing, and from replacement public housing to market rate, integrating them [] seamlessly together”; (*Id.* at 9.)
 - g. Include buildings that are “Enterprise Green Communities certifiable, with a minimum score of 50, and would exceed the minimum GAR requirement of 0.30 with a score of 0.314 for the apartment building and 0.411 for the senior citizen building. Extensive green roofs, tree planting and bioretention areas with plantings are proposed”; and (*Id.*)
 - h. “[I]mprove the aesthetics of Georgia Avenue. The building proposed to front on it has no blank walls, with the building designed to break the façade into segments. The overall site would be developed in three sections, with the largest building fronting on Georgia Avenue where other buildings of similar height have been constructed or are proposed to be built, and the smallest, the row houses, to be constructed adjacent to existing row houses.” (*Id.* at 10.)
179. The OP report further explained that the Project is consistent with the PUD Site’s designations on the Future Land Use and Generalized Policy Maps, and that OP supports the mix of housing types as proposed by the Applicant. (*Id.* at 11-12.) The OP report concluded that the proposed FAR and mix of housing types proposed for the PUD Site is not inconsistent with the Comprehensive Plan. The OP report also listed a number of recommendations included within the Strategy Plan, such as market economics, transportation, urban design and public realm, with which it found the Project to be consistent. (*Id.* at 12-13.)
180. On November 28, 2016, OP submitted a hearing report. (Ex. 43.) The OP hearing report recommended approval of the application and reiterated that the application is not inconsistent with the Comprehensive Plan, would further many of the Comprehensive Plan’s policies from various elements, and would also realize the Council-approved Park Morton Redevelopment Initiative Plan by creating a “mixed income community of low-rise and mid-rise buildings, with units for sale and for rent.” (Ex. 43, p. 1, 10.) OP also

found that the proposed zone districts “are comparable in density or intensity to those in the vicinity and not inconsistent with the predominate land use and the Comprehensive Plan.” (*Id.* at 10.)

181. The OP hearing report advised that, at the public hearing, the Applicant should (i) document flexibility for the provision of eight non-garage compact parking spaces for the townhomes; (ii) provide additional enlarged detail for the townhomes and apartment house demonstrating their residential character; and (iii) provide additional information on the proposed façade materials. The Applicant provided the information requested by OP at the public hearing.
182. Consistent with D.C. Official Code § 6-623.04 (2001), the Commission places great weight on the OP reports and testimony in approving this application.

DDOT Reports

183. On November 25, 2016, DDOT submitted a report, which indicated no objection to the application subject to the following conditions: (Ex. 44.)
- a. Enhance the TDM plan to include the following elements:
 - i. Offer each general apartment unit and townhome an annual carsharing membership or an annual Capital Bikeshare membership for a period of three years;
 - ii. Provide six shopping carts for multi-family residential tenants to run daily errands and grocery shopping; and
 - iii. Install a transit screen in each of the lobbies for the general and senior apartments;
 - b. As proposed, install pavement marking enhancements to a stop bar on Georgia Avenue at Hobart Place to better delineate stopping locations as a means to manage queue lengths; and
 - c. Commit to install pavement markings (i.e., "puppy tracks") at the study area intersections along Georgia Avenue, subject to DDOT approval at permitting.
184. At the public hearing, the Applicant agreed to all of DDOT’s conditions.
185. In addition, the DDOT report found that the proposed new north-south private street would “provide multi-modal connectivity through the site,” and that the PUD Site’s design “has the potential to disperse site traffic in a way that minimizes the action’s impact on the external road network and improve connectivity to the adjacent neighborhoods. (Ex. 44, p. 2.) DDOT also found that future residents and visitors would

be “likely to utilize transit, walking, and bicycling at high rates, thus auto use is likely to be low” because the PUD Site “is well-served by rail and bus services, as well as a robust network of bicycle facilities.” *Id.* Moreover, DDOT concluded that the Project would “minimally increase travel delay and queuing in the area,” with only minor increases in vehicle delay as a result of the Project. *Id.*

ANC Reports

186. ANC 1A, the ANC in which the PUD Site is located, submitted a resolution in support of the Project indicating that at its regularly scheduled and duly noticed public meeting of September 14, 2016, at which a quorum of commissioners was present, ANC 1A voted 10-0-0 to support the application. (Ex. 32-32A.) The resolution noted that ANC 1A “supports the request for flexibility from zoning regulations and the community benefits” and that the PUD “has offered a number of project amenities and public benefits commensurate with the development incentives and flexibility requested.” (Ex. 32-32A, pp. 3, 5.)
187. Chairman Kent Boese of ANC 1A testified in support of the Project at the public hearing. In his testimony, Chairman Boese reaffirmed ANC 1A’s unanimous support, which came “[a]fter months of community engagement, which included over 50 public meetings and workshops and careful consideration of the requested zoning relief.” (Ex. 198, p. 1.) Chairman Boese stated that the “amenities that will result from this project are significant, meaningful, and critical to the long-term health and development of the lower Georgia Avenue corridor.” (*Id.*) Chairman Boese also acknowledged the ANC’s support for the Project’s proposed height and density, asserting that it is “important to note that increasing overall density in the surrounding neighborhood is critical to revitalizing Georgia Avenue,” and that “[c]ontextually, the requested height for the building on Georgia Avenue is consistent with planned new development on Georgia Avenue.” He also noted that the ANC feels that “the scale, massing, and location of the buildings are appropriate.” (*Id.* at 2-3.)
188. ANC 1B, the ANC located adjacent to the PUD Site, also submitted a resolution in support of the project indicating that at its regularly scheduled and duly noticed public meeting of October 6, 2016, at which a quorum of commissioners was present, ANC 1B voted 7-0-0 to support the application. (Ex. 28.) ANC 1B also noted its support for the requested zoning flexibility, and confirmed that the Applicant had offered a number of benefits and amenities commensurate with the development incentives and flexibility requested. (Ex. 28, pp. 2, 3.)
189. On January 16, 2017, ANC 1A Chairman Kent Boese submitted a letter stating a concern about the Project. (Ex. 238.) His letter stated that the ANC was concerned about the Applicant’s proposal to restrict RPP eligibility from the market rate-units. The ANC stated that it did not support the Applicant’s proposal to include a condition restricting RPP eligibility from the market-rate units for several reasons. First, the ANC noted that the Applicant is complying with zoning parking requirements, and therefore was not

seeking any parking relief. Second, the ANC stated it was opposed to restricting RPP eligibility in general because: (a) doing so through a covenant seemed like a bad policy; (b) it was contrary to the intent of D.C. Law 18-240, which states that, “[a]ny resident owning a vehicle registered at an address on a Ward 1 residential block may be granted a Zone 1 residential parking sticker”; and (c) DDOT and the Department of Motor Vehicles have acknowledged that it has no self-exemption process under the current regulations, thus eligible residents applying for RPPs may receive them. Third, the ANC stated it was particularly concerned with the proposal in this case, insofar as it would deny RPP-eligibility to the market-rate units only. The ANC’s concerns are that it would decrease the marketability of the market rate units and thus have a negative impact on the success of the whole project, and that a successful mixed income project should provide equal amenities to all residents regardless of income.

190. Chairman Boese’s letter did not indicate that the ANC had authorized its contents at a properly noticed meeting with a quorum present, so it does not meet the standard of ANC report which must be accorded great weight. The Commission nonetheless considered the contents of the letter at its public meeting on January 30, 2017, and agreed with the Chairman Boese that the RPP restriction should not apply to the market-rate units. The Commission therefore struck all references to the RPP-restriction for market rate units from the conditions of this Order.

Reports of Other District Agencies

191. In addition to OP, DDOT, and the affected ANC, several other District agencies also submitted letters reviewing approval of the Project, including DHCD (Ex. 237J), DOEE (Ex. 237K), FEMS (Ex. 1237L), and DC Water (Ex. 237M). In particular, DHCD recommended approval of the Project because the Project will help meet the goals of the District’s New Communities Initiative without destabilizing land value, accelerating gentrification, or displacing neighboring residents. (Ex. 237J, p. 2.) DOEE confirmed that the Project adequately addresses and will mitigate potential environmental impacts with respect to air pollution and stormwater runoff, consistent with the regulatory requirements of DOEE. (Ex. 237K, p. 1.) DC Water stated that the Project’s utility plans adequately address water and sewer utility needs, and that the proposed water and sewer facilities shown on the Project’s Plans would be considered adequate by DC Water. (Ex. 237M, p. 1.) Finally, FEMS indicated that the Fire Marshal has no objection to the Project moving forward and being approved. (Ex. 1237L, p. 1.)

Contested Issues

192. The Park Neighbors, GAN, and a number of individuals in opposition to the Project raised a variety of issues concerning development of the PUD Site. A number of individuals also submitted letters in opposition to the Project. (Ex. 20-21, 40, 148, 151-163, 166-167, 168A, 170-171, 187-188, 191, and 220-229.) The Commission has carefully reviewed these issues, as submitted through written and oral testimony, and makes the findings discussed below.

193. Consistency with the Comprehensive Plan's Goal for Preserving Open Space. Opponents of the Project stated that the proposed rezoning is inconsistent with the Comprehensive Plan because it reduces the amount of available park greenspace. Individuals asserted their preference that the PUD Site should be improved with a larger park. As set forth in detail in FF Nos. 129-151, the Commission finds that the Project is consistent with the Comprehensive Plan, including its goals for preserving open space, due to Project's consistency with the equally important goals of developing new housing and affordable housing, combined with the District's commitment to develop a new public park directly adjacent to the PUD Site.
194. Consistency with Specific Policies Set Forth in the Comprehensive Plan. Written testimony was submitted to the record claiming that the Project is inconsistent with a number of specific policies set forth in the Comprehensive Plan related to quality of life, jobs and small businesses, public services, affordable housing, and transportation. (Ex. 181.) The Commission has reviewed each of these policies and finds that the Project is not inconsistent with the noted policies, as follows:
- a. *Policy E-4.1.3: Evaluating Development Impacts On Air Quality - Evaluate potential air emissions from new and expanded development, including transportation improvements and municipal facilities, to ensure that measures are taken to mitigate any possible adverse impacts. These measures should include construction controls to reduce airborne dust, and requirements for landscaping and tree planting to absorb carbon monoxide and other pollutants.*

The Commission finds that the Project is consistent with Policy E-4.1.3 because it includes a number of sustainable, environmentally-friendly features that will mitigate adverse impacts on air quality. These environmental measures include the implementation of erosion and sediment control techniques, new landscaping and street tree planting and maintenance, energy efficient and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices that will together work to absorb carbon monoxide and other pollutants. In addition, the Project will be certified under the Enterprise Green Communities standards, and will incorporate significant transportation demand management measures that will reduce travel demand and associated carbon emissions.

The Commission finds that DOEE supported the Project. (*See* email dated December 8, 2016 (Ex. 237K), stating that the PUD “includes measures that address and mitigate potential environmental impacts with respect to air pollution and stormwater runoff consistent with the regulatory requirements of the Agency. In addition, Certification under the Green Communities Criteria meets the minimum requirements of the Green Building Act for publicly financed developments of this scale.”)

Moreover, the Applicant will be required to comply with all applicable laws and regulations regarding construction noise and air pollution, and will address the mitigation of any construction-related impacts during the building permit process. Moreover, the Applicant submitted a Construction Management Plan, with which it will abide during construction of the Project. (Ex. 237F.) Therefore, the Commission finds that the Project is consistent with Policy E-4.1.3, and will not result in any negative impacts on air quality.

- b. *Policy E-4.3.5: Noise and Land Use Compatibility - Avoid locating new land uses that generate excessive noise adjacent to sensitive uses such as housing, hospitals, and schools. Conversely, avoid locating new noise-sensitive uses within areas where noise levels exceed federal and District guidelines for those uses.*

The Commission finds that the Project is consistent with Policy E-4.3.5 because it will not establish new land uses that generate excessive noise. The PUD Site will be developed as a residential use, which is the same use as the surrounding residential neighborhood. Moreover, the Applicant will be required to comply with all federal and District noise regulations during construction and operation of the buildings. Thus, the Commission finds that the Project will not create adverse impacts by generating excessive noise in the surrounding neighborhood.

- c. *Action E-4.5.C: Interagency Working Group - Create an interagency working group on safe drinking water to address drinking water emergencies; coordination between DCWASA and DOH, and expanded public education on water supply.*

This Commission finds that this Action item is not applicable to the Applicant's Project. (See p. 25-46 of the Comprehensive Plan's Implementation Element, which identifies DC Water, the District Department of Health ("DOH"), the District Department of Energy and the Environment ("DOEE"), and the Office of the City Administrator ("OCA") as the agencies responsible for carrying out Action E-4.5.C.) Moreover, DC Water submitted a report recommending approval of the Project and stating that the Project "adequately addresses water and sewer utility needs" and that it would "work with the Applicant during the building permit process to ensure that appropriate measures are taken to ensure that the project will not have any adverse impacts on existing or future DC Water capacity needs and will meet acceptance criteria." (Ex. 237M.) Based on the DC Water report, the Commission finds that the Project will not have any negative impact on the safety or supply of drinking water.

- d. *Policy E-4.8.2: Expanded Outreach to Disadvantaged Communities - Expand local efforts to involve economically disadvantaged communities, particularly those communities that historically have been impacted by power plants, trash transfer stations, and other municipal or industrial uses, in the planning and development processes.*

The Applicant worked closely with existing Park Morton residents through their Resident Council and Relocation/Reentry Committee, and has the full support of the Resident Council for development of the Project. (Ex. 37-38, 176-177.) The Applicant will also involve economically disadvantaged communities by meeting the U.S. Department of Housing and Urban Development's ("HUD") Section 3 requirements by providing job training, employment, and contract opportunities for low- or very-low income residents in connection with development of the Project. In addition, Dantes Partners, a member of the Applicant team, is a Section 3 business and is committed to extending opportunities to other Section 3 businesses. The Applicant has entered into a CBE Agreement with DSLBD which includes equity and development participation and reporting. (Ex. 237I.) Moreover, the Project received support from several local business owners. (Ex. 109, 144, 145, 146, 147, 207.)

In addition, DHCD recommended approval of the Project and stated that the "proposed development will help to meet the goals of the District's New Communities Initiative, which is a program designed to revitalize communities plagued with severely distressed housing, poverty, high crime and economic segregation." (See Ex. 237J.) Thus, the Commission finds that the Applicant's actions and the Project are consistent with Policy E-4.8.2.

- e. *Policy ED-3.2.1: Small Business Retention and Growth - Encourage the retention, development, and growth of small and minority businesses through a range of District-sponsored technical and financial assistance programs.*

Consistent with Policy ED-3.2.1, the Commission finds that the Project will encourage the retention, development, and growth of small and minority businesses since:

- i. The Applicant has entered into a First Source Employment Agreement with the DOES, consistent with the First Source Employment Agreement Act of 1984, to ensure that District residents are given priority for new jobs created by municipal financing and development programs;
- ii. The Applicant has entered into a CBE Agreement with DSLBD to ensure that a preference is made to District-based firms pursuing District government issued procurement opportunities. As noted above, the CBE requirements include equity and development participation and reporting; and
- iii. The Applicant will involve economically disadvantaged communities by meeting the HUD Section 3 requirements by providing job training, employment, and contract opportunities for low- or very-low income residents in connection with development of the Project;

- f. *Policy ED-3.2.6: Commercial Displacement - Avoid the displacement of small and local businesses due to rising real estate costs. Programs should be developed to offset the impacts of rising operating expenses on small businesses in areas of rapidly rising rents and prices.*

Consistent with Policy ED-3.2.6, the Commission finds that the Project will not result in the displacement of small and local businesses. The PUD Site is presently operated as a temporary park, so development of the Project will not result in the closure of any existing businesses on the PUD Site itself. Moreover, development of the Project includes 4,545 square feet of gross floor area designed for “retail/community” uses, such that new retail within the Project will not compete with or displace existing businesses in the surrounding area. Rather, the Commission finds that the Project will help support small and local businesses by introducing 273 new residential units into the neighborhood where none previously existed. The new housing will be occupied by residents who will need neighborhood goods and services. This type of mixed-income development will generate diverse new customers for small and local businesses, and will not result in rising real estate costs that could potentially displace existing businesses. Moreover, several existing local businesses have expressed their support for the Project. (*See Ex. 109, 144, 145, 146, 147, 207.*)

- g. *Policy ED-3.2.7: Assistance to Displaced Businesses - Assist small businesses that are displaced as a result of rising land costs and rents, government action, or new development. Efforts should be made to find locations for such businesses within redeveloping areas, or on other suitable sites within the city.*

The Commission finds that the Project is consistent with Policy ED-3.2.7 because the Project will not result in the displacement of small and local businesses. To the contrary, the Project will help to spur the growth and development of businesses in the area by developing significant new housing for residents in need of local goods and services. Moreover, the Commission finds that the Applicant’s commitments regarding its First Source Employment Agreement, CBE Agreement, and compliance with HUD Section 3 requirements will help to create new employment opportunities to local, low-income, and disadvantaged residents. With respect to assistance of displaced businesses, given that the Project is not displacing any existing businesses, there is no additional obligation on the Applicant.

- h. *Action ED-3.2.A: Anti-Displacement Strategies - Complete an analysis of alternative regulatory and financial measures to mitigate the impacts of “commercial gentrification” on small and local businesses. Measures to be assessed should include but not be limited to income and property tax incentives, historic tax credits, direct financial assistance, commercial land trusts, relocation*

assistance programs, and zoning strategies such as maximum floor area allowances for particular commercial activities.

Consistent with Action ED-3.2.A, the Commission finds that the Project will not result in commercial gentrification or the displacement of small and local businesses. The Project will be a benefit to the entire community and will help maintain economic stability and support the growth of small and local businesses. Moreover, pp. 25-50 of the Comprehensive Plan's Implementation Element designates OP, DMPED, the District Office of Local Business Development ("OLBD"), and DOES as the agencies responsible for carrying out Action ED-3.2.A. As stated above, DHCD expressed its support for the Project, noting that it would not result in "the destabilization of land values, the acceleration of gentrification, or the displacement of neighboring residents." (Ex. 237J.) OP and DMPED have also expressed their support for the Project. (Ex. 14, 43, 193.)

- i. *Action ED-3.2.D: Small Business Needs Assessment - Conduct an assessment of small and minority business needs and existing small business programs in the District. The study should include recommendations to improve existing small business programs and to develop new programs as needed.*

The study required by Action ED-3.2.D is intended to be undertaken by DOES and OLBD. (See p. 25-51 of the Comprehensive Plan's Implementation Element.) Therefore, the Commission finds that compliance with Action ED-3.2.D is not required by the Applicant for approval of the Project.

- j. *Policy ED-4.2.4: Neighborhood-Level Service Delivery - Emphasize the delivery of workforce development programs at the neighborhood level. Continue neighborhood faith-based and community-based initiatives which deliver job training and placement services to unemployed and underemployed residents. 717.12*
- k. *Policy ED-4.2.7: Living Wage Jobs - Promote the attraction and retention of living wage jobs that provide employment opportunities for unskilled and semi-skilled workers. Use marketing strategies and incentives to encourage the relocation of firms with such positions to the District.*
- l. *Policy ED-4.2.12: Local Hiring Incentives - Maintain requirements for resident job training and placement for projects built and/or operated with any form of public subsidy/loan, grant or other incentives. Promote incentives for similar training and hiring programs by the private sector.*

The Commission finds that the Project will advance the goals of Policies ED-4.2.7 and 4-2.12 because the Applicant will enter into a First Source Employment Agreement with DOES, enter into a CBE Agreement with DSLBD, and will meet HUD Section 3 requirements, in order to promote living wage jobs that provide

unemployment opportunities for unskilled and semi-skilled workers related to development of the PUD. Thus, the Commission finds that the Project will promote the attraction and retention of living wage jobs and will provide employment opportunities for unskilled and semi-skilled workers as part of development of the PUD.

The Commission finds that the Applicant will comply with all resident job training and placement requirements. The Applicant will enter into a First Source Employment Agreement to ensure that District residents are given priority for new jobs created by the PUD; enter into a CBE Agreement to ensure that a preference is made to District-based firms pursuing procurement opportunities related to development of the PUD; and meet the HUD Section 3 requirements by providing job training, employment, and contract opportunities for low- or very-low income residents in connection with development of the Project. Therefore, the Applicant will implement training and hiring as part of development of the PUD.

With respect to Policy ED-4.2.4, the Commission finds that it does not provide direct guidance regarding development but instead provides a suggestion to “emphasize the delivery of workforce development programs at the neighborhood level.” The Commission finds that the Applicant’s employment proffer is adequate under the circumstances, even though it is not specifically focused at the neighborhood level. The Commission finds that the statement in Policy ED-4.2.4 to “[c]ontinue neighborhood faith-based and community-based initiatives which deliver job training and placement services to unemployed and underemployed residents” is inapplicable to its decision here.

- m. *Policy CSF-1.1.1: Adequate Facilities - Construct, rehabilitate, and maintain the facilities necessary for the efficient delivery of public services to current and future District residents. 1103.6*

The PUD Site was never intended or encouraged by the District to be developed with facilities dedicated to the delivery of public services. The Commission finds that the Project respects the District’s goals, set forth in the Bruce Monroe Surplus Declaration and Approval Resolution of 2016 and the Bruce Monroe Despoliation Approval Resolution of 2016, of providing housing and affordable housing on the PUD Site. The Commission also acknowledges that the Project received approval from a number of District agencies, including DC Water, DOEE, and FEMS (Ex. 237L), all of which concluded that the Project would not have any adverse effects on their utilities or facilities. (Ex. 237K-237M.)

- n. *Policy CSF-1.1.2: Adequate Land - Ensure that the District government owns a sufficient amount of land in appropriately distributed locations to accommodate needed public facilities and meet the long-term operational needs of the government.*

The Commission finds that the District government has determined that it no longer needs to own the PUD Site, as evidenced by the Bruce Monroe Surplus Declaration and Approval Resolution of 2016 and the Bruce Monroe Despoliation Approval Resolution of 2016 (both included in Ex. 197), which establish the D.C. Council's finding that the PUD Site "is no longer required for public purposes because the Property's condition cannot viably accommodate a District agency use without cost prohibitive new construction." Indeed, the Council found that the "most pragmatic solution for activating the Bruce Monroe site is to declare the Property surplus and dispose of the Property for development... the Council determines that the Property is no longer required for public purposes." (Bruce Monroe Surplus Declaration and Approval Resolution of 2016, pp. 1-2.) Therefore, the Commission defers to the Council's decision regarding the use and development of District-owned land. However, the Commission also credits the District's commitment to retaining approximately 44,000 square feet of Lot 849 to be developed as a new public park.

- o. *Policy CSF-1.2.2: Linking the Comp Plan and Capital Improvement Program - Use the District's Comprehensive Plan, particularly its analysis of growth needs and service adequacy, to establish priorities for the funding of capital improvement projects. Public facility planning should be done systematically and comprehensively and should be based on analytical data about community needs, service levels, and projections—in addition to facility condition assessments.*

Consistent with Policy CSF-1.2.2, the Commission finds that the District has already made an assessment of the PUD Site and has determined that the "intended use of the Property is a mixed-use development providing for affordable housing, residential market rate housing, commercial or community amenities space and any ancillary uses." The District also determined that "the proposed uses will include approximately 44,404 square feet of land area devoted to a park or other public uses." (Bruce Monroe Despoliation Approval Resolution of 2016, pp. 2-3.) Thus, the Commission finds that the proposed Project is a direct result of the District's stated priorities for the PUD Site, based on its analysis of growth needs and funding priorities throughout the city.

- p. *Policy CSF-1.2.6: Impact Fees - Ensure that new development pays its "fair share" of the capital costs needed to build or expand public facilities to serve that development. Consider the use of impact fees for schools, libraries, and public safety facilities to implement this policy. Adoption of any fees shall take potential fiscal, economic, and real estate impacts into account and shall be preceded by the extensive involvement of the development community and the community at large.*

The Applicant will pay all applicable application, permit, and other required fees associated with the Project. There are no specific impact fees associated with development of the PUD Site.

- q. *CSF-3.2 Library Location - The opportunity to modernize or relocate more than two dozen branch libraries creates an exciting opportunity for many District neighborhoods. High-quality public libraries can help anchor neighborhood and corridor reinvestment efforts. Libraries can also support many of the other goals articulated in the Comprehensive Plan, including the creation of space for the arts, job training and literacy programs, and the promotion of high quality civic design.*

The PUD Site was never intended or encouraged by the District to be developed with a library. The Commission finds that the Project respects the District's goals, set forth in the Bruce Monroe Surplus Declaration and Approval Resolution of 2016 and the Bruce Monroe Despoliation Approval Resolution of 2016 by of providing housing, workforce affordable housing, and public housing on the PUD Site, and developing the public park adjacent to the PUD Site.

- r. *IN-1.2 Modernizing Water Infrastructure - In conjunction with WASA, the District must consider the impacts of new development and ensure that water infrastructure will be able to meet future demand. Planned improvements to the water system involve normal maintenance to replace aging water distribution mains and small diameter pipes, and upgrades to keep pace with population growth and new development. This may also include the addition of new water storage facilities, increasing the capacity of certain water mains, and upgrading pump stations.*

The Commission finds that the Applicant will be required to construct and maintain all public facilities and infrastructure, including water infrastructure, to accommodate future demand and maintain efficient delivery of public services for the Project. The civil sheets submitted to the record include plans for utilities, grading, erosion and sediment control, and stormwater management. Moreover, the Applicant will be required to coordinate with all applicable public utilities and District agencies during the permitting process, including DC Water, to ensure that adequate services will continue to be available for the existing and new uses.

The Commission also credits DC Water's report recommending approval of the Project, which stated that the "utility plans as presented adequately address water and sewer utility needs. The plan proposes water and sewer extensions which if placed in dedicated public space or acceptable easements would be considered adequate by DC Water." DC Water also noted that it would "work with the Applicant during the building permit process to ensure that appropriate measures are taken to ensure that the project will not have any adverse impacts on existing or future DC Water capacity needs and will meet acceptance criteria." (Ex. 237M.)

- s. *Policy IN-1.2.2: Ensuring Adequate Water Pressure - Work proactively with WASA to provide land for new storage tanks and other necessary operations so*

that adequate water supply and pressure can be provided to all areas of the District. The siting and design of water storage tanks and similar facilities should be consistent with the policies of the Urban Design and Environmental Protection Elements, and should minimize visual impacts and “skylining” effects on ridges or hills.

The Commission finds that this Policy does not apply to the Applicant’s development of the PUD Site because the land is not proposed to be developed for storage or any other operation facilities. The District has already determined that the PUD Site “is no longer required for public purposes because the Property’s condition cannot viably accommodate a District agency use without cost prohibitive new construction.” See Bruce Monroe Surplus Declaration and Approval Resolution of 2016. The Council found that the “most pragmatic solution for activating the Bruce Monroe site is to declare the Property surplus and dispose of the Property for development... the Council determines that the Property is no longer required for public purposes.” (Bruce Monroe Surplus Declaration and Approval Resolution of 2016, pp. 1-2.) Therefore, the District has already determined the preferred use for the PUD Site, and that use does not involve locating storage tanks or other DC Water facilities.

- t. *Policy IN-2.1.1: Improving Wastewater Collection - Provide for the safe and efficient collection of wastewater generated by the households and businesses of the District. Ensure that new development does not exacerbate wastewater system deficiencies, and instead supports improved system efficiency and reliability.*

Consistent with Policy IN-2.1.1, and based on DC Water’s statement that “the utility plans as presented adequately address water and sewer utility needs[,]” the Commission finds that the Project will comply with Policy IN-2.1.1. (Ex. 237M.)

Policy IN-6.1.3: Developer Contributions - Require that private developers fund the necessary relocation or upgrading of existing utilities to address limitations with existing infrastructure on or adjacent to proposed development sites. For necessary upgrades to water and wastewater infrastructure, developers should contribute to the cost of extending utilities to the project site or upgrading existing utilities to the specifications necessary for their proposed project.

The Applicant will coordinate with all applicable public utilities and District agencies during the permitting process to ensure that adequate services will continue to be available for new uses on the PUD Site and for the existing uses in the surrounding neighborhood. The Applicant will pay any required costs/fees associated with securing required utility permits for the PUD Site. Thus, the Commission finds that the Project is consistent with Policy IN-6.1.3.

- u. *Policy H-2.1.1: Protecting Affordable Rental Housing - Recognize the importance of preserving rental housing affordability to the well-being of the District of*

Columbia and the diversity of its neighborhoods. Undertake programs to protect the supply of subsidized rental units and low-cost market rate units.

- v. *Policy H-1.2.1: Affordable Housing Production as a Civic Priority - Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city.*

- w. *Policy H-1.2.7: Density Bonuses for Affordable Housing - Provide zoning incentives to developers proposing to build low- and moderate-income housing. Affordable housing shall be considered a public benefit for the purposes of granting density bonuses when new development is proposed. Density bonuses should be granted in historic districts only when the effect of such increased density does not significantly undermine the character of the neighborhood.*

The Commission finds that the Project exemplifies the goals of Policy H-2.1.1, H-1.2.1, and H-1.2.7. The Project includes 273 new residential units, of which 90 will be public housing replacement units, 109-113 will be workforce affordable units, and 70-74 will be market-rate units. The units include both rental and ownership opportunities. As contemplated by Policy H-1.2.7, the Applicant requested density bonuses associated with development of the PUD in order to build the low- and moderate-income housing proposed for the PUD Site. The variety of housing options will not only create housing for the lowest-income households, but will also establish new units that are affordable for teachers, police officers, and other working professionals in the District. Therefore, the Project provides a substantial new supply of affordable rental housing while preserving the well-being of the diversity of the District's neighborhoods.

The Project will be developed in coordination with the redevelopment of Park Morton, which also advances the goal of rehabilitating existing affordable housing. DHCD recommended approval of the application, stating that the Project would help to meet the goals of the District's New Communities Initiative, which is a program designed to revitalize communities plagued with severely distressed housing, poverty, high crime and economic segregation." (Ex. 237J.) Moreover, OP found that the "zone districts and proposed project are comparable in density or intensity to those in the vicinity and not inconsistent with the predominate land use and the Comprehensive Plan." (Ex. 43, p. 10.) Therefore, the Commission finds that the Project is fully consistent with the goals and purposes of these policies.

- x. *Policy H-2.1.4: Conversion of At-Risk Rentals to Affordable Units - Support efforts to purchase affordable rental buildings that are at risk of being sold and converted to luxury apartments or condominiums, in order to retain the units as affordable. Consider a variety of programs to manage these units, such as land banks and sale to non-profit housing organizations.*

- y. *Action H-2.1.A: Rehabilitation Grants - Develop a rehabilitation grant program for owners of small apartment buildings, linking the grants to income limits for future tenants. Such programs have been successful in preserving housing affordability in Montgomery County and in many other jurisdictions around the country.*
- z. *Action H-2.1.E: Affordable Set-Asides in Condo Conversions - Implement a requirement that 20 percent of the units in all condo conversions be earmarked for qualifying low and moderate income households. The requirement should ensure that at least some affordability is retained when rental units are converted to condominiums. In addition, require condominium maintenance fees to be set proportionally to the unit price so as not to make otherwise affordable units out-of-reach due to high fees.*
- aa. *Policy H-2.2.3: Tax Relief - Maintain tax relief measures for low income homeowners and low income senior homeowners faced with rising assessments and property taxes. These measures should reduce the pressure on low income owners to sell their homes and move out of the District.*
- bb. *Action H-2.2.E: Program Assistance for Low and Moderate Income Owners - Continue to offer comprehensive home maintenance and repair programs for low and moderate income owners and renters of single family homes. These programs should include counseling and technical assistance, as well as zero interest and deferred interest loans and direct financial assistance.*

The Commission finds that *Policy H-2.1.4, Action H-2.1.A, Action H-2.1.E, Policy H-2.2.3, and Action H-2.2.E* are not applicable to the Project because: (i) the PUD Site does not have any existing affordable rental buildings; (ii) the PUD Site does not include any existing apartment buildings; (iii) the PUD does not involve condo conversions; (iv) the Project will not have any impact on tax relief measures implemented by the District; and (v) the Project will not have any impact of the District's ability to offer home maintenance and repair programs.

- cc. *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.*

The Commission finds that the Project advances Policy H-1.1.3 by developing new housing on surplus, vacant and underutilized land. The District has already determined that the PUD Site is surplus and should be redeveloped with new housing, affordable housing, and open park space. (Bruce Monroe Surplus Declaration and Approval Resolution of 2016 and Bruce Monroe Despoliation Approval Resolution of 2016 (Ex. 197); DMPED Open Letter (included in Ex.

232).) Moreover, the Project will help enable the city to meet its long-term housing needs by developing low-, moderate-, and higher-density housing on the PUD Site, affordable for a range of income levels and provided at a variety of unit types and sizes.

195. Density, Scale, and Building Height. Opponents of the Project alleged that the apartment house would reduce light, air, and privacy to existing residences, and that the building's proposed height would be out of character with the surrounding row house neighborhood.
196. As described in FF Nos. 122-128, the Commission provided details regarding our determination on how the Project is consistent with the Comprehensive Plan parameters regarding height and density. The Commission further finds that the apartment house height is consistent with surrounding building heights and uses and will not negatively affect light, air, or privacy currently enjoyed by nearby properties. The apartment house provides setbacks and step-downs in deference to the scale of the surrounding row houses and to minimize the impact of its overall massing. The setbacks and step-downs were specifically designed to mitigate shadows on the nearby homes. (*See* Applicant's rebuttal testimony at the 12/8/16 Tr., p. 5.) As shown on the shadow studies for June, March, and December (included in Ex. 197), the apartment house will cast nominal shadows on the surrounding residential dwellings throughout the day. In December, when shadows are the greatest, there are no shadows on the adjacent row dwellings; and at 3:00 p.m., there is a maximum of one minimally impacted residence. (*Id.*) Therefore, the Commission finds that the apartment house will not negatively impact light or air available to surrounding residences.
197. Regarding privacy, the Commission finds that the Applicant established significant setbacks between the proposed buildings on the PUD Site and the closest residential neighbors. To the north, the apartment house and senior building are separated approximately 90 feet from the closest residential dwellings across Irving Street as a result of (i) the 60-foot right-of-way created by Irving Street; (ii) a 20-foot setback established by the front setbacks for the existing row dwellings across Irving Street; and (iii) the eight-foot setback created by the Applicant at the front of the apartment house. (Applicant's testimony at the 12/8/16 Tr., pp. 4-5.) Thus, the Applicant has provided almost a 1:1 setback from the residential dwellings that are closest to the apartment house, which will help to ensure privacy for its residents.
198. To the west, the senior building is separated from the closest residential dwellings by the new private street, which has a right-of-way of 60 feet. Also to the west, the townhomes, which are only 40 feet in height, are separated from the closest residential dwelling by their 15-foot rear yards, a proposed three-foot, six-inch tall privacy fence, and ornamental trees. To the east of the PUD Site is the commercial corridor of Georgia Avenue, and to the south is the 44,000-square-foot parcel to be used for park and recreation purposes. Therefore, the Commission finds that the massing and placement of the buildings on the PUD Site respect the existing dwellings and will not result in any adverse impacts to light, air, or privacy to any adjacent properties.

199. In addition, the Applicant's architect testified regarding the extensive public outreach that occurred through four separate design workshops (following previous public meetings regarding the Project regarding its siting, massing, and scale. At those meetings, the Applicant brought "building blocks in which people could build with different various size and scale blocks and really locate the housing on each site as they deemed appropriate." (*Id.* at 6.) In those meetings, the Applicant "chronologized that both in a narrative, based on the conversation we heard, but also in photo form, and used those as a response to generate some of the schemes that we saw coming out of that... we looked at a number of options with the community and DMPED, in terms of how to divide the portion of land to be conveyed, and developed by the applicant, and the portion of land to remain with DMPED for park and open space purposes." (*Id.* at 6-7.) After multiple studies, the Applicant determined "after working with the community, participants, and stakeholders, that the best and most feasible way to provide a substantial amount of land as (*sic*) open space, while also meeting the important need for housing was to locate the main density of Irving Street, and to preserve the open spaces to have the needed residential use." (*Id.* at 7.)
200. At the public hearing, and in their post-hearing submission dated January 10, 2017, the Park Neighbors suggested that the footprint of the buildings should be changed. However, the Applicant's architect presented six different early development schemes for the PUD Site, which described the Applicant's process for selecting the proposed site plan and building heights, and explained why the alternative five development schemes were not selected. (Applicant's Rebuttal PowerPoint (Ex. 234, pp. 5-7).) For example, the Applicant explained that it did not locate the majority of the site density and tallest building heights on the east side of the PUD Site, along Georgia Avenue, because it was "resoundingly not supported by the community because they lost the visual connection from Georgia to the park. And that was very important to everyone... [i]t also made the park seem more private, because it was behind the building." (12/8/16 Tr., pp 7-8.) The Applicant explained that it did not locate the majority of site density to the west of the PUD Site, since it "pulled the density off of Georgia, so the... taller 90-foot portion was more into the neighborhood, would cast more shadows on to the adjacent homes, and also felt that that privatized -- it made it more like a front yard for the building, and not so much a public park in some comments that we heard." (*Id.* at 8.) Further, the Applicant explained that it did not locate the density/tallest buildings on the southern portion of the PUD Site because it "was not seen favorably because in contrast to the scheme we ended up with, there is no street to separate the shadow from the [park] use. So, the shadow from that building would have set directly on to the park. You didn't have the benefit of having a street to separate it from any other use." (*Id.*) The Applicant also explained that it chose not to "wrap" the building around the park because it "was seen as much too private and owned by the building and not open to -- really open to Georgia Avenue or the community." (*Id.* at 8-9.) Therefore, the Commission credits the Applicant's testimony that the site plan and building heights and locations were selected based on input from the community and through the elimination of other development schemes that were rationally rejected.

201. The Park Neighbors also stated that the density at the PUD Site should be reduced by shifting units to the Park Morton PUD. However, the Commission credits the Applicant's and DMPEd's evidence that none of the units proposed for the PUD Site can be shifted to Park Morton in order to achieve the desired number of replacement units overall. Unlike the PUD Site, Park Morton is located within a residential neighborhood and is situated off of Georgia Avenue. Accordingly, it is prescribed a lower-density zoning designation under a PUD than that of the PUD Site, and a lower zoning designation results in a lower unit yield.
202. Finally, the Commission finds that the proposed apartment house, proposed at 90 feet in height, is consistent with several other existing buildings and approved PUDs in the surrounding area. (*See, e.g.* Z.C. Order No. 13-10, approving a PUD at 3212-3216 Georgia Avenue (one block to the north of the PUD Site) with a height of 87 feet and 5.95 FAR; Z.C. Order No. 10-26, approving a PUD at 3221-3335 Georgia Avenue (two blocks to the northeast of the PUD Site) with a height of 90 feet and 5.37 FAR; Z.C. Order No. 08-26, approving a PUD at 3232 Georgia Avenue (two blocks north of the PUD Site) with a height of 80 feet and 4.54 FAR.) Thus, the Commission confirms that the apartment house's height is consistent with other residential development projects in the area.
203. Based upon the Findings of Fact above, the Commission finds that the proposed density, scale, and building heights proposed for the PUD Site are consistent with the Comprehensive Plan. However, even if this Commission found that the proposed density, scale, and building heights were not consistent with the Comprehensive Plan, the Commission would still conclude that the overall Project is consistent with the Comprehensive Plan based on the numerous goals and policies that the Project's development program embodies and advances. (*See Durant I*, 65 A.3d at 1168, stating that "even if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.") In this case, the Commission has balanced the many competing priorities within the Comprehensive Plan, and concluded that the overall Project is consistent with the Comprehensive Plan as a whole. (*See D.C. Library Renaissance Project/West End Library Advisory Grp.*, 73 A.3d at 126, stating that "the Commission may balance competing priorities" in determining whether a PUD is consistent with the Comprehensive Plan as a whole.) As set forth in FF Nos. 105-151 of this Order, the Commission has explained why the policies related to land use, housing, and affordable housing are so important to achieving District goals, and that the Project's density, scale, and building heights are necessary to achieve these goals.
204. Traffic. Individuals testified that the Project would exacerbate existing traffic issues on the surrounding streets and that the Project fails to adequately address parking challenges. The Park Neighbors also specifically asked the Applicant to block vehicular access to the alley from the new private street.

205. The Commission finds that the only evidence of record in this case demonstrates that the Project will not have any adverse impacts on traffic or on the existing transit system. As set forth in the Applicant's TIS, dated November 1, 2016, and prepared by Symmetra Design, the transportation network surrounding the PUD Site is diverse and robust and the Applicant has proposed significant TDM measures that will encourage use of non-automobile modes. (Ex. 33.) Thus, the combination of transportation options and the TDM program will help to reduce traffic and parking demand associated with the PUD. Moreover, the TIS found that: (i) with build-out of the Bruce Monroe PUD, there will be a "negligible increase in delay to motorists" at two intersections within the study area, (ii) all other intersections will "continue to operate at or above the LOS [level of service] threshold," and (iii) the intersections created by the new private street with Columbia Road and Irving Street will "both operate at LOS "A" during the AM and PM peak hours." (Ex. 33, p. 11.) In addition, the Project will "allow for improved pedestrian conditions with new sidewalks along both sides of the new private street. Pedestrian facilities adjacent to the site will adhere to DDOT standards." (*Id.*)
206. DDOT reviewed the TIS, confirmed that the Applicant utilized sound methodology to perform its analysis, and recommended approval of the application. In its review, DDOT found that the "site design has the potential to disperse site traffic in a way that minimizes the action's impact on the external road network and improve connectivity to adjacent neighborhoods." (Ex. 44, p. 2). DDOT also concluded that "future residents and retail visitors are likely to utilize transit, walking, and bicycling at high rates, thus auto use is likely to be low, resulting in the PUD generating a nominal number of new trips (40 AM trips and 57 PM trips). (*Id.* at 2 and 8 (emphasis added).)
207. With respect to parking, the Project will add 16 new on-street parking spaces located on the new private street for residents and guests of the project, as well as 99 below-grade parking spaces within the proposed buildings. This total supply of 115 spaces exceeds the 79 spaces required by the Zoning Regulations and will adequately serve the needs of the PUD Site's residents and guests so that they will not need to utilize existing public on-street parking spaces. Moreover, DDOT determined that the "residential parking provision of about one space per three multi-family units is generally consistent with other recent projects in similar walkable, transit-friendly neighborhoods." (*Id.* at 7.)
208. Finally, consistent with other recently approved PUDs where the use of on-street parking was a concern, this Order includes a condition that prohibits the Applicant from seeking or supporting any change to designate the apartment house as becoming RPP-eligible.
209. Based on the evidence presented in the Applicant's TIS and DDOT's written report, as well as oral testimony from the Applicant's transportation consultant and DDOT at the public hearing, the Commission concludes that that the Project will not have any adverse impacts on traffic or on the existing transit system.
210. Regarding the Park Neighbor's request to block vehicular access to the alley from the new private street, the Commission notes that DDOT did not support this idea because

doing so would hamper improved connectivity in the alley system. (Ex. 237, p. 6.) DDOT indicated its support for the alley connection because it will facilitate alley operations for the structures that currently use the existing dead-end alley, and because maintaining the alley/street connection is not anticipated to induce significant numbers of new trips in the alley, since all non-local traffic would be expected to use the streets not the alleys. (*Id.* at 5-6.) The Commission credits DDOT's review of the alley/street connection, and concludes that blocking vehicular access in this location would hamper improved connectivity in the alley system.

211. Parking. Opposition testimony asserted that the Project would result in reduced on-street parking and would create new parking challenges. Testimony was also presented that the District's proposed dedicated bus lanes for Irving Street and Columbia Road would eliminate half of the currently available street parking.
212. The Commission finds that the Project incorporates significant on- and off-street parking, such that existing public on-street parking will not become over-saturated as a result of the Project. The Project will add 16 new on-street parking spaces located on the new private street for residents and guests of the Project, as well as 99 below-grade parking spaces within the proposed buildings. This total supply exceeds the 79 spaces required by the Zoning Regulations and will adequately serve the needs of the PUD Site's residents and guests so that they will not need to utilize existing public on-street parking spaces. Thus, the Commission concludes that the Project will not result in an increased parking demand in the surrounding neighborhood.
213. The Commission notes that DDOT also determined that the "residential parking provision of about one space per three multi-family units is generally consistent with other recent projects in similar walkable, transit-friendly neighborhoods." (Ex. 44, p. 7.) DDOT found that the PUD Site "is well served by public transit. (Ex. 44, p. 9.) DDOT did not indicate that traffic or parking associated with the Project would adversely impact existing or planned bus routes on Georgia Avenue, Irving Street, or Columbia Road. Therefore, based on the findings of the TIS, DDOT's report and testimony, the Commission finds that the Project will not cause any adverse impacts on the availability of on-street parking.
214. Noise and Air Pollution Caused by Construction. Opponents of the Project testified that the Project would result in increased noise and air pollution as a result of construction. However, the Commission finds that that the Project will not result in unmitigated or unreasonable noise or air pollution caused by construction. The Project was reviewed and approved by DC Water, DOEE, and FEMS, all of which asserted that the Project would not have any adverse effects on their utilities or facilities. The Commission credit's DOEE's findings that the Project "includes measures that address and mitigate potential environmental impacts with respect to air pollution... consistent with the regulatory requirements of the Agency. In addition, Certification under the Green Communities Criteria meets the minimum requirements of the Green Building Act for publicly financed developments of this scale." (Ex. 237K.) Moreover, the Applicant will be

- required to comply with all applicable laws and regulations regarding construction noise and air pollution, and will address the mitigation of any construction-related impacts during the building permit process. The Applicant also submitted a Construction Management Plan, with which it will abide during construction of the Project. (Ex. 237F.) Therefore, the Commission is satisfied that the Project will not result in adverse impacts to noise or air pollution as a consequence of construction.
215. The Commission also finds that the Project includes a variety of sustainable features and will be certified under the Enterprise Green Communities standards. Although only 35 points are required to be certified, the Applicant proposes to achieve 57 points for the apartment house and senior building each, and 50 points for the townhomes. Sustainable features that will be implemented as part of the Enterprise Green Communities certification include erosion and sediment control techniques, efficient irrigation and water reuse, advanced water conservation, surface water management, and high quality water drainage. These features will ensure that the Project does not result in negative impacts to air pollution.
216. Water Runoff. Testimony in opposition to the Project claimed that the proposed high-density units along Georgia Avenue would increase the amount of paved and impervious surfaces in the area, and thus increase water runoff. More specifically, testimony asserted that reducing the size of the existing park would eliminate one of the few remaining green spaces that helps mitigate water runoff issues in the area.
217. Based on testimony provided by the Applicant at the public hearing, the Commission understands that the majority of the PUD Site drains to the southwest, that there is little existing storm drain infrastructure on the PUD Site, and that there are no existing stormwater controls. Upon development of the PUD Site, stormwater runoff will be significantly reduced because the PUD Site will be subject to the 2013 Stormwater Management Regulations, which are more stringent than the stormwater regulations that were previously applicable to the PUD Site. All runoff will be captured on-site and safely conveyed into the public combined sewer system not onto public streets or adjacent properties. The PUD Site's drainage characteristics will be vastly improved from existing conditions, which will alleviate existing off-site drainage concerns that may exist in the surrounding area. Moreover, stormwater in the public right-of-way, which is directed to public right-of-way storm drains, will also be reduced since the Project incorporates new planting areas along the public right-of-way. *See* testimony of Marcelo Lopez, Tr. 12/8/2016. The Commission finds there is no evidence to the contrary in the case record that would invalidate the Applicant's testimony that the Project will not result in increased or unacceptable water runoff.
218. Moreover, DC Water submitted a letter approving the Project, which noted that the "utility plans as presented adequately address water and sewer utility needs. The plan proposes water and sewer extensions which if placed in dedicated public space or acceptable easements would be considered adequate by DC Water." DC Water noted that it would "work with the Applicant during the building permit process to ensure that

appropriate measures are taken to ensure that the project will not have any adverse impacts on existing or future DC Water capacity needs and will meet acceptance criteria.” (Ex. 237M.)

219. DOEE also submitted a letter approving the Project, stating that the Project “includes measures that address and mitigate potential environmental impacts with respect to... stormwater runoff consistent with the regulatory requirements of the Agency. In addition, Certification under the Green Communities Criteria meets the minimum requirements of the Green Building Act for publicly financed developments of this scale.” (Ex. 237K.)
220. Based on the foregoing, including testimony from the Applicant’s civil engineer and the review and approval by DC Water and DOEE, the Commission finds that the Project will not result in increased or unacceptable water runoff in the surrounding area. The Commission also notes that evaluation of these types of environmental impacts are best conducted by DOEE, and accordingly will be part of the building permit process. (*See* Z.C. Order No. 13-14, Finding of Fact No. 175; *see also Foggy Bottom Association v. District of Columbia Zoning Comm’n*, 878 A.2d 1160 (D.C. 2009).)
221. Public Services: Testimony in the record claimed that the Project would create a stress on the public services serving the community (transit, water, electric, gas, environment) and that cumulative densities of projects along Georgia Avenue are not being considered holistically so to determine a comprehensive impact analysis on public services.
222. The Commission finds that development of the PUD Site will not have adverse impacts on the availability of public services. The civil sheets included in the Plans for utilities, grading, erosion and sediment control, and stormwater management, such that the details regarding all public services have been adequately reviewed and planned for in conjunction with the proposed Project. Moreover, the Applicant will coordinate with all applicable public utilities and District agencies during the permitting process to ensure that adequate services will continue to be available for the existing and new uses. The Commission also notes that the Project was approved by DC Water, DOEE, and FEMS, which all noted that the Project would not have any adverse impacts on utility services. (Ex. 237K-237M.) FEMS in particular noted that the “Fire Marshal has no objection on the project moving forward and being approved. Fire department access needs appears to [be] on point at this stage.” (Ex. 237L.) Thus, the Commission is confident that the Project will not create an unacceptable stress on public services.
223. Impact on Property Values. Project opponents asserted that the Project would impact the value of property in the neighborhood surrounding the PUD Site, thus resulting in negative impacts to existing residents.
224. There is no evidence in the record to support a claim that the Project will have adverse impacts on land values, rents, or housing costs. To the contrary, given the Project’s mix of uses and income ranges, the Commission finds that the Project will help preserve property values and provide a variety of new housing options that will improve the surrounding

area. The Commission credits DHCD's written testimony approving the Project, which specifically noted that "[g]iven the proposed income mix, we do not believe that the proposed developments will result in the destabilization of land values, the acceleration of gentrification, or the displacement of neighboring residents." (Ex. 237J.)

225. The Project includes replacement public housing, affordable housing, and market-rate housing, with 90 public housing replacement units, 109-113 workforce affordable units, and 70-74 market-rate units. This diverse spread of housing options will not only create housing for the lowest-income households, but will also establish new units that are affordable for teachers, police officers, and other working professionals in the District. This type of mixed-income development and diverse housing stock will not adversely impact or lead to the destabilization of land values. Rather, the Project will be a benefit to the entire community that will maintain and improve economic stability and achieve the goals of the New Communities Initiative.
226. Moreover, the provision of new mixed-income communities is consistent with Policy H-1.2.3 of the Comprehensive Plan, which states that "investment strategies and affordable housing programs [should] distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing" (10A DCMR § 504.8)) and Policy H-1.4.4, which encourages "efforts to transform distressed public and assisted housing projects into viable mixed-income neighborhoods, providing one-for-one replacement within the District of Columbia of any public housing units that are removed. Target such efforts to locations where private sector development interest can be leveraged to assist in revitalization" (10A DCMR § 506.10). Consistent with these policies, and in deference to DHCD's approval of the Project, the Commission finds that the Project will not create a concentration of poverty, but will instead allow for the formation of a true mixed-income community.
227. Benefits and Amenities. Opponents of the Project testified that the proposed public benefits and project amenities were insufficient, inappropriate, undesirable, and would not benefit the entire public.
228. The Commission finds that the record in this case demonstrates that the project amenities and public benefits associated with the Project, which includes the following items, are significant and support approval of the application:
- a. Significant new housing and affordable housing, including public housing replacement units and senior housing;
 - b. Infrastructure improvements that include a new north-south public street through the site that will enhance circulation and reduce traffic congestion in the square;
 - c. High quality urban design and architecture;

- d. Effective and safe vehicular, pedestrian, bicycle access, and a robust TDM plan that includes the following elements:
 - i. Providing 189 helmets for the apartment building residents and eight helmets for the townhome residents;
 - ii. Offering a preloaded \$10 SmarTrip card for each residential unit;
 - iii. Unbundling the costs for market-rate units from the cost of lease or purchase of apartments;
 - iv. Providing two on-street carsharing spaces along the new private street;
 - v. Providing a bicycle repair station in the apartment building;
 - vi. Posting all TDM commitments online;
 - vii. Designating a TDM leader;
 - viii. Providing 90 long-term and 16-short term bicycle parking spaces;
 - ix. Offering each apartment unit and townhome an annual car-share membership or an annual Capital Bikeshare membership for a period of three years;
 - x. Providing six shopping carts for the multi-family residential tenants to run daily errands and grocery shopping; and
 - xi. Installing a transit screen in the lobby of the apartment house and senior building;
 - e. Environmental benefits, including certification of the project under the EGC standards;
 - f. A new storm water management system that will reduce runoff and improve site drainage conditions;
 - g. Public space improvements; and
 - h. Employment and training opportunities, including entering into a Certified Business Enterprise Agreement with the District Department of Small and Local Business Development, entering into a First Source Employment Agreement with the District Department of Employment Services, and contracting with Section 3 businesses.
229. Together, the Commission finds that these proposed benefits holistically result in a significant value as they relate to the Commission’s balancing test between the benefits offered and the development incentives and flexibility requested. (11 DCMR § 2403.8.)
230. ANC 1A and ANC 1B both noted in their separate resolutions (Ex. 32-32A and 28, respectively) that the PUD “has offered a number of project amenities and public benefits commensurate with the development incentives and flexibility requested.” (See p. 3 of ANC 1A resolution and p. 2 of ANC 1B resolution.) Moreover, in recommending approval of the application, the Office of Planning also identified the above-listed items

as meeting the standards set-froth in § 2403.9 of the Zoning Regulations regarding public benefits and project amenities. (Ex. 43).

231. Lack of Adequate Community Engagement. Opponents testified that the Applicant did not participate in any meaningful discussion with or consider input from the surrounding community, particularly residents living within 200 feet of the PUD Site.
232. The Commission finds that the Applicant engaged in extensive community outreach. As shown on the list of community outreach meetings (included in Ex. 197), the Applicant met with adjacent impacted neighbors and stakeholders; presented to ANC 1A and 1B on multiple occasions; hosted and/or participated in public meetings and charrettes during the master planning process; attended and engaged in discussions about the Project at meetings with local community groups such as the Georgia Avenue Community Development Task Force, Park View UNC, and the Luray Warder Neighborhood Association; actively participated in Steering Committee meetings; engaged with the Park Morton residents directly via their Resident Council and Relocation/Reentry Committee meetings; conducted one-on-one meetings with residents and neighbors upon request; and knocked on the doors of every dwelling that was accessible and located within 200 feet of the PUD Site. The Applicant also submitted to the record the sign-in sheets from community engagement meetings, meeting flyers, and project fact sheets distributed to the public for over two years. (Ex. 23G.) As a result, there are more than 100 letters of support for the Project in the record. Therefore, the Commission concludes that the Applicant has made substantial efforts to meet with neighbors to discuss the Project and respond to their concerns.
233. Density of New Residents. Opponents testified that the proposed 273 new residential units would add approximately 700 new residents to the block, which is more than triple the current population. The Park Neighbors' also suggested the Applicant should revise the redevelopment plan for Park Morton to shift units (density) from the PUD Site to Park Morton by adding more apartment buildings to the Park Morton site and redesigning the Park Morton site plan to include more or a larger apartment building similar to the theoretical concept plan shown in the Park Morton Redevelopment Initiative Plan.
234. The Commission finds that the proposed density and number of units proposed for the PUD Site is appropriate and necessary to achieve the goals and policies set forth in the Comprehensive Plan, the Strategy Plan, and the New Communities Initiative. The Project includes increased density for the explicit purpose of providing new housing and affordable housing along Georgia Avenue. Doing so is specifically encouraged by the Comprehensive Plan's Housing Element (*see, e.g. Policy H-1.1.4* – “[p]romote mixed use development, including housing, on commercially zoned land, particularly... along Main Street mixed-use corridors). It is also consistent with *Policy H-1.2.1: Affordable Housing Production as a Civic Priority*; *Policy H-1.2.3: Mixed Income Housing*, and *Policy H-1.2.7: Density Bonuses for Affordable Housing*, due to the significant amount of housing and affordable housing generated by the Project. The unit density is also consistent with a

variety of goals in the Strategy Plan, which indicates the critical need to preserve and create affordable housing. *See* FF Nos. 161-165 of this Order.

235. In addition, the Commission finds that the proposed number of units and density will help to advance these and other stated policies by allowing the PUD Site to serve as the “build-first” site for Park Morton’s replacement public housing units, as part of the District’s New Communities Initiative. The proposed density at Bruce Monroe is necessary allow for the implementation of the build-first principle, which will minimize displacement, maximize one-time, permanent moves, and implement the phased redevelopment of Park Morton.
236. As set forth in FF No. 173-177, the Commission also credits the testimony of DMPED, which explained the need for density at the PUD Site and why density cannot be shifted to the Park Morton site. (Ex. 237D.)
237. With respect to the number of new residents being added to the block, the Commission credits the Applicant’s testimony that the 273 units proposed for the PUD Site includes 375 bedrooms, which will result in a range of 375 to 559 total new residents based on occupancy standards. The number of units at Park Morton will be 189 (not 126) and a total of 308 bedrooms, resulting in a range of 308 to 452 new residents at the Park Morton site based upon occupancy standards. Thus, the Commission finds that the number of actual new residents at the Bruce Monroe site is much less than that claimed by the Park Neighbors, and the number of new residents at the two sites is comparable and does not result in an “unbalanced distribution” of units as suggested by the Park Neighbors.
238. Thus, the Commission concludes that the PUD’s proposed density and number of units are consistent with the Comprehensive Plan, the Strategy Plan, and New Communities Initiative, and are necessary to successfully relocate public housing residents and fulfil the District’s requirements under the New Communities Initiative.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (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 of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and 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.
3. Development of the property included in these applications carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
 4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential uses for the Project are appropriate for the PUD Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.
 5. The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
 6. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the Project's benefits and amenities are reasonable tradeoffs for the requested development flexibility.
 7. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
 8. The Commission is required under § 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 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP reports in this case and, as explained in this decision, finds its recommendation to grant the applications persuasive.
 9. 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 the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the recommendations of ANC 1A and 1B for approval of the applications, and concurs in their recommendations.
 10. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 et seq. (2007 Repl.)).

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 the applications for consolidated review and approval of a planned unit development and related zoning map amendment from the R-4 and C-2-A Zone Districts to the R-5-B and C-2-B Zone Districts for Part of Lot 849 in Square 2890. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The Project shall be developed in accordance with the Architectural Plans and Elevations dated January 10, 2017 (Ex. 237A), as supplemented by the Architectural Sheets dated February 16, 2017 (Ex. 246) (the "Plans") and as modified by the guidelines, conditions, and standards of this Order. The Project shall include new landscaping, street tree planting and maintenance, energy efficient and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices, in accordance with the landscape, park, open space, and streetscape designs included as Sheets G21, A11B, A11C, A21B, A21C, A27-A30, and L01-L11 of the Plans.
2. The overall PUD Site shall be developed with approximately 275,747 square feet of gross floor area (3.6 FAR). The apartment house shall contain approximately 191,333 square feet of gross floor area and a maximum height of 90 feet; the senior building shall contain approximately 70,817 square feet of gross floor area and a maximum height of 60 feet; and each townhome shall contain approximately 1,685 square feet of gross floor area and a maximum height of 40 feet. The total lot occupancy for the PUD Site shall be approximately 53%.
3. Ninety-nine on-site parking spaces shall be provided in a parking garage below the apartment house and senior building. Sixteen surface parking spaces shall be provided on the new private street.
4. The Project shall have approximately 273 residential units, with 189 units in the apartment house, 76 units in the senior building, and eight townhomes. Of the 273 total residential units, 90 units shall be public housing replacement units, 109-113 shall be workforce affordable units, and 70-74 units shall be market rate units.
5. The Applicant is granted flexibility from the side yard, rear yard, loading, lot occupancy, compact parking space, phasing, and single building on a record lot requirements of the Zoning Regulations, consistent with the Plans and as discussed in the Development Incentives and Flexibility section of this Order.
6. The Applicant shall also have flexibility with the design of the PUD in the following areas:

- a. To be able to provide a range in the number of residential units of plus or minus 10%;
- b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
- c. To vary the sustainable design features of the Project, provided the total number of points achievable for the apartment house and senior building is not below 57 points and the points achievable for the townhomes is not below 50 points utilizing the Enterprise Green Communities rating standards;
- d. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and
- e. To vary the features, means and methods of achieving: (i) the code-required GAR of 0.3 for the apartment house and 0.4 for the senior building, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.

B. Public Benefits

1. **Prior to the issuance of a Building Permit for the apartment house**, the Applicant shall demonstrate to the Zoning Administrator that DMPED will convey the PUD Site to Park View Community Partners pursuant to a 99-year ground lease. The ground lease will contain a provision wherein DMPED agrees that a minimum of 44,000 square feet of land area of land in Square 2890 identified as a public park shown on Sheet G10 of the Architectural Plans and Elevations, dated January 10, 2017, and included as Exhibit 237A in the record, will only be used for park and recreation uses for the term of the ground lease. The Applicant shall have the right to use a portion of the park area as a temporary staging area during construction of the Project.
2. **Prior to the issuance of a Certificate of Occupancy for the apartment house**, the Applicant shall demonstrate to the Zoning Administrator that it has done the following:

- a. Dedicated a minimum of 54 units in the apartment house as replacement public housing units;
 - b. Dedicated a minimum of 68 units in the apartment house as workforce affordable units;
 - c. Established the proportion of unit sizes in the apartment house according to the unit mix shown on Sheet G15 of the Plans;
 - d. Demonstrated that the affordable housing shall be provided in accordance with the table below; and
 - e. The covenant required by 11 DCMR § 2602.7(c) shall include a condition or conditions requiring compliance with this Condition.
3. **Prior to the issuance of a Certificate of Occupancy for the senior building**, the Applicant shall demonstrate to the Zoning Administrator that it has:
- a. Dedicated a minimum of 33 units in the senior building as replacement public housing units;
 - b. Dedicated a minimum of 43 units in the senior building as workforce affordable units;
 - c. Designated all of the units within the senior building as one-bedroom units;
 - d. Demonstrated that the affordable housing shall be provided in accordance with the table below; and
 - e. The covenant required by 11 DCMR § 2602.7(c) shall include a condition or conditions requiring compliance with this Condition.
4. **Prior to entering into a contract for the lease or purchase of the first townhome completed as part of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has:
- a. Dedicated a minimum of three of the townhomes as replacement public housing units;
 - b. Designated all of the townhomes as three-bedroom units;
 - c. Demonstrated that the affordable housing shall be provided in accordance with the table below; and

- d. The covenant required by 11 DCMR § 2602.7(c) shall include a condition or conditions requiring compliance with this Condition.

The public housing and workforce affordable units shall maintain affordability for the life of the Project. A breakdown of the public housing, workforce affordable, and market-rate units shall be established in accordance with the following table:⁴

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	275,747 sf of GFA (100%)	273			Rental
Market Rate	71,694 sf of GFA (26%)	70-74	Market Rate	NA	Rental
Public Housing Replacement Units	90,997 sf of GFA (33%)	90	HUD Requirements/ LIHTC Rules	Life of the Project	Rental
Affordable Housing	113,056 sf of GFA (41%)	109-113	Up to 60% AMI	Life of the Project	Rental

- 5. **During development of the Project, and for the life of the Project,** the Applicant shall comply with the applicable relocation and reentry requirements for public housing replacement units set forth in Resolution No. 16-06 “To Adopt and Re-entry Policies for New Communities Initiative Developments,” as adopted and enforced by DCHA.
- 6. **Prior to the issuance of a Building Permit for the apartment house, senior building, and townhomes, respectively,** the Applicant shall register each building with Enterprise to commence the Enterprise Green Communities certification process.
- 7. **Prior to the issuance of a Certificate of Occupancy for the apartment house,** the Applicant shall furnish a copy of its Enterprise Green Communities certification application to the Zoning Administrator. The application shall indicate that the apartment house has been designed to include a minimum of 57 points under the Enterprise Green Communities standards.
- 8. **Prior to the issuance of a Certificate of Occupancy for the senior building,** the Applicant shall furnish a copy of its Enterprise Green Communities certification application to the Zoning Administrator that the senior building has been designed

⁴ The Applicant has not requested flexibility from the Inclusionary Zoning Regulations, but instead will request the Zoning Administrator to grant an exemption pursuant to 11 DCMR § 2602.3(f). In the event the exemption is not granted, the Applicant must comply with the Inclusionary Zoning Regulations unless the requirements of these conditions are more stringent.

to include a minimum of 57 points under the Enterprise Green Communities standards.

9. **Prior to entering into a contract for the lease or purchase of the first townhome completed as part of the Project**, the Applicant shall furnish a copy of its Enterprise Green Communities certification application to the Zoning Administrator that the townhomes have been designed to include a minimum of 50 points under the Enterprise Green Communities standards.
10. **Prior to the issuance of a Building Permit for each of the apartment house, senior building, and townhomes, respectively**, the Applicant shall submit to the Zoning Administrator a copy of the executed CBE Agreement with DSLBD, included as Ex. 237I; and (ii) a copy of the executed First Source Employment Agreement with DOES, included as Ex. 237H.
11. **Prior to commencing construction of any building within the PUD Site**, the Applicant shall demonstrate to the Zoning Administrator that it has entered into a Section 3 Plan that benefits low-income and very low-income district residents and/or businesses.
12. **Prior to the issuance of a Certificate of Occupancy for the apartment house or senior building (whichever is first) and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has constructed a new north-south private street that connects Irving Street to Columbia Road, with a 22-foot travel lane, 16 on-street parking spaces in a seven-foot parking lane, canopy trees in a six-foot tree strip, and six-foot sidewalks, in accordance with Sheets G10-11, G17, G21, and L08 of the Plans.
13. **For the life of the Project**, the Applicant shall maintain the private street consistent with DDOT standards.
14. **Prior to the issuance of a Certificate of Occupancy for either the apartment house or senior building (whichever is first), and for the life of the Project**, Applicant shall demonstrate to the Zoning Administrator that it has:
 - a. Installed pavement marking enhancements to a stop bar on Georgia Avenue at Hobart Place; and
 - b. Installed pavement markings (i.e. “puppy tracks”) at the study area intersections along Georgia Avenue, subject to DDOT approval.

C. Transportation Demand Measures

1. The Applicant shall implement the TDM measures as follows:

- a. **For the first three years of operation of the apartment house**, the Applicant shall offer each apartment unit either one annual carsharing membership or one annual Capital Bikeshare membership;
- b. **For the first three years of operation of each townhome**, the Applicant shall offer to each townhome either one annual carsharing membership or one annual Capital Bikeshare membership;
- c. **Prior to the issuance of a Certificate of Occupancy for the apartment house**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased 189 bicycle helmets for use by apartment house occupants;
- d. **Prior to entering into a contract for lease or purchase of the first townhome completed as part of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased eight bicycle helmets for use by townhome occupants;
- e. **Prior to the issuance of a Certificate of Occupancy for the apartment house**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased 189 pre-loaded SmarTrip cards to be offered at the initial sale or rental of each unit;
- f. **Prior to the issuance of a Certificate of Occupancy for the senior building**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased 76 pre-loaded \$10.00 SmarTrip cards to be offered at the initial sale or rental of each unit;
- g. **Prior to entering into a contract for lease or purchase of the first townhome completed as part of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased eight pre-loaded \$10.00 SmarTrip cards to be offered at the initial sale or rental of each townhome;
- h. **Prior to the issuance of a Certificate of Occupancy for the apartment house, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has included in the residential leases for the market-rate units a provision that the cost of residential parking is unbundled from the cost of lease or purchase of each market-rate residential unit;
- i. **Prior to entering into a contract for lease or purchase of the first townhome completed as part of the Project, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has included in the residential leases for the market-rate townhomes a

provision that the cost of residential parking is unbundled from the cost of lease or purchase of each market-rate townhome;

- j. **Prior to the issuance of a Certificate of Occupancy for either the apartment house or senior building (whichever is first), and for the life of the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has designated two-on street parking spaces along the new private street to a car-share company;
- k. **Prior to the issuance of a Certificate of Occupancy for the apartment house, and for the life of the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has installed a bicycle repair station within the apartment building;
- l. **Prior to the issuance of a Certificate of Occupancy for the apartment house and for the life of the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has installed a transit screen in the lobby of the apartment house;
- m. **Prior to the issuance of a Certificate of Occupancy for the senior building and for the life of the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has installed a transit screen in the lobby of the senior building;
- n. **Prior to the issuance of a Certificate of Occupancy for either the apartment house or senior building (whichever is first), and for the life of the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has: (i) posted all of the Project's TDM commitments online, and (ii) designated a TDM leader for the Project;
- o. **Prior to issuance of a Certificate of Occupancy for either the apartment house or senior building (whichever is first),** the Applicant shall demonstrate to the Zoning Administrator that it has: (i) installed 90 long-term and 16 short-term bicycle parking spaces on the PUD Site, and (ii) purchased six total shopping carts for residents of the apartment house and senior building; and
- p. **Prior to the issuance of a Certificate of Occupancy for the apartment house, and for the life of the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has established a Georgia Avenue address for the apartment house, and for the life of the Project, the Applicant shall not seek or support any change to designate the apartment house as becoming RPP-eligible.

D. Miscellaneous

1. 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, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of six years from the effective date of Z.C. Order No. 16-11. Within such time, an application must be filed for a building permit, with construction to commence within seven years of the effective date of this Order.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On January 30, 2017, upon the motion of Commissioner May, as seconded by Vice Chairman Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter A. Shapiro to approve).

On March 13, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter A. Shapiro to approve).

In accordance with the provisions of 11-Z DCMR § 604.8, this Order shall become final and effective upon publication in the *DC Register*; that is on May 5, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-12
Z.C. Case No. 16-12**

**Park View Community Partners, the District of Columbia Housing Authority
and the District of Columbia
(Consolidated PUD and Related Map Amendment
@ Square 3040, Lots 124-126 and 844; Square 3039, Lots 128-134 and 846;
and Square 3043, Lots 18-20)
March 13, 2017**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on December 8, 2016, to consider applications for a consolidated planned unit development (“PUD”) and a related Zoning Map amendment filed by Park View Community Partners, the District of Columbia Housing Authority, and the District of Columbia (collectively, “Applicant”). The Commission considered the applications pursuant to Chapters 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”).¹ The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 400. For the reasons stated below, the Commission hereby **APPROVES** the applications.

FINDINGS OF FACT

The Applications, Parties, Hearings, and Post-Hearing Filings

1. On May 16, 2016, the Applicant filed applications with the Commission for consolidated review of a PUD and a related Zoning Map amendment from the R-4 Zone District to the R-5-B Zone District for Square 3040, Lots 124-126 and 844; Square 3039, Lots 128-134 and 846; and Square 3043, Lots 18-20 (“PUD Site”). The PUD Site is presently improved with 174 public housing units.
2. Concurrent with filing the subject application, Park View Community Partners and the District of Columbia also filed applications for a PUD and related Zoning Map amendment for the Bruce Monroe site, located on Part of Lot 849 in Square 2890. Bruce Monroe was designated by the District as the “build-first” site for the existing public housing units at Park Morton, which will be razed and redeveloped as part of the companion applications.
3. The PUD Site has a land area of approximately 180,338 square feet. The PUD Site spans across a dead-end portion of Morton Street, N.W., with frontage on Park Road, N.W. to the north and Warder Street, N.W. to the east. Squares 3039, 3040, and 3043 are generally bounded by Park Road, N.W. to the north, Warder Street, N.W. to the east,

¹ Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016, and replaced with a Chapter 3 of Subtitle 11-X. However, because these applications were set down for hearing prior to that date, the Commission’s approval was based upon the standards set forth in Chapter 24. Since the hearing was held on December 8, 2016, the procedural requirements of the 2016 Zoning Regulations were applied to this case.

Lamont Street, N.W. to the south, and Georgia Avenue, N.W. and a portion of 6th Street, N.W. to the west. At the time of filing the application, the entirety of the PUD Site was zoned R-4.

4. The PUD Site is presently improved with 174 garden-style, two-bedroom, public housing apartment units in 12 buildings. The Applicant proposes to raze the existing buildings and replace them with a vibrant new mixed-income community of high-quality architecture comprised of affordable and market-rate apartment and townhome units.
5. The PUD Site is surrounded by a variety of uses, including retail, service, and dining opportunities along Georgia Avenue; a variety of elementary, middle, and high schools; and dense residential urban development that includes townhomes, low-rise multi-family buildings, and medium-density apartment homes. The PUD Site is also well served by public transportation with two Metrorail stations located in close proximity to the Subject Property and multiple Metrobus routes running along the surrounding corridors.
6. The Project will establish a mixed-income residential community that replaces the existing public housing units with approximately 189 new residential units, comprised of 142 apartment units, six flats, and 41 townhomes. Over half (53%) of the residential units will be income-restricted housing for low- or moderate-income households as follows: 57 units will be public housing replacement units, 44-59 units will be workforce affordable units, and 73-88 units will be market rate. This is significant because Park Morton is one of the communities that is part of the District's New Communities Initiative. The goals of the New Communities Initiative include revitalizing areas with deteriorating subsidized housing by providing one-for-one replacement of the public housing units and developing new mixed-income communities.
7. The overall PUD Site will be developed with approximately 206,208 square feet of gross floor area (a density of 1.9 floor area ratio ("FAR")) and an overall lot occupancy of 50%. The apartment house will have a maximum height of 60 feet and the flats and townhomes will range in height from 28 feet to 38 feet. A total of approximately 110 on-site parking spaces will be provided across the PUD Site, including below-grade parking in the apartment house and off-street surface spaces.
8. The Project also includes two parks: one located in the center of the PUD Site ("Central Park") and one located on the eastern edge of the PUD Site at Warder Street, N.W. and the proposed Morton Street, N.W. extension ("Pocket Park"). The parks will serve as much needed new open green spaces for residents of the PUD Site and of the surrounding residential community.
9. By report dated July 15, 2016, the District of Columbia Office of Planning ("OP") recommended that the applications be set down for a public hearing. (Exhibit ["Ex."] 12.) At its public meeting on July 25, 2016, the Commission voted to schedule a public hearing on the applications.

10. The Applicant filed a prehearing submission on August 5, 2016 and a public hearing was timely scheduled for the matter. (Ex. 14-15H.) On September 22, 2016, the notice of public hearing was sent to all owners of property located within 200 feet of the PUD Site; Advisory Neighborhood Commission (“ANC”) 1A, the ANC in which the PUD Site is located; Commissioner Bobby Holmes, the Single Member District Commissioner for ANC 1A09, and to Councilmember Brianne Nadeau. A description of the proposed development and the notice of the public hearing in this matter were published in the *DC Register* on September 30, 2016.
11. On November 4, 2016, the Applicant filed its Transportation Impact Study. (Ex. 27.) On November 15, 2016, the Applicant filed its supplemental prehearing submission. (Ex. 30.) The supplemental prehearing submission included: (i) revised architectural plans and elevations, and (ii) a letter from the office of the Deputy Mayor for Planning and Economic Development (“DMPED”) confirming its participation as an applicant in this case.
12. On November 28, 2016, OP submitted a hearing report. (Ex. 35.) The OP hearing report stated that the “application is not inconsistent with the Comprehensive Plan and would further many of its policies, while realizing the Council approved Park Morton Redevelopment Initiative Plan. As such OP recommends that the Commission approve the subject application.” (Ex. 35, p. 1.)
13. On November 28, 2016, DDOT submitted a hearing report. (Ex. 36.) The DDOT hearing report indicated no objection to the applications subject to the conditions set forth in Finding of Fact (“FF”) No. 102 of this Order.
14. ANC 1A submitted a resolution in support of the Project, indicating that at its regularly scheduled and duly noticed public meeting of September 14, 2016, at which a quorum of commissioners was present, ANC 1A voted 10-0-0 to support the application. (Ex. 26.) The resolution stated that ANC 1A “supports the request for flexibility from zoning regulations and the community benefits,” and that the PUD “has offered a number of project amenities and public benefits commensurate with the development incentives and flexibility requested.” (Ex. 26, pp. 3, 4.)
15. On November 21, 2016, the Park Morton Resident Council, the resident council for the individuals currently living at the Park Morton public housing site, submitted a request for party status in support of the application. (Ex. 31-32.) The Commission granted party status for the Park Morton Resident Council at the public hearing.
16. On November 21, 2016, the Georgia Avenue Corridor Neighbors (“GAN”), a group of individuals that “live and work and play along the Georgia Avenue corridor” submitted a request for party status in opposition to the application. (Ex. 33.) At the public hearing, the Commission denied party status for GAN because there was no evidence in the record indicating that GAN was more uniquely affected by the Project than others in the surrounding neighborhood.

17. The parties to the case were the Applicant, ANC 1A, and the Park Morton Resident Council.
18. The Commission convened a public hearing on December 8, 2016, which concluded that evening. At the hearing, the Applicant presented four witnesses in support of the applications: Robert Fossi and Buwa Binitie on behalf of the Applicant; Murphy Antoine of Torti Gallas + Partners, architect for the Project; and Nicole White of Symmetra Design, transportation consultant for the Project. Based upon their professional experience and qualifications, the Commission qualified Mr. Antoine as an expert in architecture and Ms. White as an expert in transportation planning and engineering.
19. Stephen Mordfin of OP and Jonathan Rogers of the District Department of Transportation (“DDOT”) testified in support of the applications at the public hearing.
20. Representatives of the Park Morton Resident Council also testified in support of the applications at the public hearing. These representatives described the Applicant’s extensive public engagement regarding development of the PUD Site through charrette meetings, public meetings, design workshops, steering committee meetings, and resident council meetings. (*See* Transcript [“Tr.”] 12/8/2016, pp. 96-97.) They also described the “substandard living conditions” within the existing Park Morton public housing units, with “cracking walls, peeling lead paint, poisonous lead pipes, structural damage... asbestos, radiator heat with no control setting, drafty windows that feel like there are no windows when the wind starts blowing hard enough, spiders, no ventilation, and dust.” (*Id.* at 98.) The Park Morton Resident Council representatives stated that they “ought not, cannot, will not, and shall not continue to be treated this way.” (*Id.* at 98-99.)
21. At the conclusion of the public hearing, the Commission closed the record except for the limited purposes of allowing: (i) the Applicant to submit the specific post-hearing items filed in Exhibit 174; and (ii) the parties to submit responses to the Applicant’s post-hearing submission.
22. On January 10, 2017, the Applicant submitted its post-hearing submission, which included the following materials and information requested by the Commission at the public hearing: (i) updated architectural plans and elevations responding to comments received by the Commission at the public hearing; (ii) a lighting and security plan; (iii) updates on various questions regarding the residential use of the PUD Site; (iv) confirmation of the Applicant’s employment proffer; (v) a construction management plan; and (vi) copies of approval letters from the District Department of Housing and Community Development (“DHCD”), the District Department of Energy and the Environment (“DOEE”), the District Fire and EMS Department (“FEMS”), and DC Water. (Ex. 174-174J.)
23. On January 18, 2017, the Applicant submitted its proposed findings of fact and conclusions of law. (Ex. 176.)

24. On January 18, 2017, the Park Morton Resident Council submitted a response to reiterate its support for the proposed redevelopment. (Ex. 177.)
25. At the public meeting of January 30, 2017, the Commission reviewed the additional materials submitted to the record and took proposed action to approve the applications.
26. The proposed action was referred to the National Capital Planning Commission (“NCPC”) on February 1, 2017, pursuant to § 492 of the Home Rule Act.
27. On February 6, 2017, the Applicant submitted its proposed proffers and conditions. (Ex. 180-181.)
28. On February 28, 2017, the Applicant submitted revised proffers and conditions. (Ex. 182-183.)
29. The Executive Director of NCPC, by delegated action dated March 2, 2017, found that the applications are not inconsistent with the Comprehensive Plan for the National Capital and other federal interests. (Ex. 184.)
30. The Commission took final action to approve the applications on March 13, 2017.

The PUD Site and Surrounding Area

31. The PUD Site consists of Square 3040, Lots 124-126 and 844; Square 3039, Lots 128-134 and 846; and Square 3043, Lots 18-20. The PUD Site has a land area of approximately 180,338. The PUD Site spans across a dead-end portion of Morton Street, N.W., with frontage on Park Road, N.W. to the north and Warder Street, N.W. to the east. Squares 3039, 3040, and 3043 are generally bounded by Park Road, N.W. to the north, Warder Street, N.W. to the east, Lamont Street, N.W. to the south, and Georgia Avenue, N.W. and a portion of 6th Street, N.W. to the west.
32. The Applicant requested a PUD-related Zoning Map amendment to rezone the PUD Site from the R-4 Zone District to the R-5-B Zone District. As detailed in FF Nos. 88-91, the Commission finds that the requested map amendment is consistent with the Comprehensive Plan Future Land Use Map designation of the PUD Site as Medium-Density Residential.
33. The PUD Site is presently improved with 174 garden-style, two-bedroom, public housing apartment units in 12 buildings. The Applicant proposes to raze the existing buildings and replace them with a vibrant new mixed-income community of high-quality architecture comprised public housing, workforce affordable, and market-rate units, located in an apartment house, flats, and townhomes.
34. The PUD Site is located within a diverse mosaic of neighborhoods with strong identities and rich historic fabric. The PUD Site is also located a half-block to the east of the dynamic Georgia Avenue corridor, which is one of the most rapidly changing areas of the

city, but still includes significant pockets of concentrated poverty where residents lack quality housing, supportive services, and access to quality open space, healthcare, and recreation. (See Park Morton Redevelopment Initiative Plan (“Park Morton Plan”), p. 6.)

35. The Park Morton Plan seeks to create a healthy, mixed-income community with integrated services that offer families better housing, employment, and educational opportunities. The Park Morton Plan protects affordable housing, improves economic integration, engages residents in community decision making, decreases crime through proven crime reduction strategies, and creates opportunity through better jobs, education, training, human services and other programs. (*Id.* at 2.)
36. As part of the District’s Great Street Initiative, the vision for the Georgia Avenue corridor is a revitalized, pedestrian friendly corridor anchored by mixed-use development at key sites. This vision for Georgia Avenue was conceived through the Georgia Avenue-Petworth Metro Station Area Plan, which was completed in 2004. A number of planned and under-construction private developments are leading to the revitalization of the broader neighborhood, and several public investments are being made on the Georgia Avenue corridor. (Park Morton Plan, p. 7.)
37. The Georgia Avenue-Petworth Metro Station Area Plan provides a framework to guide growth and development on Georgia Avenue while preserving and enhancing the quality of life in the community. To ensure that neighborhood and city-wide concerns are balanced, the Plan is designed to leverage the public investment of the Georgia Avenue-Petworth Metro Station and employ transit-oriented development principles; balance growth and development by identifying and guiding opportunities for redevelopment; identify strategies to encourage a better mix of uses, including quality neighborhood-serving retail and housing; maintain and enhance neighborhood character; and prioritize when and where public investment should occur. See Overview of Georgia Avenue-Petworth Metro Station Area Plan at OP’s website, available at <http://planning.dc.gov/page/georgia-avenue-petworth-metro-station-and-corridor-plan-ward-1-and-ward-4>.

Existing and Proposed Zoning

38. The PUD Site is presently zoned R-4. The R-4 Zone District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR § 330.1.) Very little vacant land should be included within the R-4 Zone District, since its primary purpose shall be the stabilization of remaining one-family dwellings. (11 DCMR § 330.2.) The R-4 Zone District shall not be an apartment house district as contemplated under the General Residence (R-5) Districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement. (11 DCMR § 330.3.) As a matter of right, property in the R-4 Zone District can be developed to a maximum building height of 40 feet and three stories. (11 DCMR § 400.1.) The minimum lot area and width for a row dwelling or flat in the R-4 Zone District is 1,800 square feet and 18 feet, respectively. (11 DCMR § 401.3.)

39. The Applicant proposes to rezone the PUD Site to the R-5-B Zone District. The R-5 Zone Districts are designed to permit flexibility of design by permitting in a single district all types of urban residential development if they conform to the height, density, and area requirements. (11 DCMR § 350.1.) In the R-5-B Zone District, a moderate height and density is permitted. (11 DCMR § 350.2.)
40. The R-5-B Zone District permits, as a matter of right, a maximum building height of 50 feet with no limit on the number of stories, a maximum density of 1.8 FAR, and a maximum lot occupancy of 60%. (11 DCMR §§ 400.1, 402.4, and 403.2.) For projects subject to the Inclusionary Zoning (“IZ”) regulations, a maximum density of 2.16 FAR is permitted. (11 DCMR § 2604.1.) For a PUD in the R-5-B Zone District, a maximum building height of 60 feet and a maximum density of 3.0 FAR is permitted. (11 DCMR §§ 2405.1 and 2405.2.)
41. Rear yards in the R-5-B Zone District must have a minimum depth of four inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet. (11 DCMR § 404.1.) Except for detached and semi-detached single-family dwellings, a side yard is generally not required in the R-5-B Zone District; however, if a side yard is provided, it must be at least three inches wide per foot of height of building, but not less than eight feet. (11 DCMR §§ 405.1, 405.2 and 405.6.)
42. The parking and loading requirements for buildings are based upon the proposed use of the property. For example, an apartment house or multiple dwelling in the R-5-B Zone District requires one parking space for each two dwelling units. (11 DCMR § 2101.1.) A one-family dwelling requires one parking space for each dwelling unit. (*Id.*) An apartment house or multiple dwelling with 50 or more units in all zone districts is required to provide one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. (11 DCMR §2201.1.)
43. Consistent with the R-5-B development parameters, the Applicant will develop the PUD Site with a mixed-income community comprised of an apartment house, flats, and townhomes. A tabulation of the PUD’s development data is included on Sheets G24-26 of the Architectural Plans and Elevations dated January 10, 2017, and included in the record at Ex. 174A (“Plans”).

Description of the PUD Project

44. As shown on the Plans, the Applicant is seeking a consolidated PUD and Zoning Map amendment to redevelop the PUD Site with a mixed-income community with a variety of residential unit types and new public open space. The Project will be developed with approximately 189 new residential units, comprised of 142 apartment units, six flats, and 41 townhomes. The overall PUD Site will be developed with approximately 206,208 square feet of gross floor area (1.9 FAR) and an overall lot occupancy of 50%. The apartment house will have a maximum height of 60 feet and the flats and townhomes will range in height from 28 feet to 38 feet. A total of approximately 110 on-site parking

spaces will be provided across the PUD Site, including below-grade parking in the apartment house and off-street surface spaces.

- 45. Over half (53%) of the residential units will be income-restricted housing for low- or moderate-income households as follows: 57 units will be public housing replacement units, 44-59 units will be workforce affordable units, and 73-88 units will be market rate. This is significant because Park Morton is one of the communities that is part of the District’s New Communities Initiative. The goals of the New Communities Initiative include revitalizing areas with deteriorating subsidized housing by providing one-for-one replacement of the public housing units and developing new mixed-income communities.
- 46. Due to the extensive amount of public and affordable housing developed on the PUD Site, the Project is exempt from the IZ Regulations. The public and affordable housing will be provided as set forth below:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	206,208 sf of GFA (100%)	189			Rental or Homeownership
Market Rate	96,918 sf of GFA (47%)	73-88	Market Rate	NA	Rental or Homeownership
Public Housing Replacement Units	61,862 sf of GFA (30%)	57	HUD Requirements/ LIHTC Rules	Life of the Project	Rental
Affordable Housing	47,428 sf of GFA (23%)	44-59	Up to 60% AMI Up to 120% AMI for homeownership	Life of the Project No less than 10 years for homeownership	Rental or Homeownership

47. The Project is consistent with the master plan vision and design guidelines set forth in the Park Morton Plan, and is characterized by its enhanced connectivity to the surrounding neighborhood. The extension of Morton Street, N.W. east to Warder Street, N.W. is the chief element of this connectivity and is a hallmark of the proposal dating back to the Park Morton Small Area Plan. This proposed street extension eliminates the current dead-end cul-de-sac condition and reconnects the PUD Site to the larger context and city. An additional north-south street connection between Park Road and Morton Street, and an additional street loop that runs parallel to and connects on both sides to the extended Morton Street, further enhance the reconnected street grid and associated block pattern. The complex web of alleys that the disconnected current conditions have sponsored is also simplified and reconnected in the proposed site plan.

48. Other significant components of the Project include residentially scaled blocks with a mix of housing types that range from two- and three-story townhomes, to individual entry flats, to a four- and five-story apartment house with underground structured parking. The

mix of housing types are oriented towards the streets and parks created by the new site plan, giving frontage to the public spaces and further engaging the urban and pedestrian experience through porches and balconies.

49. The introduction of parks and open spaces involves development of the Central Park, which includes open lawn, rain gardens, a pavilion, and play structure. The Central Park takes advantage of the deep-block site dimensions to introduce desired park space to the neighborhood at an appropriate scale, while simultaneously maintaining appropriately scaled lots and blocks for the residential fabric of the townhouses.
50. The architectural character and articulation of the proposed housing mix both defers to and builds on the existing historic fabric of the larger neighborhood and the vibrant and rapidly changing character of the Georgia Avenue corridor. The townhomes take their cues in scale, detail, and material from the surrounding rowhome fabric of Park View, Pleasant Plains, and Petworth, which are characterized by columned front porches and stoops, brick fronts and sides, strongly articulated cornice lines, and dormered attic stories. The backs of the traditional rowhomes have been historically expressed with frame sleeping porches that, over time, have been enclosed and converted to additional interior living space, which is typically clad in siding. The proposed townhome backs are similarly clad in cementitious siding. Three-story flats are located at the ends of longer strings of townhomes and in primary corners of the development plan on the PUD Site. This typology lends itself to a side entry into the ground-floor flat, with primary entries into the two upstairs units from the front, thus creating an ideal “corner turning” typology which gives frontage to both streets in corner conditions.
51. The apartment house takes its massing cues from both existing multi-family apartments in the neighborhood and along the burgeoning Georgia Avenue corridor. Four-story wings front Park Road with the five story massing of the main bar of the building setback from Park Road. Fifth floor terraces and building mass setbacks further carve the building back in mass and scale from the Park Road frontage. Articulated bays, and balconies at the corners of the building and the individual four-story wings also modulate the building mass in its relationship to the surrounding neighborhood. Those bay articulations read in floors two through four on the end corners of the building and with a two-story reading on floors two and three at the internal and central wings. Storefront glass at the ground floor engages the building as it meets the street and neighborhood. A more contemporary architectural language, material, and color palette expresses itself on this building as an acknowledgement and progression of more recently entitled and constructed multi-family and other buildings in the surrounding Georgia Avenue Corridor. A brick base, cementitious paneled field, metal panel attic story, wood-grained accent composite panels, and bright accent colored metal panel canopies, along with a generous, residentially scaled fenestration pattern of windows and balcony doors characterize the building’s materials and façade organization.
52. In addition, the Project will integrate a host of sustainable features, such that all buildings on the PUD Site will be certified with a minimum of 50 points under the Enterprise

Green Communities standards. (See Conceptual Enterprise Green Communities scorecards included with the Plans.)

Zoning Flexibility

53. The Applicant requested the following areas of flexibility from the Zoning Regulations discussed below.
54. Side Yards. The Applicant requested side yard relief for the apartment house and for some of the end flats and townhomes in select locations, which have varying side yard widths. Side yards are not required by the Zoning Regulations. However, the Applicant is providing the side yards to create additional open space, light, air, and ventilation for the occupants of the buildings. The Applicant cannot provide compliant side yards on every lot because doing so would reduce the land area on the adjacent streets, alleys, and open spaces, which would be inconsistent with the Park Morton Plan and the community's vision for the PUD Site.
55. Given the extensive amount of open space within the Project, including the large courts in the apartment house, front yard setbacks for the townhomes (which in many cases are deeper than the required rear yard depths), and significant open spaces and parks, the Commission finds that the lack of compliant side yards in certain locations will not result in adverse impacts. Providing the minimum required side yard width for every dwelling would adversely impact the layout and design of the Project and would hinder the Applicant's ability to provide a reasonable footprint and layout for the proposed buildings. Moreover, the Commission agrees with OP's finding that reducing the side yard width would improve "the streetscape facing the 'central park.'" (Ex. 35, p. 8.) Therefore, the Commission hereby grants the requested side yard flexibility.
56. Lot Occupancy. The Applicant requests flexibility from the lot occupancy requirements for the apartment house, which provides 72% lot occupancy where 60% lot occupancy is permitted, and for one of the flats, which provides 63% lot occupancy where 60% permitted.
57. The apartment house is surrounded by Park Road to the north, a new 22-foot-wide street to the east, large front setbacks for the dwellings to the south, and a public alley to the east. Thus, although the Applicant proposes to increase the lot occupancy to 12% greater than is permitted, the Commission finds that there is still significant open space surrounding the building. Moreover, the Applicant is taking land from this lot to create the new public street, which is consistent with the vision set forth in the Park Morton Plan. Similarly, the flat that requires lot occupancy relief also has significant open space in all directions, such that the Commission finds that there will be adequate light, air, and ventilation for all Project residents.
58. The Applicant could have provided compliant lot occupancies for all of the lots; however, the Applicant is instead creating new park space and dedicating new streets and alleys, which will have a more impactful positive effect on the surrounding community. Given

the extensive amount of open space provided throughout the Project, including the large courts in the apartment building, front setbacks for the smaller units, and new park space, the Commission finds that the non-compliant lot occupancies will not result in adverse impacts. Further, the overall PUD Site has a lot occupancy of 50%, which is well under the maximum lot occupancy requirement of 60%. The Commission agrees with OP's finding that the lot occupancy relief would "allow for flexibility in design while still requiring the site as a whole to comply," and therefore grants the relief requested.

59. Parking. The Applicant requests flexibility from the parking requirement of 11 DCMR § 2116.1, which requires that all parking spaces shall be located on the same lot with the buildings or structures they are intended to serve. In this case, the Project provides the required number of parking spaces pursuant to 11 DCMR § 2101.1. However, some of the required parking spaces for the flats and townhomes are not located on the same lot as the building that they are intended to serve, and are instead located on new parking areas created for the Project. The Commission finds that because the Applicant will assign each off-site parking space to a corresponding residential unit, and because the Project provides the zoning-required total number of parking spaces, there will be no adverse impacts as a result of granting flexibility from 11 DCMR § 2116.1.
60. Loading. Subsection 2201.1 of the Zoning Regulations requires one loading berth at 55 feet deep; one loading platform at 200 square feet; and one service/delivery space at 20 feet deep for the apartment house. The Applicant proposes to provide one loading berth at 30 feet deep and one loading platform/service space at 100 square feet, and one service/delivery space at 20 feet deep. The Commission finds that the proposed loading facilities are appropriate for the type of residential development provided, and that the requested flexibility is consistent with the Comprehensive Plan's recommendations to consolidate loading areas within new developments and minimize curb cuts on streets to the greatest extent possible. Given the nature and size of the apartment house units, it is unlikely that residents will need a 55-foot berth to move in and out of the building. Thus, the Commission concludes that the loading facilities as proposed will not create any adverse impacts and will adequately serve the proposed residential development.
61. Phasing. Pursuant to 11 DCMR §§ 2408.8 and 2408.9, the Applicant is required to file a building permit application for the approved PUD within two years of the effective date of the Commission's Order granting approval of the Project, and must commence construction of the Project within three years of the effective date of the Commission's Order. The Applicant requested flexibility from this provision of the Zoning Regulations to allow the PUD to be valid for a period of six years after the effective date of the Commission's Order, with construction to commence within seven years of the effective date of the Commission's Order. This flexibility is requested in order to prepare the PUD Site and fully implement the redevelopment plan.
62. The Commission finds that the proposed phasing will allow for a realistic timeline for successful phased development of the Park Morton and Bruce Monroe sites. Evidence in the record demonstrates that the Applicant needs time to complete the Bruce Monroe improvements, move the existing Park Morton residents to Bruce Monroe, and then start

the permitting and moving process for the remaining residents at Park Morton. Extending the PUD approval timeline will therefore minimize displacement and off-site moves for current Park Morton residents. Thus, the Commission finds that the proposed phasing plan is appropriate to allow for a true build-first scenario and properly respect the living conditions of the existing Park Morton residents.

63. Green Area Ratio (“GAR”). The Applicant requests relief from the GAR requirements for the apartment house and some of the flats, which require a minimum GAR of 0.40. The Applicant has maximized the amount of landscaping features on these lots. However, due to the relatively small size of the lots, the footprints of the buildings, and the proposed construction type, the Applicant cannot incorporate enough landscaping features to meet the minimum GAR requirement for these individual lots. However, the Project otherwise employs significant sustainability measures, including bioretention/landscaped areas, the Central Park, and the Pocket Park, which provide landscaped areas but technically do not count towards the GAR requirements since no buildings are on those lots. Moreover, the overall PUD Site will exceed the GAR requirement. Therefore, the Commission finds that the requested relief is appropriate because it will “allow the Applicant flexibility in design while still providing the minimum green area ratio for the site as a whole.” (Ex. 35, p. 8.)

Development Flexibility

64. The Applicant also requests flexibility in the following additional areas:
- a. To be able to provide a range in the number of residential units of plus or minus 10%;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
 - c. To vary or reduce the number, location and arrangement of parking (vehicular and bicycle) spaces, provided that the total is not reduced below the number required under the Zoning Regulations;
 - d. To vary the sustainable design features of the Project, provided the total number of points achievable for the Project is not below 50 points utilizing the Enterprise Green Communities rating standards;
 - e. 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 without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes in order to comply

with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit; and

- f. To vary the features, means and methods of achieving (i) the code-required GAR of 0.4, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.
65. The Commission does not approve the requested flexibility related to parking and bicycle spaces for two reasons. First, the Applicant did not adequately explain why it needs the flexibility. Second, the flexibility undermines the justification of the finding the Commission made that the project would not result in increased demand for parking on existing public streets, which was based on the number of spaces included in the Project. The Commission also only partially granted the Applicant's request for flexibility in the final selection of the exterior materials because it believed the Applicant's request was overly broad.

Project Benefits and Amenities

66. Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a)). The Project will implement a number of best planning practices within a site that has not seen significant improvement or redevelopment for over 50 years. These practices include the introduction of a new street grid pattern with broad, landscaped sidewalks, the creation of smaller, pedestrian-friendly blocks, and the introduction of parks and outdoor public amenities. The outdoor park spaces will be adequately lit and easily surveyed to provide a safe and inviting public environment. The Project also incorporates an appropriate distribution of housing densities to establish a renewed neighborhood with a variety of building heights, types, and massing. The architecture is appropriately scaled to match the existing style and character of the surrounding neighborhood, including traditional rowhouse and apartment building fabric and more recent development in the Georgia Avenue corridor.
67. Housing and Affordable Housing (11 DCMR § 2403.9(f)). The Project includes a total of 189 new residential units, with 142 apartment units, six flats, and 41 townhomes. The majority of the residential units will be subsidized housing for low- or moderate-income households as follows: 57 units will be public housing replacement units, 44-59 units will be workforce affordable units, and 73-88 units will be market rate. Thus, approximately 53% of the units will be devoted to affordable housing, which is significant.
68. The breakdown of affordable housing by gross floor area and level of affordability is set forth below:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	206,208 sf of GFA (100%)	189			Rental or Homeownership
Market Rate	96,918 sf of GFA (47%)	73-88	Market Rate	NA	Rental or Homeownership
Public Housing Replacement Units	61,862 sf of GFA (30%)	57	HUD Requirements/ LIHTC Rules	Life of the Project	Rental
Affordable Housing	47,428 sf of GFA (23%)	44-59	Up to 60% AMI Up to 120% AMI for homeownership	Life of the Project No less than 10 years for homeownership	Rental or Homeownership

69. The affordability control period for the homeownership units is stated as no less than 10 years to provide flexibility for the potential purchasers to access mortgage programs that will lend to homeowners with an income/resale restriction. The Applicant will work with its public partners and potential homeowners to identify appropriate loan programs that fund mortgages with a 10-year minimum affordability control period. However, requiring these units to be affordable for the life of the project would make it more difficult for homeowners to acquire these units. The Commission has noted this challenge in approving other PUDs and has thus approved shorter affordability control periods for affordable, homeownership units. (See Z.C. Order No. 14-02, Decision No. 8, stating: “The affordable control period for the affordable homeownership units shall be subject to the requirements of their funding source or a minimum of 10 years.”)
70. Employment and Training Opportunities (11 DCMR § 2403.9(c)). Expanding employment opportunities for residents and local businesses is a priority of the Applicant. Therefore, the Applicant will: (i) enter into a Certified Business Enterprise (“CBE”) Agreement with the District Department of Small and Local Business Development (“DSLBD”); (ii) enter into a First Source Employment Agreement with the District Department of Employment Services (“DOES”), consistent with the First Source Employment Agreement Act of 1984; and (iii) meet the U.S. Department of Housing and Urban Development’s (“HUD”) Section 3 requirements by providing job training, employment, and contract opportunities for low- or very-low income residents in connection with development of the Project.
71. Environmental Benefits (11 DCMR § 2403.9(h)). The Project promotes environmental sustainability by implementing a variety of sustainable design features. The proposed site plan opens the PUD Site to the surrounding community by creating a new street grid, ensuring increased pedestrian access to public transportation and enhanced walkability. The Project incorporates two parks that will serve as much needed new open green spaces for residents of the PUD Site and the surrounding residential community. Moreover, the

Project provides a host of environmental benefits consistent with the recommendations of 11 DCMR § 2403.9(h), including landscaping, street tree planting and maintenance, energy efficient and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices. The Project will be designed to integrate a host of sustainable features, such that each building on the PUD Site will be certified with a minimum of 50 points under the Enterprise Green Communities standards. (See Conceptual Enterprise Green Communities scorecard included with the Plans.)

72. Transportation Benefits (11 DCMR § 2403.9(c)). The Applicant incorporated a number of elements into the Project that will promote effective and safe access to the PUD Site, convenient connections to public transit services, and on-site amenities that encourage pedestrian and bicycle activity. Consistent with the Park Morton Plan, the Project will introduce an east-west street grid connection at Morton Street to accommodate vehicular and pedestrian traffic safely while minimizing cut through traffic on Morton Street. The redesigned street grid will also help to create enhanced access points and circulation within and across the PUD Site, along with improved sidewalks and streetscapes to encourage pedestrian activity. The new street grid will include enhanced multi-modal connections for vehicles, bicyclists, and pedestrians, and will increase community safety while beautifying the surrounding area.
73. The Applicant will install pavement markings (i.e., “puppy tracks”) at the Georgia Avenue and Park Road intersection to enhance intersection safety, subject to DDOT approval.

Transportation Demand Management

74. In addition to the transportation amenities described above, the Applicant will implement the following transportation demand management (“TDM”) strategies to reduce travel demand:
- a. Offer each apartment unit an annual car sharing membership or an annual Capital Bikeshare membership for a period of three years;
 - b. Provide, as a one-time incentive, 142 helmets for apartment building occupants and 47 helmets for the flat and townhome occupants;
 - c. At the initial sale or lease of units, offer a pre-loaded \$10 SmarTrip card for each residential unit in the apartment house and for each flat and townhome;
 - d. Unbundle the cost of parking spaces from the cost of lease or sale of market-rate units;
 - e. Provide one off-street car sharing space in private space;
 - f. Provide a bicycle repair station in the apartment building;

- g. Provide four shopping carts for multi-family residential tenants to run daily errands;
- h. Install a transit screen in the lobby of the apartment house;
- i. Post all TDM commitments online;
- j. Designate a TDM leader; and
- k. Provide 45 long-term and 14 short-term bicycle parking spaces.

Park Morton Redevelopment Initiative Plan

- 75. The Park Morton Plan seeks to create a healthy mixed-income community for Park Morton with integrated services that offer families better housing, employment, and educational opportunities. The Park Morton Plan protects affordable housing, improves economic integration, engages residents in community decision making, decreases crime, and creates opportunity through better jobs, education, training, human services, and other programs. (Park Morton Plan, p. 4.)
- 76. A key principle of the Park Morton Plan is the one-for-one replacement of existing publicly subsidized housing. This application was submitted in conjunction with the application for redevelopment of the Bruce Monroe site, which is intended to serve as off-site replacement housing for Park Morton, meeting the Guiding Principles of the New Communities Initiative and the Park Morton Plan. To date, 27 replacement units have been built for Park Morton residents at The Avenue, which delivered in 2012.
- 77. Redevelopment of the Bruce Monroe site spreads the density of the PUD Site across multiple land parcels in order to achieve the New Communities Initiative's Guiding Principles of one-for-one replacement of public housing units and mixed-income development. The development program for the PUD Site, paired with the redevelopment of the Bruce Monroe site, incorporates a unit mix that accommodates the housing needs of current families of Park Morton.
- 78. The Park Morton Plan's "Physical Plan" element makes detailed recommendations for improving the area's housing, neighborhood design, open space, transportation, and parking needs. (Park Morton Plan, p. 5.) Key elements of the Physical Plan for the neighborhood include the following:
 - a. "Creating a moderate density mixed-income community of apartments, townhouses and duplexes on the site which includes approximately 152 replacement units, seven homeownership units for current Park Morton residents and 317 market/workforce units for an approximate total of 477 homes at the Park Morton site;

- b. Supporting a vibrant mix of uses, consistent with the Georgia Avenue-Petworth Metro Station Area Plan to encourage new retail and commercial development along Georgia Avenue that capitalizes on Metro accessibility and provides new neighborhood retail;
 - c. Creating a new east-west connection through the redeveloped community that eliminates the isolation of the existing neighborhood and provides increased safety and security;
 - d. Creating a new passive park and community open space surrounded by new family-style duplexes and flats for children to play safely; and
 - e. Utilizing sustainable practices to preserve the site's existing natural features and minimize the development's impact on the environment." (*Id.* at 5.)
79. The preferred development scheme for Park Morton was developed as a response to input from the community and District agencies and incorporates the following design concepts:
- a. "Introducing an East-West street grid connection at Morton Street; the new street should accommodate vehicular and pedestrian traffic safely while minimizing cut through traffic on Morton Street by use of traffic calming techniques;
 - b. Creating residentially scaled blocks of multi-family buildings and three-family rowhouse style units that complement the existing architectural scale and context;
 - c. Developing a neighborhood green space that is fronted by residential structures, creating "eyes" on the park; incorporating additional open space for both private and common use within individual buildings; and
 - d. Creating streetscapes welcoming to pedestrians with sidewalks, tree boxes, lighting and appropriate street furniture that comply with District requirements." (*Id.* at 15.)
80. The physical plan contemplates that development will require modification of the existing zoning of the PUD Site, and anticipates that the changes to the existing height and density limits will be pursued through the PUD process and reviewed by the Commission. (*Id.* at 18.) The Park Morton Plan recommends moderate-density residential development for those properties facing the extended Morton Street, and moderate- to medium-density residential and commercial development along Park Road and Georgia Avenue. (*Id.* at 18.)
81. The Park Morton Plan sets forth the following design guidelines to ensure that the Project's height, massing, and architectural style is compatible with the surrounding community:

- a. “Developing residentially scaled blocks through a street grid pattern;
 - b. Establishing new mixed-income housing units in a variety of configurations;
 - c. Creating density within the site and along Park Road to establish a renewed neighborhood;
 - d. Allowing massing along Park Road up to four stories, with up to six stories at the rear of the property set back a minimum of forty feet from Park Road;
 - e. Allowing massing along Morton Street up to four stories, with up to five stories at the rear of the property set back a minimum of 40 feet from Morton Street;
 - f. Encouraging new architecture that is appropriately scaled to match existing rowhouse style character using design techniques such as residentially scaled bays, cornice lines, multiple entrances to multifamily buildings and setbacks to complement the neighborhood context;
 - g. Creating porches, balconies and terraces to promote neighbor interaction;
 - h. Utilizing building materials and colors that are appropriate to the surrounding neighborhood; preferred materials include brick and glass;
 - i. Incorporating structured or underground parking within multi-family buildings and rear yard parking for row-house style units; parking should be accessed through the alley network in order to minimize new curb cuts; and
 - j. Developing private and publicly accessible open spaces within multi-family buildings that are green, adequately lit, and easily surveyed.” (*Id.* at 18-19.)
82. The Park Morton Plan also envisions the creation of a new privately owned and maintained park that is managed by the developer in coordination with a neighborhood association and/property owners. Open space should be well lit and accessible and free from fencing around the whole park; fences should be restricted to specific features like a playground or other similar functions. The park should be in a location that has adequate visibility that maximizes “eyes on the park” to ensure safety. The integration of porches, balconies and terraces are encouraged to be consistent with the surrounding community and should provide opportunities for neighbors to gather and monitor their community. (*Id.* at 19.) The Commission finds that the architecture, building massings, site plan, street and alley layout, open spaces, and lighting and privacy plans are consistent with the architectural context of the goals set forth in the Park Morton Plan design guidelines, and are consistent with the surrounding community.
83. The Park Morton Plan also seeks development that meets the requirements of the DC Green Building Act of 2006, using the Green Communities Criteria as a guide for sustainable design. The design of buildings should reinforce a commitment to

sustainability by providing energy-efficient appliances; providing daylighting and programmable thermostats to help reduce energy usage; using low- and no-volatile organic compound materials to promote cleaner indoor air quality; using low volume fixtures and appliances to help municipal water supplies last longer and help lower water bills; using low impact design storm water management strategies to better manage water runoff and extend the ability of the ground to absorb storm water; and installing cutoff lights in the public areas to reduce energy cost. (*Id.* at 19.) The Commission finds that the Project is consistent with these recommendations because it will integrate a host of sustainable features, such that all buildings on the PUD Site will be certified with a minimum of 50 points under the Enterprise Green Communities standards. (*See* Conceptual Enterprise Green Communities scorecards included with the Plans.)

84. Overall, the Commission finds that the Project is consistent with the Park Morton Plan's goals of improving the area's housing, neighborhood design, open space, transportation, and parking needs. The Project incorporates a mixed-income community of apartments and townhouses, including 57 public housing replacement units, 44-59 workforce affordable units, and 73-88 market-rate units. The Project introduces an east-west street connection through the PUD Site that eliminates the isolation of the exiting neighborhood and provides increased safety and security, as well as a north-south connection to further integrate the neighborhood into the larger community. Moreover, the Project creates new parks and community open spaces and uses sustainable design practices to preserve the PUD Site's natural features and minimize the Project's impact on the environment. The public spaces will be well lit and accessible, with adequate visibility to encourage neighbors to gather and monitor their community.
85. Moreover, the Commission finds that the Project incorporates design concepts that are consistent with the goals set forth in the Park Morton Plan. For example, the site plan creates residentially scaled blocks with various building heights and types, which complement the existing architectural style and context of the surrounding neighborhood and put additional "eyes and ears" on the new public spaces. The architecture incorporates design techniques such as bays, cornice lines, multiple entrances, and setbacks to ensure consistency with the surrounding neighborhood. Furthermore, the new street connection safely accommodates vehicular, pedestrian, and bicycle traffic and creates streetscapes that are welcoming to pedestrians with wide sidewalks, tree boxes, lighting, and appropriate street furniture. Therefore, the Commission finds that the Project is fully consistent with the goals and objectives set forth in the Park Morton Plan.

Comprehensive Plan

86. The Commission finds that the PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map and Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan.
87. Purposes of the Comprehensive Plan. The purposes of the Comprehensive Plan are six-fold: (i) to define the requirements and aspirations of District residents, and accordingly

influence social, economic and physical development; (ii) to guide executive and legislative decisions on matters affecting the District and its citizens; (iii) to promote economic growth and jobs for District residents; (iv) to guide private and public development in order to achieve District and community goals; (v) to maintain and enhance the natural and architectural assets of the District; and (vi) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Official Code § 1-301.62(b).) The Commission finds that the Project significantly advances these purposes by promoting the social, physical and economic development of the District through the provision of a high-quality residential development that will increase the housing supply, improve the District's natural and architectural assets, promote economic growth and jobs for District residents, and improve the surrounding community. The Project will achieve community goals by providing significant new affordable housing, and will do so through the construction of aesthetically pleasing new buildings that respect the character of the surrounding neighborhood without generating any adverse impacts.

88. Future Land Use Map. The District of Columbia Comprehensive Plan Future Land Use Map designates the PUD Site in the Medium-Density Residential land use category. The Medium Density Residential category is used to define: “neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low and moderate density housing may exist within these areas. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone Districts are generally consistent with the Medium Density designation, although other zones may apply.” (10A DCMR § 225.5.)
89. The Commission finds that the R-5-B Zone District proposed for the PUD Site is specifically listed as a zone district that is consistent with the Medium-Density Residential designation, and that the Project will incorporate a mid-rise apartment building, townhomes, and open spaces that are compatible with the surrounding residential development. Moreover, this Commission has previously granted Zoning Map amendments to the R-5-B Zone District for residentially developed PUDs with similar heights and densities as those proposed for the Subject Property. (*See, e.g.* Z.C. Case No. 12-18 (granting a map amendment for a portion of the subject site from the R-4 Zone District to the R-5-B Zone District to develop a mixed-use retail and residential project constructed to a maximum height of 90 feet and to a maximum density of 4.85 FAR); Z.C. Case No. 04-13 (granting a map amendment from the R-4 Zone District to the R-5-B Zone District to develop a new residential project constructed to a maximum height of 50.5 feet and at a maximum density of 2.68 FAR.)
90. Subsection 226.1(d) of the Comprehensive Plan provides that the “zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans.” The Zoning Regulations further require consistency with “other adopted public policies and active programs related to the subject site.” (11 DCMR § 2403.4.) Small area policies appear in “separately bound Small Area

Plans for particular neighborhoods and business districts. As specified in the city's municipal code, Small Area Plans provide supplemental guidance to the Comprehensive Plan and are not part of the legislatively adopted document." (10A DCMR § 104.2.)

91. The small area plan applicable to the PUD Site is the Park Morton Plan. As set forth in FF Nos. 75-85 above, the Commission finds that the Project is consistent with many of the goals, objectives, and design guidelines set forth in the Park Morton Plan as they apply to the PUD Site. For example, the Park Morton Plan recommends "creating density within the site and along Park Road to establish a renewed neighborhood," and "allowing massing along Park Road up to four stories, with up to six stories at the rear of the property set back a minimum of forty feet from Park Road." The Commission finds that, when the Comprehensive Plan is read in conjunction with the Park Morton Plan, the proposed heights and densities for the PUD Site are consistent with both planning documents. The Commission also credits OP's testimony that "[t]he application is not inconsistent with the Comprehensive Plan and would further many of its policies, while realizing the Council approved Park Morton Redevelopment Initiative Plan." (Ex. 35, p. 1.)
92. Generalized Policy Map. The Comprehensive Plan Generalized Policy Map designates the PUD Site as a Neighborhood Enhancement Area. The guiding philosophy in Neighborhood Enhancement Areas 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. The unique and special qualities of each area should be maintained and conserved, and overall neighborhood character should be protected as development takes place. Publicly-owned open space within these areas should be preserved and enhanced to make these communities more attractive and desirable." (10A DCMR § 223.7.)
93. The Commission finds that the proposed rezoning and redevelopment of the PUD Site is consistent with the policies indicated for Neighborhood Enhancement Area. The proposed Zoning Map amendment will permit the creation of a new high quality, mixed-income housing development with adjoining public open spaces that will improve and build on the unique character of the surrounding neighborhood. The Project will "fit in" with the existing architectural context and will preserve and enhance Park Morton to be a more attractive and desirable place to visit and live.
94. Guiding Principles and Major Elements of the Comprehensive Plan. The Commission further finds that the PUD is consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as discussed in the paragraphs below.
95. Managing Growth and Change. The guiding principles of this element are focused on ensuring that the benefits and opportunities of living in the District are equally available to everyone in the city. The Commission finds that the Project is fully consistent this

- goal. Specifically, the Project will help to attract a diverse population with the inclusion of a mix of housing types for households of differing income levels. (10A DCMR §§217.2 and 217.3.) In addition, as shown on the Plans, the Project will help connect the Subject Property to the rest of the neighborhood and the overall urban fabric by developing an enhanced street grid, improving the pedestrian experience through new streetscape infrastructure, and building new open green spaces for the use and enjoyment of the public. (*See* 10A DCMR § 217.6.)
96. Creating Successful Neighborhoods. The guiding principles for creating successful neighborhoods include improving the residential character of neighborhoods. (10A DCMR § 218.1.) The production of new affordable housing is essential to the success of neighborhoods. (10A DCMR § 218.3.) Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (10A DCMR § 218.8.) The Commission finds that the Project furthers each of these guiding principles with the construction of significant new housing, including replacement public housing units and workforce affordable units. As part of the PUD process, the Applicant worked closely with ANC 1A and other community stakeholders to ensure that the Project provides a positive impact to the surrounding neighborhood.
97. Connecting the City. The Commission finds that the Project will help to implement a number of the guiding principles of this element. The Project will reconnect the street grid to provide improved mobility and circulation to and through the Subject Property, thus reducing traffic congestion on the surrounding streets and creating a safer and more pleasant and walkable urban environment. (10A DCMR § 220.2.) The Applicant will also implement major streetscape improvements to the existing streets to encourage pedestrian travel and enhance neighborhood safety. (10A DCMR § 220.3.) Finally, the access points for the required parking and loading facilities on the Subject Property are designed to appropriately balance the needs of pedestrians, bicyclists, transit users, vehicles and delivery trucks, as well as the needs of residents and others to move around and through the city. (10A DCMR § 220.2.)
98. Building Green and Healthy Communities. The Commission finds that the Project is fully consistent with the guiding principles of the Building Green and Healthy Communities element. The Project will increase the District's tree cover, minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (11 DCMR §§ 221.2 and 221.3.) Moreover, the improved street grid will help to facilitate pedestrian and bicycle travel and reduce vehicle use. The Project also provides two new community parks, which will increase permeable materials and encourage neighborhood residents and visitors to adopt a healthy and active lifestyle. Finally, the Project will integrate a host of sustainable features, such that all buildings on the PUD Site will be certified with a minimum of 50 points under the Enterprise Green Communities standards.
99. The Commission also finds that the PUD furthers the objectives and policies from various elements of the Comprehensive Plan, including the Land Use, Transportation,

Housing, Environmental Protection, Parks, Recreation, and Open Space, and Urban Design Citywide elements, and the Mid-City Area Element, as set forth in the Applicant's Statement in Support and the OP Reports. (Ex. 4, 12, 35.)

Office of Planning Reports

100. On July 15, 2016, OP submitted a setdown report recommending that the applications be set down for a public hearing. (Ex. 12.) The OP report stated that the Project "is not inconsistent with the Comprehensive Plan and would further many of its policies" because the Project would: (Ex. 12, p.19.)
- a. "[R]evitalize a public housing complex, providing new affordable and market rate housing, parks and open space. Streets internal to the site would be connected to Warder Street and Park Road, improving pedestrian connection to the surrounding neighborhood and access to public transportation"; (Ex. 12, p. 8.)
 - b. "[C]onnect the sidewalk system within the PUD to the streets of the surrounding neighborhood, providing residents with improved access to public transportation"; (*Id.* at 9.)
 - c. "[P]rovide for of the replacement of public housing and a mixture of affordable units for the life of the project, and market rate housing. Units would range from studios to four-bedroom units, and a variety of unit types from apartments to row and semi-detached dwellings"; (*Id.* at 10.)
 - d. "[P]rovide the planting of trees, including street trees. The application indicates that the building would be Enterprise Green Communities certifiable, with a minimum score of 50, and would meet or exceed the minimum GAR requirement of 0.40. Green roofs, tree planting and bioretention areas with plantings are proposed"; (*Id.* at 11.)
 - e. "[I]nclude a park with active and passive recreation to meet some of the demand for recreation services"; (*Id.* at 12.)
 - f. "[C]onnect this large site with Warder Street and Park Road, eliminating the existing Morton Street cul-de-sac, integrating the site into the community and improving safety. The new residential structures would be consistent and compatible with the scale, height and density of the surrounding community, maintaining the neighborhood character and identity"; and (*Id.* at 12.)
 - g. "[R]edvelop the Park Morton site into a walkable neighborhood, with housing types and architecture consistent with the surrounding area. New tree plantings would be provided along the streets the PUD." (*Id.* at 13.)
101. On November 28, 2016, OP submitted a hearing report stating that the "application is not inconsistent with the Comprehensive Plan and would further many of its policies, while realizing the Council approved Park Morton Redevelopment Initiative Plan. (Ex. 35.) As

such OP recommends that the Commission approve the subject application.” (*Id.* at p. 1.) More specifically, the OP report noted that the Project would “further major policies from various elements of the Comprehensive Plan, including the Land Use, Transportation, Housing, Environmental Protection, Parks, Recreation, and Open Space and Urban Design citywide elements, and the Mid-City Area Element[,]” and referred readers to its setdown report (Ex. 12) for a full discussion of OP’s findings regarding the Project’s consistency with the Comprehensive Plan. (*Id.* at p. 9.) OP reiterated that the application would “create a mixed income community of low-rise and mid-rise buildings, with units for sale and for rent,” and that the Project would “greatly improve the lives of those that live there and of the Pleasant Plains community as a whole,” (*Id.* at 1, 9.)

DDOT Report

102. On November 28, 2016, DDOT submitted a hearing report. (Ex. 36.) The DDOT hearing report indicated no objection to the application subject to the following conditions:
- a. Develop and implement a DDOT-approved curbside management and signage plan during the public space permitting process;
 - b. Commit to install pavement markings (i.e. "puppy tracks") at the Georgia Avenue and Park Road intersection to enhance intersection safety, subject to DDOT approval at permitting; and
 - c. Enhance the TDM plan to include the following elements:
 - i. Remove the commitment to identify two car sharing spaces in public space and instead dedicate two parking spaces on private space for car sharing services to use with right of first refusal;
 - ii. Provide a total of 14 short-term bicycle parking spaces in the public space adjacent to the site;
 - iii. Offer each apartment unit an annual car sharing membership or an annual Capital Bikeshare membership for a period of three years;
 - iv. Provide a bicycle repair station in the apartment building; and
 - v. Provide four shopping carts for apartment tenants to run daily errands and grocery shopping.
103. At the public hearing, the Applicant agreed to all of DDOT’s conditions, except that it agreed to provide one parking space on private space to car sharing services to use with right of first refusal.
104. The DDOT report noted that the Applicant had proposed eight-foot porches on some of the townhomes, which exceeds the five-foot projection width allowed by the Building

Code. The Applicant reduced the width of the porch projections in its post-hearing submission, such that the projections are fully compliant with the Building Code. (Ex. 174A.)

105. The DDOT report also noted that some of the townhomes lacked rear alley access, and that the Applicant would be expected to develop a trash removal plan that allows for trash pickup from the rear such that trash receptacles are not stored in public space. The Applicant provided a trash removal plan in its post-hearing submission (Ex. 174A). Trash for these townhomes will be collected from a path along the rear of the townhomes that leads to a receptacle area that is accessible for pick-up.
106. Finally, DDOT noted that because of the new street and alley layout and circulation patterns, a portion of the north-south alley between Morton Street and New Street 1 will function much like part of the street network rather than an alley segment, and therefore this portion of the alley should be designed to provide visual cues to users that reinforce the primary vehicular movement. At the public hearing, the Applicant agreed to continue to work with DDOT to design this portion of the alley so that it feels like a street, including the implementation of travel restriction signage if necessary.

ANC Reports

107. ANC 1A, the ANC in which the PUD Site is located, submitted a resolution in support of the project, indicating that at its regularly scheduled and duly noticed public meeting of September 14, 2016, at which a quorum of commissioners was present, ANC 1A voted 10-0-0 to support the application. (Ex. 26.) The resolution stated that ANC 1A “supports the request for flexibility from zoning regulations and the community benefits,” and that the PUD “has offered a number of project amenities and public benefits commensurate with the development incentives and flexibility requested.” (Ex. 26, pp. 3, 4.)
108. Chairman Kent Boese of ANC 1A testified in support of the Project at the public hearing. In his testimony, Chairman Boese reaffirmed ANC 1A’s unanimous support, which came “[a]fter months of community engagement, which included over 50 public meetings and workshops and careful consideration of the requested zoning relief.” (Ex. 169, p. 1.) Chairman Boese stated that the Project will “reconnect this part of the neighborhood with the surrounding neighborhood by creating new streets and by constructing housing that more closely adheres to the intent of the underlying R-4 zoning.” (*Id.*) Commissioner Boese noted that many of the buildings “will resemble the traditional rowhouses found in the surrounding neighborhood,” and that the 60-tall apartment building proposed on Park Road is appropriate because “an apartment building dating to 1930 is already located on the north side of Park Road, and the site of the proposed apartment building abuts land that is zoned GA/C-2-A to the west and very close to the GA/C-3-A zone.” (*Id.* at 1-2.) Finally, Commissioner Boese noted the “overwhelming community support for the redevelopment of Park Morton,” including support from ANC 1A, the Luray-Warder Neighborhood Association, and the Park View United Neighborhood Coalition. (*Id.* at 2.) Commissioner Boese stated that while some community residents suggested that housing

units be shifted from the Bruce Monroe site to the Park Morton site, the underlying zoning at the Park Morton site does not support that approach. (*Id.*)

Individuals and Agencies in Support

109. Numerous letters and testimony were submitted to the record in support of the applications. (Ex. 37-139, 143, 149-161, 165-168.) Individuals supported the Project due to its proposal to provide much needed new housing, workforce affordable housing, and public housing; its ability to improve the living conditions for existing Park Morton residents, allowing them to remain in their community; and its commitment to provide new park space for the community to enjoy, among many other reasons expressed at the public hearing.
110. In addition to OP and DDOT, several other District agencies also submitted letters recommending approval of the Project, including DHCD, DOEE, FEMS, and DC Water (Ex. 174G-174J). In particular, DHCD recommended approval of the Project because the Project will help meet the goals of the District's New Communities Initiative without destabilizing land value, accelerating gentrification, or displacing neighboring residents. (Ex. 174G, p. 2.) DOEE confirmed that the Project adequately addresses and will mitigate potential environmental impacts with respect to air pollution and stormwater runoff, consistent with the regulatory requirements of DOEE. (Ex. 174H, p. 1.) DC Water stated that the Project's utility plans adequately address water and sewer utility needs, and that the proposed water and sewer facilities shown on the Project's Plans would be considered adequate by DC Water. (Ex. 174J, p. 1.) Finally, FEMS indicated that the Fire Marshal has no objection to the Project moving forward and being approved. (Ex. 174I, p. 1.)

Contested Issues

111. In addition to the submission by GAN, two individuals testified in opposition to the Project at the public hearing, and several letters in opposition were also submitted to the record. The Commission has carefully reviewed the issues raised by the individuals in opposition and makes the following findings:

Consistency with Specific Policies Set Forth in the Comprehensive Plan. Written testimony was submitted to the record claiming that the Project is inconsistent with a number of specific policies set forth in the Comprehensive Plan related to quality of life, jobs and small businesses, public services, affordable housing, and transportation. (Ex. 141.) The Commission has reviewed each of these policies and finds that the Project is not inconsistent with the noted policies, as follows:

- a. *Policy E-4.1.3: Evaluating Development Impacts On Air Quality - Evaluate potential air emissions from new and expanded development, including transportation improvements and municipal facilities, to ensure that measures are taken to mitigate any possible adverse impacts. These measures should include*

construction controls to reduce airborne dust, and requirements for landscaping and tree planting to absorb carbon monoxide and other pollutants.

The Commission finds that the Project is consistent with Policy E-4.1.3 because it includes a number of sustainable, environmentally-friendly features that will mitigate adverse impacts on air quality. These environmental measures include the landscaping, street tree planting and maintenance, energy efficient and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices that will together work to absorb carbon monoxide and other pollutants. In addition, the Project will be certified under the Enterprise Green Communities standards, and will incorporate significant transportation demand management measures that will reduce travel demand and associated carbon emissions.

The Commission finds that DOEE supported the Project. (*See* email dated December 8, 2016 (Ex. 174H), stating that the PUD “includes measures that address and mitigate potential environmental impacts with respect to air pollution and stormwater runoff consistent with the regulatory requirements of the Agency. In addition, Certification under the Green Communities Criteria meets the minimum requirements of the Green Building Act for publically financed developments of this scale.”)

Moreover, the Applicant will be required to comply with all applicable laws and regulations regarding construction noise and air pollution, and will address the mitigation of any construction-related impacts during the building permit process. Moreover, the Applicant submitted a Construction Management Plan, with which it will abide during construction of the Project. (Ex. 174F.) Therefore, the Commission finds that the Project is consistent with Policy E-4.1.3, and will not result in any negative impacts on air quality.

- b. *Policy E-4.3.5: Noise and Land Use Compatibility - Avoid locating new land uses that generate excessive noise adjacent to sensitive uses such as housing, hospitals, and schools. Conversely, avoid locating new noise-sensitive uses within areas where noise levels exceed federal and District guidelines for those uses.*

The Commission finds that the Project is consistent with Policy E-4.3.5 because it will not establish new land uses that generate excessive noise. The PUD Site will be developed as a residential use, which is the same use as the surrounding residential neighborhood. Moreover, the Applicant will be required to comply with all federal and District noise regulations during construction and operation of the buildings. Thus, the Commission finds that the Project will not create adverse impacts by generating excessive noise in the surrounding neighborhood.

- c. *Action E-4.5.C: Interagency Working Group - Create an interagency working group on safe drinking water to address drinking water emergencies;*

coordination between DCWASA and DOH, and expanded public education on water supply.

This Commission finds that this Action item is not applicable to the Applicant's Project. (*See* pp. 25-46 of the Comprehensive Plan's Implementation Element, which identifies DC Water, the District Department of Health ("DOH"), DOEE, and the Office of the City Administrator ("OCA") as the agencies responsible for carrying out Action E-4.5.C.) Moreover, DC Water submitted a report recommending approval of the Project and stating that the Project "adequately addresses water and sewer utility needs" and that it would "work with the Applicant during the building permit process to ensure that appropriate measures are taken to ensure that the project will not have any adverse impacts on existing or future DC Water capacity needs and will meet acceptance criteria." (Ex. 174J.) Based on the DC Water report, the Commission finds that the Project will not have any negative impact on the safety or supply of drinking water.

- d. *Policy E-4.8.2: Expanded Outreach to Disadvantaged Communities - Expand local efforts to involve economically disadvantaged communities, particularly those communities that historically have been impacted by power plants, trash transfer stations, and other municipal or industrial uses, in the planning and development processes.*

The Applicant worked closely with existing Park Morton residents through their Resident Council and Relocation/Reentry Committee, and has the full support of the Resident Council for development of the Project. (Ex. 31-32, 149-161.) The Applicant will also involve economically disadvantaged communities by meeting the U.S. Department of Housing and Urban Development's ("HUD") Section 3 requirements by providing job training, employment, and contract opportunities for low- or very-low income residents in connection with development of the Project. In addition, Dantes Partners, a member of the Applicant team, is a Section 3 business and is committed to extending opportunities to other Section 3 businesses. The Applicant has entered into a CBE Agreement with DSLBD which includes equity and development participation and reporting. (Ex. 174E.)

In addition, DHCD recommended approval of the Project and stated that the "proposed development will help to meet the goals of the District's New Communities Initiative, which is a program designed to revitalize communities plagued with severely distressed housing, poverty, high crime and economic segregation." (Ex. 174G.) Thus, the Commission finds that the Applicant's actions and the Project are consistent with Policy E-4.8.2.

- e. *Policy ED-3.2.1: Small Business Retention and Growth - Encourage the retention, development, and growth of small and minority businesses through a range of District-sponsored technical and financial assistance programs.*

Consistent with Policy ED-3.2.1, the Commission finds that the Project will encourage the retention, development, and growth of small and minority businesses since:

- i. The Applicant has entered into a First Source Employment Agreement with the DOES, consistent with the First Source Employment Agreement Act of 1984, to ensure that District residents are given priority for new jobs created by municipal financing and development programs;
 - ii. The Applicant has entered into a CBE Agreement with DSLBD to ensure that a preference is made to District-based firms pursuing District government issued procurement opportunities. As noted above, the CBE requirements include equity and development participation and reporting; and
 - iii. The Applicant will involve economically disadvantaged communities by meeting the HUD Section 3 requirements by providing job training, employment, and contract opportunities for low- or very-low income residents in connection with development of the Project;
- f. *Policy ED-3.2.6: Commercial Displacement - Avoid the displacement of small and local businesses due to rising real estate costs. Programs should be developed to offset the impacts of rising operating expenses on small businesses in areas of rapidly rising rents and prices.*

Consistent with Policy ED-3.2.6, the Commission finds that the Project will not result in the displacement of small and local businesses. The PUD Site is presently operated with public housing units, so development of the Project will not result in the closure of any existing businesses on the PUD Site itself. Moreover, development of the Project does not include any new retail or commercial uses, such that new retail within the Project will not compete with or displace existing businesses in the surrounding area. Rather, the Commission finds that the Project will help support small and local businesses by introducing 189 new residential units into the neighborhood where none previously existed. The new housing will be occupied by residents who will need neighborhood goods and services. This type of mixed-income development will generate diverse new customers for small and local businesses, and will not result in rising real estate costs that could potentially displace existing businesses.

- g. *Policy ED-3.2.7: Assistance to Displaced Businesses - Assist small businesses that are displaced as a result of rising land costs and rents, government action, or new development. Efforts should be made to find locations for such businesses within redeveloping areas, or on other suitable sites within the city.*

The Commission finds that the Project is consistent with Policy ED-3.2.7 because the Project will not result in the displacement of small and local businesses. To

the contrary, the Project will help to spur the growth and development of businesses in the area by developing significant new housing for residents in need of local goods and services. Moreover, the Commission finds that the Applicant's commitments regarding its First Source Employment Agreement, CBE Agreement, and compliance with HUD Section 3 requirements will help to create new employment opportunities to local, low-income, and disadvantaged residents. With respect to assistance of displaced businesses, given that the Project is not displacing any existing businesses, there is no additional obligation on the Applicant.

- h. *Action ED-3.2.A: Anti-Displacement Strategies - Complete an analysis of alternative regulatory and financial measures to mitigate the impacts of "commercial gentrification" on small and local businesses. Measures to be assessed should include but not be limited to income and property tax incentives, historic tax credits, direct financial assistance, commercial land trusts, relocation assistance programs, and zoning strategies such as maximum floor area allowances for particular commercial activities.*

Consistent with Action ED-3.2.A, the Commission finds that the Project will not result in commercial gentrification or the displacement of small and local businesses. The Project will be a benefit to the entire community and will help maintain economic stability and support the growth of small and local businesses. Moreover, pp. 25-50 of the Comprehensive Plan's Implementation Element designates OP, DMPED, the District Office of Local Business Development ("OLBD"), and DOES as the agencies responsible for carrying out Action ED-3.2.A. As stated above, DHCD expressed its support for the Project, noting that it would not result in "the destabilization of land values, the acceleration of gentrification, or the displacement of neighboring residents." (Ex. 174G.) OP has also expressed its support for the Project. (Ex. 12, 35.)

- i. *Action ED-3.2.D: Small Business Needs Assessment - Conduct an assessment of small and minority business needs and existing small business programs in the District. The study should include recommendations to improve existing small business programs and to develop new programs as needed.*

The study required by Action ED-3.2.D is intended to be undertaken by DOES and OLBD. (See pp. 25-51 of the Comprehensive Plan's Implementation Element.) Therefore, the Commission finds that compliance with Action ED-3.2.D is not required by the Applicant for approval of the Project.)

- j. *Policy ED-4.2.4: Neighborhood-Level Service Delivery - Emphasize the delivery of workforce development programs at the neighborhood level. Continue neighborhood faith-based and community-based initiatives which deliver job training and placement services to unemployed and underemployed residents.*

- k. *Policy ED-4.2.7: Living Wage Jobs - Promote the attraction and retention of living wage jobs that provide employment opportunities for unskilled and semi-skilled workers. Use marketing strategies and incentives to encourage the relocation of firms with such positions to the District. 717.15*
- l. *Policy ED-4.2.12: Local Hiring Incentives - Maintain requirements for resident job training and placement for projects built and/or operated with any form of public subsidy/loan, grant or other incentives. Promote incentives for similar training and hiring programs by the private sector.*

The Commission finds that the Project will advance the goals of Policies ED-4.2.4, 4.2.7, and 4.2.12 because the Applicant will enter into a First Source Employment Agreement with DOES, enter into a CBE Agreement with DSLBD, and will meet HUD Section 3 requirements, in order to promote living wage jobs that provide unemployment opportunities for unskilled and semi-skilled workers related to development of the PUD. Thus, the Commission finds that the Project will promote the attraction and retention of living wage jobs and will provide employment opportunities for unskilled and semi-skilled workers as part of development of the PUD.

The Commission finds that the Applicant will comply with all resident job training and placement requirements. The Applicant will enter into a First Source Employment Agreement to ensure that District residents are given priority for new jobs created by the PUD; enter into a CBE Agreement to ensure that a preference is made to District-based firms pursuing procurement opportunities related to development of the PUD; and meet the HUD Section 3 requirements by providing job training, employment, and contract opportunities for low- or very-low income residents in connection with development of the Project. Therefore, the Applicant will implement resident job training and hiring as part of development of the PUD.

- m. *Policy CSF-1.1.1: Adequate Facilities - Construct, rehabilitate, and maintain the facilities necessary for the efficient delivery of public services to current and future District residents.*

The PUD Site was never intended or encouraged by the District to be developed with facilities dedicated to the delivery of public services. The Commission finds that the Project respects the District's goals, set forth in the Park Morton Plan, to develop the PUD Site with a "moderate density mixed-income community of apartments, townhouses and duplexes on the site." (Park Morton Plan, p. 5.) The District's commitment to redevelop the PUD Site in this manner was "developed in partnership with the District of Columbia Housing Authority, the Park Morton Resident Council, the Park Morton Advisory Committee, and the surrounding community." (*Id.*) Therefore, the Commission defers to the District's decision regarding the use and development of the PUD Site.

The Commission also acknowledges that the Project received approval from a number of District agencies, including DC Water, DOEE, and FEMS, all of which asserted that the Project would not have any adverse effects on their utilities or facilities. (Ex. 174H-174J.)

- n. *Policy CSF-1.1.2: Adequate Land - Ensure that the District government owns a sufficient amount of land in appropriately distributed locations to accommodate needed public facilities and meet the long-term operational needs of the government.*

The Commission finds that the District has already determined that the appropriate use of the PUD Site is for the redevelopment of the existing public housing units with a “moderate density mixed-income community of apartments, townhouses and duplexes on the site.” (Park Morton Plan, p. 5.) The District’s commitment to redevelop the PUD Site in this manner was “developed in partnership with the District of Columbia Housing Authority, the Park Morton Resident Council, the Park Morton Advisory Committee, and the surrounding community.” (*Id.*) Therefore, the Commission defers to the District’s decision regarding the use and development of the PUD Site.

- o. *Policy CSF-1.2.2: Linking the Comp Plan and Capital Improvement Program - Use the District’s Comprehensive Plan, particularly its analysis of growth needs and service adequacy, to establish priorities for the funding of capital improvement projects. Public facility planning should be done systematically and comprehensively and should be based on analytical data about community needs, service levels, and projections—in addition to facility condition assessments.*

Consistent with Policy CSF-1.2.2, the Commission finds that the District has already made an assessment of the PUD Site and has determined that the best use for the PUD Site is its redevelopment as “a vibrant mixed-income community where residents have quality housing options, real economic opportunity and access to human services.” (*Id.* at 4.) The Park Morton Plan undertook a market analysis that supported the reuse of the PUD Site with mixed-income residential development. The Park Morton Plan stated that “[t]here is sufficient demand for market rate for-sale and rental housing to complement the replacement units identified in this Plan. A number of different residential products types including, mid- to high-rise buildings and low-rise residential units (i.e. townhouses) are supportable at the site. While there is demand for moderate amounts of retail and office space within the larger community, the site itself is not suitable for these commercial uses.” (*Id.* at 9). Thus, the Commission finds that the proposed Project is a direct result of the District’s stated priorities for the PUD Site, based on its analysis of growth needs and funding priorities throughout the city.

- p. *Policy CSF-1.2.6: Impact Fees - Ensure that new development pays its “fair share” of the capital costs needed to build or expand public facilities to serve that development. Consider the use of impact fees for schools, libraries, and public*

safety facilities to implement this policy. Adoption of any fees shall take potential fiscal, economic, and real estate impacts into account and shall be preceded by the extensive involvement of the development community and the community at large.

The Applicant will pay all applicable application, permit, and other required fees associated with the Project. There are no specific impact fees associated with development of the PUD Site.

- q. *CSF-3.2 Library Location - The opportunity to modernize or relocate more than two dozen branch libraries creates an exciting opportunity for many District neighborhoods. High-quality public libraries can help anchor neighborhood and corridor reinvestment efforts. Libraries can also support many of the other goals articulated in the Comprehensive Plan, including the creation of space for the arts, job training and literacy programs, and the promotion of high quality civic design.*

The PUD Site was never intended or encouraged by the District to be developed with a library. The Commission finds that the Project respects the District's goals, set forth in the Park Morton Plan by providing housing, workforce affordable housing, and replacement public housing on the PUD Site.

- r. *IN-1.2 Modernizing Water Infrastructure - In conjunction with WASA, the District must consider the impacts of new development and ensure that water infrastructure will be able to meet future demand. Planned improvements to the water system involve normal maintenance to replace aging water distribution mains and small diameter pipes, and upgrades to keep pace with population growth and new development. This may also include the addition of new water storage facilities, increasing the capacity of certain water mains, and upgrading pump stations.*

The Commission finds that the Applicant will have to comply with applicable District requirements regarding public facilities and infrastructure, including water infrastructure, to accommodate future demand and maintain efficient delivery of public services for the Project. The civil sheets submitted to the record include plans for utilities, grading, erosion and sediment control, and stormwater management. Moreover, the Applicant will be required to coordinate with all applicable public utilities and District agencies during the permitting process, including DC Water, to ensure that adequate services will continue to be available for the existing and new uses.

The Commission also credits DC Water's report recommending approval of the Project, which stated that the "utility plans as presented adequately address water and sewer utility needs. The plan proposes water and sewer extensions which if placed in dedicated public space or acceptable easements would be considered adequate by DC Water." DC Water also noted that it would "work with the

Applicant during the building permit process to ensure that appropriate measures are taken to ensure that the project will not have any adverse impacts on existing or future DC Water capacity needs and will meet acceptance criteria.” (Ex. 174J.)

- s. *Policy IN-1.2.2: Ensuring Adequate Water Pressure - Work proactively with WASA to provide land for new storage tanks and other necessary operations so that adequate water supply and pressure can be provided to all areas of the District. The siting and design of water storage tanks and similar facilities should be consistent with the policies of the Urban Design and Environmental Protection Elements, and should minimize visual impacts and “skylining” effects on ridges or hills.*

The Commission finds that this Policy does not apply to the Applicant’s development of the PUD Site because the land is not proposed to be developed for storage or any other operation facilities. As set forth above, the District has already established that the intended use for the PUD Site is as a “moderate density mixed-income community of apartments, townhouses and duplexes on the site.” (Park Morton Plan, p. 5.) Therefore, the District has already determined the preferred use for the PUD Site, and that use does not involve locating storage tanks or other DC Water facilities.

- t. *Policy IN-2.1.1: Improving Wastewater Collection - Provide for the safe and efficient collection of wastewater generated by the households and businesses of the District. Ensure that new development does not exacerbate wastewater system deficiencies, and instead supports improved system efficiency and reliability.*

Consistent with Policy IN-2.1.1, and based on DC Water’s statement that “the utility plans as presented adequately address water and sewer utility needs[.]” the Commission finds that the Project will comply with Policy IN-2.1.1. (Ex. 174J.)

Policy IN-6.1.3: Developer Contributions - Require that private developers fund the necessary relocation or upgrading of existing utilities to address limitations with existing infrastructure on or adjacent to proposed development sites. For necessary upgrades to water and wastewater infrastructure, developers should contribute to the cost of extending utilities to the project site or upgrading existing utilities to the specifications necessary for their proposed project.

The Applicant will coordinate with all applicable public utilities and District agencies during the permitting process to ensure that adequate services will continue to be available for new uses on the PUD Site and for the existing uses in the surrounding neighborhood. The Applicant will pay any required costs/fees associated with securing required utility permits for the PUD Site. Thus, the Commission finds that the Project is consistent with Policy IN-6.1.3.

- u. *Policy H-2.1.1: Protecting Affordable Rental Housing - Recognize the importance of preserving rental housing affordability to the well-being of the District of*

Columbia and the diversity of its neighborhoods. Undertake programs to protect the supply of subsidized rental units and low-cost market rate units.

- v. *Policy H-1.2.1: Affordable Housing Production as a Civic Priority - Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city.*
- w. *Policy H-1.2.7: Density Bonuses for Affordable Housing - Provide zoning incentives to developers proposing to build low- and moderate-income housing. Affordable housing shall be considered a public benefit for the purposes of granting density bonuses when new development is proposed. Density bonuses should be granted in historic districts only when the effect of such increased density does not significantly undermine the character of the neighborhood.*

The Commission finds that the Project exemplifies the goals of Policies H-2.1.1, H-1.2.1, and H-1.2.7. The Project includes 189 new residential units, of which 57 will be public housing replacement units, 44-59 will be workforce affordable units, and 73-88 will be market rate units. The units include both rental and ownership opportunities. As contemplated by Policy H-1.2.7, the Applicant requested density bonuses associated with development of the PUD in order to build the low- and moderate-income housing proposed for the PUD Site. The variety of housing options will not only create housing for the lowest-income households, but will also establish new units that are affordable for teachers, police officers, and other working professionals in the District. Therefore, the Project provides a substantial new supply of affordable rental housing while preserving the well-being of the diversity of the District's neighborhoods.

More specifically, the Project advances the goal of rehabilitating existing affordable housing. DHCD recommended approval of the application, stating that the Project would help to meet the goals of the District's New Communities Initiative, which is a program designed to revitalize communities plagued with severely distressed housing, poverty, high crime and economic segregation." (Ex. 174G.) Moreover, OP found that the "new residential structures would be consistent and compatible with the scale, height and density of the surrounding community, maintaining the neighborhood character and identity." (Ex. 12, p. 12.) Therefore, the Commission finds that the Project is fully consistent with the goals and purposes of Policies H-2.1.1, H-1.2.1, and H-1.2.7.

- x. *Policy H-2.1.4: Conversion of At-Risk Rentals to Affordable Units - Support efforts to purchase affordable rental buildings that are at risk of being sold and converted to luxury apartments or condominiums, in order to retain the units as affordable. Consider a variety of programs to manage these units, such as land banks and sale to non-profit housing organizations.*

- y. The Commission finds that the Project is consistent with the objective of Policy H-2.1.4 because it allows for the redevelopment of existing “affordable rental buildings” into a new residential community that preserves affordability on the site and provides both public housing and workforce affordable units on the PUD Site.
- z. *Action H-2.1.A: Rehabilitation Grants - Develop a rehabilitation grant program for owners of small apartment buildings, linking the grants to income limits for future tenants. Such programs have been successful in preserving housing affordability in Montgomery County and in many other jurisdictions around the country.*
- aa. *Action H-2.1.E: Affordable Set-Asides in Condo Conversions - Implement a requirement that 20 percent of the units in all condo conversions be earmarked for qualifying low and moderate income households. The requirement should ensure that at least some affordability is retained when rental units are converted to condominiums. In addition, require condominium maintenance fees to be set proportionally to the unit price so as not to make otherwise affordable units out-of-reach due to high fees.*
- bb. *Policy H-2.2.3: Tax Relief - Maintain tax relief measures for low income homeowners and low income senior homeowners faced with rising assessments and property taxes. These measures should reduce the pressure on low income owners to sell their homes and move out of the District.*
- cc. *Action H-2.2.E: Program Assistance for Low and Moderate Income Owners - Continue to offer comprehensive home maintenance and repair programs for low and moderate income owners and renters of single family homes. These programs should include counseling and technical assistance, as well as zero interest and deferred interest loans and direct financial assistance.*

The Commission finds that *Action H-2.1.A, Action H-2.1.E, Policy H-2.2.3, and Action H-2.2.E* are not applicable to the Project because (i) the PUD Site does not have housing that is owned by individuals who could participate in a rehabilitation grant program; (ii) the PUD does not involve condo conversions; (iii) the Project will not have any impact on tax relief measures implemented by the District; and (iv) the Project will not have any impact of the District’s ability to offer home maintenance and repair programs.

- dd. *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.*

The Commission finds that the Project advances Policy H-1.1.3 by redeveloping and replacing the existing public housing units on the PUD Site. The District has already determined that the PUD Site should be redeveloped with new housing, public housing, and affordable housing. (Park Morton Plan.) Moreover, the Project will help enable the city to meet its long-term housing needs by developing low, moderate, and higher density housing on the PUD Site, affordable for a range of income levels and provided at a variety of unit types and sizes.

112. Traffic. Letters of opposition in the record claimed that the Project would result in increased pedestrian and vehicular traffic that would exacerbate existing traffic conditions on the already congested streets surrounding the PUD Site.
113. The Commission finds that the only evidence of record in this case demonstrates that the Project will not have any adverse impacts on traffic. The Commission credits the findings of the Applicant's Transportation Impact Study ("TIS"), dated November 1, 2016, and prepared by Symmetra Design, which concluded that the Project would not result in any adverse traffic impacts. (Ex. 27.) The Project includes modifications to the existing roadway network, which will "increase the number of access options to the site, allow for greater distribution of traffic and provide for improved pedestrian connectivity with shorter walking distances." (Ex. 27, p. 6.) In addition, the TIS found that the Project's "proposed alley closures and roadway modifications will improve vehicular circulation and eliminate the existing circuitous routes some motorists take to circulate internally. No adverse impacts are anticipated as a result of the closures." (*Id.*) Therefore, the Commission finds that the proposed new roadway network and design will improve traffic in the surrounding area, rather than exacerbate existing traffic conditions, as suggested by opponents of the Project.
114. The Commission also credits the TIS's finding that the transportation network surrounding the PUD Site "is diverse and robust given the availability of Metrorail, Metrobus, bicycling and walking as viable transportation options." (*Id.* at 11.) The TIS explained that the Applicant's TDM plan would "encourage use of non-automobile modes of transportation to the Site," and that the "combination of transportation options in the area, in conjunction with TDM measures will help to reduce traffic and parking demand associated with the Site." (*Id.* at 11.)
115. Moreover, DDOT reviewed the TIS, confirmed that the Applicant utilized sound methodology to perform its analysis, and recommended approval of the application. In its review, DDOT found that the "proposed street and alley changes enhance multimodal connectivity through the site and has the potential to disperse site traffic in a way that minimizes the action's impact on the external road network and improve connectivity to the adjacent neighborhoods." (Ex. 36, p. 2.) The DDOT report also found that "[w]hen accounting for average auto occupancy and existing site trips, the action is expected to generate a minimal number of net new vehicle trips," and that the "intersections in the study area are expected to be minimally impacted by the action as measured by LOS." (*Id.* at 11, 12.)

116. Based on the evidence presented in the Applicant's TIS and DDOT's written report, as well as oral testimony from the Applicant's transportation consultant and DDOT at the public hearing, the Commission concludes that the evidence in the record demonstrates that the Project will not have any adverse impacts on traffic.
117. Parking. Testimony in the record indicated that the Project would result in reduced on-street parking and would create new parking challenges.
118. The Commission finds that the Project incorporates significant on- and off-street parking, such that existing public on-street parking will not become over-saturated as a result of the Project. The Project will provide a total of 110 parking spaces, which meets the parking requirements of the Zoning Regulations and will adequately serve the needs of the PUD Site's residents. In reviewing the project, DDOT determined that the "new street network has the potential to create approximately 25 new curbside parking spaces in the vicinity when taking into account the spaces created by the new streets and the existing spaces lost in order to allow for new intersections on Morton Street and Park Road." (Ex. 36, p. 8.) The DDOT Report also noted that the "multi-family residential parking provision of one space per two units is generally consistent but slightly higher than other recent projects in similar walkable, transit-friendly neighborhoods." (*Id.* at p. 10.) Thus, the Commission concludes that the Project will not result in an increased demand for parking on existing public streets.
119. Noise and Air Pollution Caused by Construction. Opponents of the Project testified that the Project would result in increased noise and air pollution as a result of construction. However, the Commission finds that that the Project will not result in unmitigated or unreasonable noise or air pollution caused by construction. The Project was reviewed and approved by DC Water, DOEE, and FEMS, all of which asserted that the Project would not have any adverse effects on their utilities or facilities. The Commission credits DOEE's findings that the Project "includes measures that address and mitigate potential environmental impacts with respect to air pollution... consistent with the regulatory requirements of the Agency. In addition, Certification under the Green Communities Criteria meets the minimum requirements of the Green Building Act for publicly financed developments of this scale." (Ex. 174H.) Moreover, the Applicant will be required to comply with all applicable laws and regulations regarding construction noise and air pollution, and will address the mitigation of any construction-related impacts during the building permit process. Moreover, the Applicant submitted a Construction Management Plan, with which it will abide during construction of the Project. (Ex. 174F.) Therefore, the Commission is satisfied that the Project will not result in adverse impacts to noise or air pollution as a consequence of construction.
120. The Commission also finds that the Project includes a variety of sustainable features, with buildings on the PUD Site being certified with a minimum of 50 points under the Enterprise Green Communities standards. Sustainable features that will be implemented as part of the Enterprise Green Communities certification include erosion and sediment control techniques, efficient irrigation and water reuse, advanced water conservation,

surface water management, and high quality water drainage. These features will ensure that the Project does not result in negative impacts to air pollution.

121. Water Runoff. Testimony in opposition to the Project asserted that the proposed high-density units along Georgia Avenue would increase the amount of paved and impervious surfaces in the area, and thus increase water runoff.
122. As shown on the GAR calculations included in the Plans for the PUD Site, the Project will implement a significant amount of new permeable paving, vegetated/green roof areas, landscaped areas that have soil depths of more than 24 inches, bioretention facilities, extensive tree canopies, and other plantings, including native plant species. These elements will together meet or exceed the GAR requirements for the PUD Site, consistent with the purposes of the GAR regulations to “set integrated environmental requirements for landscape elements and site design that contribute to the reduction of stormwater runoff...” (11 DCMR § 3400.2.) Thus, the Commission finds that stormwater will be appropriately mitigated on the PUD Site.
123. Moreover, DC Water submitted a letter approving the Project, which noted that the “utility plans as presented adequately address water and sewer utility needs. The plan proposes water and sewer extensions which if placed in dedicated public space or acceptable easements would be considered adequate by DC Water.” DC Water noted that it would “work with the Applicant during the building permit process to ensure that appropriate measures are taken to ensure that the project will not have any adverse impacts on existing or future DC Water capacity needs and will meet acceptance criteria.” (Ex. 174J.)
124. DOEE also submitted a letter approving the Project, stating that the Project “includes measures that address and mitigate potential environmental impacts with respect to... stormwater runoff consistent with the regulatory requirements of the Agency. In addition, Certification under the Green Communities Criteria meets the minimum requirements of the Green Building Act for publicly financed developments of this scale.” (Ex. 174H.)
125. The Commission also finds that the Project will incorporate a host of sustainable features and will be certified under the Enterprise Green Communities standards. Sustainable features that will be implemented as part of the Enterprise Green Communities certification include erosion and sediment control techniques, efficient irrigation and water reuse, advanced water conservation, surface water management, and high quality water drainage. (*Id.*)
126. Based on the foregoing, including the review and approval by DC Water and DOEE, the Commission finds that the Project will not result in increased or unacceptable water runoff in the surrounding area. The Commission also notes that evaluation of these types of environmental impacts are best conducted by DOEE, and accordingly will be part of the building permit process. (*See Z.C. Order No. 13-14, Finding of Fact No. 175; see also Foggy Bottom Association v. District of Columbia Zoning Comm'n, 878 A.2d 1160 (D.C. 2009).*)

127. Public Services: Testimony in the record claimed that the Project would create a stress on the public services serving the community (transit, water, electric, gas, environment) and that cumulative densities of projects along Georgia Avenue are not being considered holistically so to determine a comprehensive impact analysis on public services.
128. The Commission finds that development of the PUD Site will not have unmitigated adverse impacts on the availability of public services. The civil sheets included in Plans include plans for utilities, grading, erosion and sediment control, and stormwater management, such that the details regarding all public services have been adequately reviewed and planned for in conjunction with the proposed Project. Moreover, the Applicant will coordinate with all applicable public utilities and District agencies during the permitting process to ensure that adequate services will continue to be available for the existing and new uses. The Commission also notes that the Project was approved by DC Water, DOEE, and FEMS, which all noted that the Project would not have any adverse impacts on utility services. (Ex. 174H-174J.) FEMS in particular noted that the “Fire Marshal has no objection on the project moving forward and being approved. Fire department access needs appears to [be] on point at this stage.” (Ex. 174I.) Thus, the Commission is confident that the Project will not create an unacceptable stress on public services.
129. Impact on Property Values. Testimony in the record claimed that the Project would impact the value of property in the neighborhood surrounding the PUD Site, thus resulting in negative impacts to existing residents.
130. There is no evidence in the record to support a claim that the Project will have adverse impacts on land values, rents, or housing costs. To the contrary, given the Project’s mix of uses and income ranges, the Commission finds that the Project will help preserve property values and provide a variety of new housing options that will improve the surrounding area. The Commission credits DHCD’s written testimony approving the Project, which specifically noted that “[g]iven the proposed income mix, we do not believe that the proposed developments will result in the destabilization of land values, the acceleration of gentrification, or the displacement of neighboring residents.” (Ex. 174G.)
131. The Project will provide much needed new replacement public housing, affordable housing, and market-rate housing. The Project includes 189 new residential units, of which 57 will be public housing replacement units, 44-59 will be workforce affordable units, and 73-88 will be market-rate units. This diverse spread of housing options will not only create housing for the lowest-income households, but will also establish new units that are affordable for teachers, police officers, and other working professionals in the District. This type of mixed-income development and diverse housing stock will not create any adverse impacts related to the destabilization of land values. Rather, the Project will be a benefit to the entire community that will help maintain economic stability and help to meet the District’s goals of the New Communities Initiative.

132. Moreover, the provision of new mixed-income communities is consistent with Policy H-1.2.3 of the Comprehensive Plan, which states that “investment strategies and affordable housing programs [should] distribute mixed-income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing” (10A DCMR § 504.8) and Policy H-1.4.4, which encourages “efforts to transform distressed public and assisted housing projects into viable mixed-income neighborhoods, providing one-for-one replacement within the District of Columbia of any public housing units that are removed. Target such efforts to locations where private sector development interest can be leveraged to assist in revitalization” (10A DCMR § 506.10). Consistent with these policies, and in deference to DHCD’s approval of the Project, the Commission finds that the Project will not create a concentration of poverty, but will instead allow for the formation of a true mixed-income community.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (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 of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and 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.
3. Development of the property included in these applications carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential uses for the Project are appropriate for the PUD Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.
5. The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

6. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the Project's benefits and amenities are reasonable tradeoffs for the requested development flexibility.
7. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Commission is required under § 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 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP reports in this case and, as explained in this decision, finds its recommendation to grant the applications persuasive.
9. 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 the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the recommendation of ANC 1A for approval of the applications, and concurs in its recommendation.
10. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2- 1401 et seq. (2007 Repl.)).

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 the applications for consolidated review and approval of a planned unit development and related Zoning Map amendment from the R-4 Zone District to the R-5-B Zone District for Square 3040, Lots 124-126 and 844; Square 3039, Lots 128-134 and 846; and Square 3043, Lots 18-20. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The Project shall be developed in accordance with the Architectural Plans and Elevations dated January 10, 2017 (Ex. 174A) ("Plans") and as modified by the guidelines, conditions, and standards of this Order.
2. In accordance with the Plans, the PUD shall be a mixed-use project consisting of approximately 206,208 square feet of gross floor area (1.9 FAR) and an overall lot occupancy of 50%. The apartment house shall have a maximum height of 60 feet and the flats and townhomes will range in height from 28 feet to 38 feet. A total of approximately 110 on-site parking spaces will be provided across the

PUD Site, including below-grade in the apartment house, off-street surface spaces, and within a number of the townhomes and flats.

3. The Project shall have approximately 189 residential units, with 142 apartment units, six flats, and 41 townhomes. Over half (53%) of the residential units shall be income-restricted housing for low- or moderate-income households as follows: 57 units shall be public housing replacement units, 44-59 units shall be workforce affordable units, and 73-88 units shall be market rate.
4. The Project shall include two parks: one located in the center of the PUD Site (“Central Park”) and one located on the eastern edge of the PUD Site at Warder Street, N.W. and the proposed Morton Street, N.W. extension (“Pocket Park”). The parks shall be lit by the light fixtures shown on Sheet L03 of the Plans.
5. The Applicant is granted flexibility from the side yard, lot occupancy, parking, loading, phasing, and GAR requirements of the Zoning Regulations, consistent with the Plans and as discussed in the Development Incentives and Flexibility section of this Order.
6. The Applicant shall also have flexibility with the design of the PUD in the following areas:
 - a. To be able to provide a range in the number of residential units of plus or minus 10%;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
 - c. To vary the sustainable design features of the Project, provided the total number of points achievable for the Project is not below 50 points utilizing the Enterprise Green Communities rating standards;
 - d. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and
 - e. To vary the features, means and methods of achieving: (i) the code-required GAR of 0.4, and (ii) stormwater retention volume and other

requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.

B. Public Benefits

1. **Prior to the issuance of a Certificate of Occupancy for the apartment house,** the Applicant shall demonstrate to the Zoning Administrator that it has:
 - a. Dedicated a minimum of 40 units in the apartment house as replacement public housing units;
 - b. Established the proportion of unit sizes in the apartment house according to the unit mix shown on Sheet G25 of the Plans submitted at Ex. 174A;
 - c. Demonstrated that the affordable housing shall be provided in accordance with the table below; and
 - d. The covenant required by 11 DCMR § 2602.7(c) shall include a condition or conditions requiring compliance with this Condition.

2. **Prior to entering into a contract for lease or purchase of the first flat or townhome completed in Building B (whichever is first),** the Applicant shall demonstrate to the Zoning Administrator that it has:
 - a. Dedicated a minimum of one flat and two townhomes in Building B as replacement public housing units;
 - b. Established the proportion of unit sizes in the apartment house according to the unit mix shown on Sheet G25 of the Plans submitted at Ex. 174A;
 - c. Demonstrated that the affordable housing shall be provided in accordance with the table below; and
 - d. The covenant required by 11 DCMR § 2602.7(c) shall include a condition or conditions requiring compliance with this Condition.

3. **Prior to entering into a contract for lease or purchase of the first flat completed as part of the Project (excluding the flat included in Building B),** the Applicant shall demonstrate to the Zoning Administrator that it has:
 - a. Dedicated a minimum of five flats as replacement public housing units;
 - b. Dedicated a minimum of 44 units across the PUD Site as workforce affordable units;
 - c. Established the proportion of unit sizes in the flats according to the unit mix shown on Sheet G25 of the Plans submitted at Ex. 174A;

- d. Demonstrated that the affordable housing shall be provided in accordance with the table below; and
 - e. The covenant required by 11 DCMR § 2602.7(c) shall include a condition or conditions requiring compliance with this Condition.
4. **Prior to entering into a contract for lease or purchase of the first townhome completed as part of the Project (excluding the townhomes included in Building B)**, the Applicant shall demonstrate to the Zoning Administrator that it has:
- a. Dedicated a minimum of nine of the townhomes as replacement public housing units;
 - b. Established the proportion of unit sizes in the townhomes according to the unit mix shown on Sheet G25 of the Plans submitted at Ex. 174A;
 - c. Demonstrated that the affordable housing shall be provided in accordance with the table below; and
 - d. The covenant required by 11 DCMR § 2602.7(c) shall include a condition or conditions requiring compliance with this Condition.
5. The public housing and workforce affordable units shall maintain affordability for the life of the Project. A breakdown of the public housing, workforce affordable, and market-rate housing units shall be established in accordance with the following table:²

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	206,208 sf of GFA (100%)	189			Rental or Homeownership
Market Rate	96,918 sf of GFA (47%)	73-88	Market Rate	NA	Rental or Homeownership
Public Housing Replacement Units	61,862 sf of GFA (30%)	57	HUD Requirements/ LIHTC Rules	Life of the Project	Rental

² The Applicant has not requested flexibility from the Inclusionary Zoning Regulations, but instead will request the Zoning Administrator to grant an exemption pursuant to 11 DCMR § 2602.3(f). In the event the exemption is not granted, the Applicant must comply with the Inclusionary Zoning Regulations unless the requirements of these conditions are more stringent.

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Affordable Housing	47,428 sf of GFA (23%)	44-59	Up to 60% AMI Up to 120% AMI for homeownership	Life of the Project No less than 10 years for homeownership	Rental or Homeownership

6. **Prior to issuance of a Certificate of Occupancy for the apartment house**, the Applicant shall demonstrate to the Zoning Administrator that the apartment house has been certified with a minimum of 50 points under the Enterprise Green Communities standards.
7. **Prior to entering into a contract for lease or purchase of the first flat or townhome completed as part of the Project**, the Applicant shall demonstrate to the Zoning Administrator that the flats and townhomes have been certified with a minimum of 50 points under the Enterprise Green Communities standards.
8. **Prior to issuance of a Building Permit for each of the apartment house, flats, and townhomes, respectively**, the Applicant shall submit to the Zoning Administrator: (i) a copy of the executed CBE Agreement with DSLBD, included as Ex. 174E; and (ii) a copy of the executed First Source Employment Agreement with DOES, included as Ex. 174D. The Project shall include new landscaping, street tree planting and maintenance, energy efficiency and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices, in accordance with the landscape, park, open space, and streetscape designed included as Sheets G16-18, A48-A51, and L01-L018 of the Plans.
9. **Prior to the issuance of a Certificate of Occupancy for the apartment house, or prior to entering into a contract for lease or purchase of the first flat or townhome completed as part of the Project (whichever occurs first)**, the Applicant shall demonstrate to the Zoning Administrator that it has installed pavement markings (i.e. “puppy tracks”) at the Georgia Avenue and Park Road intersection to enhance intersection safety, subject to DDOT approval.
10. **Prior to issuance of a Certificate of Occupancy for the apartment house, or prior to entering into a contract for lease or purchase of the first flat or townhome completed as part of the Project (whichever occurs first)**, the Applicant shall demonstrate to the Zoning Administrator that it has completed the street grid connections and implemented the new street and alley configurations, as shown on Sheet G15 of the Plans and in accordance with the phasing shown on Sheet G14.

C. Transportation Demand Measures.

1. **For the first three years of operation of the apartment house**, the Applicant shall offer each apartment unit either an annual cars haring membership or an annual Capital Bikeshare membership;
2. **Prior to issuance of a Certificate of Occupancy for the apartment house**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased 142 helmets for use by residents of the apartment house.
3. **Prior to entering into a contract for lease or purchase of the first flat or townhome completed as part of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased 47 helmets for use by residents of the flats and townhomes.
4. **Prior to the issuance of a Certificate of Occupancy for the apartment house**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased 142 pre-loaded \$10.00 SmarTrip cards to be offered at the initial sale or lease of each unit.
5. **Prior to entering into a contract for lease or purchase of the first flat or townhome completed as part of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased 47 pre-loaded \$10.00 SmarTrip cards to be offered at the initial sale or lease of each townhome.
6. **Prior to the issuance of a Certificate of Occupancy for the apartment house and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has included in the residential leases for the market-rate units a provision that the cost of residential parking is unbundled from the cost of lease or purchase of each market-rate residential unit.
7. **Prior to entering into a contract for lease or purchase of the first flat or townhome completed as part of the Project (excluding the flat and townhomes included in Building B)**, the Applicant shall demonstrate to the Zoning Administrator that it has designated one off-street parking space in private space to a car-share company.
8. **Prior to the issuance of a Certificate of Occupancy for the apartment house, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a bicycle repair station within the apartment house.
9. **Prior to the issuance of a Certificate of Occupancy for the apartment house, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased and provided four shopping carts for use by residents of the apartment house.

10. **Prior to the issuance of a Certificate of Occupancy for the apartment house,** the Applicant shall demonstrate to the Zoning Administrator that it has installed a transit screen in the lobby of the apartment house.
11. **Prior to the issuance of a Certificate of Occupancy for the apartment house, or prior to entering into a contract for lease or purchase of the first flat or townhome completed as part of the Project (whichever is first),** the Applicant shall demonstrate to the Zoning Administrator that it has: (i) posted all of the Project's TDM commitments online, and (ii) designated a TDM leader for the Project.
12. **Prior to issuance of a Certificate of Occupancy for the apartment house,** the Applicant shall demonstrate to the Zoning Administrator that it has installed 45 long-term bicycle parking spaces and 14 short-term bicycle parking spaces.

D. Miscellaneous

1. 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, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of six years from the effective date of Z.C. Order No. 16-12. Within such time, an application must be filed for a building permit, with construction to commence within seven years of the effective date of this Order.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On January 30, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the applications at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter Shapiro to approve).

On March 13, 2017, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the applications at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter Shapiro to approve).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *DC Register*; that is on May 5, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

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