



District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council schedules a public hearing on Bill 22-0192, Fair Elections Act of 2017
- D.C. Council schedules a public oversight hearing on the “Proposed Replacement of the Affordable Care Act and Its Impact on District of Columbia Residents”
- Office on Aging announces funding availability for the Fiscal Year 2018 Lead Agency - Senior Wellness Center Ward 8 Competitive Grant
- Department of Health Care Finance proposes the establishment of the My Health GPS Program as a second health home initiative for District Medicaid beneficiaries with multiple chronic conditions
- Department of Small and Local Business Development amends funding availability for the DC Main Streets Project
- Office of the State Superintendent of Education announces funding availability for the Fiscal Year 2018 DC Environmental Literacy Advancement Grant

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.).

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Deadlines for Submission of Documents for Publication

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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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COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than **15 days**. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA**PROPOSED LEGISLATION****BILLS**

- | | |
|---------|---|
| B22-326 | Advisory Neighborhood Commissions Purchase Cards Amendment Act of 2017

Intro. 6-12-17 by Councilmember Nadeau and referred to the Committee on Housing and Neighborhood Revitalization |
| <hr/> | |
| B22-327 | Leave and Retirement Modifications for Chief of Police Peter Newsham Amendment Act of 2017

Intro. 6-15-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety |
| <hr/> | |
| B22-328 | Closing of a Public Alley in Square 748, S.O. 16-21105, Act of 2017

Intro. 6-15-17 by Councilmember Allen and referred to the Committee of the Whole |
| <hr/> | |
| B22-329 | Trafficking Survivors Relief Amendment Act of 2017

Intro. 6-20-17 by Councilmembers Cheh and Allen and referred to the Committee on Judiciary and Public Safety |
-

- B22-330 Washington, D.C. Preferred Terms Establishment Act of 2017
Intro. 6-20-17 by Councilmembers Grosso, Bonds, Nadeau, R. White, and Silverman and referred to the Committee of the Whole
-
- B22-331 Nonbinary Identification Cards Amendment Act of 2017
Intro. 6-20-17 by Councilmembers Nadeau, R. White, Silverman, Grosso, Allen, and Cheh and referred to the Committee on Transportation and the Environment
-
- B22-332 Home Sale Facilitation Amendment Act of 2017
Intro. 6-20-17 by Councilmember Nadeau and referred to the Committee on Housing and Neighborhood Revitalization
-
- B22-333 Advanced Practice Registered Nurse Signature Authority Amendment Act of 2017
Intro. 6-20-17 by Councilmembers Nadeau and Cheh and referred to the Committee on Health
-
- B22-334 Universal Paid Leave Pay Structure Amendment Act of 2017
Intro. 6-20-17 by Chairman Mendelson and referred to the Committee of the Whole
-
- B22-335 Ward 4 Full-Service Grocery Store Amendment Act of 2017
Intro. 6-20-17 by Councilmembers Todd and Bonds and referred to the Committee on Business and Economic Development
-
- B22-336 Lincoln Court Designation Act of 2017
Intro. 6-20-17 by Councilmember Allen and referred to the Committee of the Whole
-

PROPOSED RESOLUTIONS

- PR22-361 Public Employee Relations Board Mary Anne Gibbons Confirmation
Resolution of 2017
- Intro. 6-15-17 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Labor and Workforce Development
-
- PR22-362 Public Employee Relations Board Ann Hoffman Confirmation Resolution of
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- Intro. 6-15-17 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Labor and Workforce Development
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- PR22-364 Sense of the Council Condemning Violence Perpetrated Against Demonstrators
Protesting Turkish Government Policies Resolution of 2017
- Intro. 6-20-17 by Councilmembers Cheh, Silverman, Allen, and Nadeau and
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-
- PR22-365 Local Rent Supplement Program Contract No. 2016-LRSP-01A Approval
Resolution 2017
- Intro. 6-19-17 by Chairman Mendelson at the request of the District of
Columbia Housing Authority and Retained by the Council
-

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
REVISED AND ABBREVIATED NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

B22-0192, THE “FAIR ELECTIONS ACT OF 2017”

**Thursday, June 29, 2017, 9:00 a.m.
Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Thursday, June 29, 2017, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a public hearing on Bill 22-0192, the “Fair Elections Act of 2017”. The hearing will take place in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 9:00 a.m. *Please note that this notice has been revised to reflect that the hearing start time has been changed from 9:30 a.m. to 9:00 a.m.*

The stated purpose of Bill 22-0192, the “Fair Elections Act of 2017”, is to reform campaign financing and provide for publicly-funded political campaigns.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at judiciary@dccouncil.us or at (202) 727-8275, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Monday, June 26**. 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 and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

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 to the Committee at judiciary@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 July 14.**

**Council of the District of Columbia
Committee on Health
Notice of Public Oversight Hearing**

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

**COUNCILMEMBER VINCENT C. GRAY, CHAIR
COMMITTEE ON HEALTH**

ANNOUNCES A PUBLIC OVERSIGHT HEARING ON

**“THE PROPOSED REPLACEMENT OF THE AFFORDABLE CARE ACT AND ITS
IMPACT ON DISTRICT OF COLUMBIA RESIDENTS”**

**WEDNESDAY, JULY 12, 2017
11:00 A.M., ROOM 123, JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004**

Councilmember Vincent C. Gray, Chairman of the Committee on Health, announces a public oversight hearing on the “The Proposed Replacement of the Affordable Care Act and Its Impact on District of Columbia Residents”, to be held on Wednesday, July 12, 2017 at 11:00 a.m. in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

The purpose of this hearing is to discuss the proposed replacement of the Affordable Care Act, which is currently being considered by Congress, and its potential impact on health care in the District of Columbia. The Department of Health Care Finance has reviewed the proposed changes, and will report on how said changes can affect District residents.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Malcolm Cameron, Committee Legislative Analyst at (202) 654-6179 or mcameron@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization, preferably by 5:00 p.m. on Monday, July 10, 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 mcameron@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 113, Washington D.C. 20004.

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

Placard Posting Date: June 23, 2017
Protest Petition Deadline: August 7, 2017
Roll Call Hearing Date: August 21, 2017
Protest Hearing Date: October 18, 2017

License No.: ABRA-106496
Licensee: The Fried Rice Collective, LLC
Trade Name: Chiko
License Class: Retailer's Class "C" Restaurant
Address: 423 8th Street, S.E.
Contact: Michael D. Fonseca: (202) 625-7700

WARD 6

ANC 6B

SMD 6B03

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 August 21, 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 October 18, 2017 at 4:30 p.m.**

NATURE OF OPERATION

New full-service Class "C" Restaurant offering Korean and Chinese food, with a full bar. 28 seats and a Total Occupancy Load of 40.

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

Sunday - Saturday 10:00 am - 12:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date: June 16, 2017
Protest Petition Deadline: July 31, 2017
Roll Call Hearing Date: August 14 2017
Protest Hearing Date: October 11, 2017

License No.: ABRA-106537
Licensee: City Tap 1250 DC, LLC
Trade Name: City Tap House
License Class: Retail Class "C" Restaurant
Address: 1250 Connecticut Avenue, N.W.
Contact: **Andrew J. Kline: 202 686-7600

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 August 14, 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 **October 11, 2017 at 1:30 p.m.**

NATURE OF OPERATION

New Restaurant serving contemporary food. Total Occupancy Load of 315. Sidewalk Café with 30 seats.

HOURS OF OPERATION ON PREMISE

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

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE

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

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON SIDEWALK CAFE

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date: June 16, 2017
Protest Petition Deadline: July 31, 2017
Roll Call Hearing Date: August 14 2017
Protest Hearing Date: October 11, 2017

License No.: ABRA-106537
Licensee: City Tap 1250 DC, LLC
Trade Name: City Tap House
License Class: Retail Class "C" Restaurant
Address: 1250 Connecticut Avenue, N.W.
Contact: **Stephen O'Brien: 202 686-7600

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 August 14, 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 **October 11, 2017 at 1:30 p.m.**

NATURE OF OPERATION

New Restaurant serving contemporary food. Total Occupancy Load of 315. Sidewalk Café with 30 seats.

HOURS OF OPERATION ON PREMISE

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

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE

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

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON SIDEWALK CAFE

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: June 23, 2017
Protest Petition Deadline: August 7, 2017
Roll Call Hearing Date: August 21, 2017

License No.: ABRA-083149
Licensee: Ethiopic Corp
Trade Name: Ethiopic Restaurant
License Class: Retailer’s Class “C” Restaurant
Address: 401 H Street, N.E.
Contact: Meseret Bekele: (202) 841-0348

WARD 6 ANC 6C SMD 6C04

Notice is hereby given that this licensee has requested a Substantial Change to their 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 August 21, 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.

NATURE OF SUBSTANTIAL CHANGES

Applicant has requested to increase Total Occupancy Load from 47 patrons to 71 patrons inside the premises.

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

Sunday through Saturday 10:00 am to 1:00 am

CURRENT HOURS OF LIVE ENTERTAINMENT ON PREMISE

Sunday through Thursday 6:00 pm to 10:00 pm, Friday and Saturday 6:00 pm to 12:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: June 23, 2017
Protest Petition Deadline: August 7, 2017
Roll Call Hearing Date: August 21, 2017
Protest Hearing Date: October 18, 2017

License No.: ABRA-106681
Licensee: Kaliwa on the Wharf, LLC
Trade Name: Kaliwa
License Class: Retailer's Class "C" Restaurant
Address: 751 Wharf Street, S.W.
Contact: Andrew Kline: (202) 686-7600

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 August 21, 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 **October 18, 2017 at 1:30 p.m.**

NATURE OF OPERATION

New Class "C" Restaurant serving Asian food and offering alcoholic beverages. Total Occupancy Load of 244. Offering a Summer Garden with seating for 40 patrons.

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

Sunday through Saturday 10:00 am - 2:00 am

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

Placard Posting Date: June 23, 2017
Protest Petition Deadline: August 7, 2017
Roll Call Hearing Date: August 21, 2017
Protest Hearing Date: October 18, 2017

License No.: ABRA-106574
Licensee: Selva, LLC
Trade Name: Sweet Agave
License Class: Retailer's Class "C" Restaurant
Address: 5105 MacArthur Blvd, N.W.
Contact: Mike Pappas: (202) 575-2450

WARD 3

ANC 3D

SMD 3D05

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 August 21, 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 **October 18, 2017 at 1:30 p.m.**

NATURE OF OPERATION

New Class "C" Restaurant serving Tex Mex food and offering alcoholic beverages. Restaurant will have 75 seats and a Total Occupancy Load of 80. Applicant has also applied for a Sidewalk Café with seating for 8 patrons.

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

Sunday through Thursday 11:00 am – 10:00 pm, Friday and Saturday 11:00 am – 2:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****READVERTISEMENT**

Placard Posting Date: June 23, 2017
Protest Petition Deadline: August 7, 2017
Roll Call Hearing Date: August 21, 2017
Protest Hearing Date: October 18, 2017

License No.: ABRA-105767
Licensee: 46 Hospitality, LLC
Trade Name: TBD
License Class: Retailer's Class "C" Tavern
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 **August 21, 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 ****October 18, 2017 at 1:30 p.m.**

NATURE OF OPERATION

A Retailer's Class "C" Tavern that will be serving American foods along with alcoholic beverages with a Total Occupancy Load of 163 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: **May 19, 2017
Protest Petition Deadline: **July 3, 2017
Roll Call Hearing Date: **July 17, 2017
Protest Hearing Date: **September 13, 2017

License No.: ABRA-105767
Licensee: 46 Hospitality, LLC
Trade Name: TBD
License Class: Retailer's Class "C" Tavern
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 17, 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 ****September 13, 2017 at 1:30 p.m.**

NATURE OF OPERATION

A Retailer's Class "C" Tavern that will be serving American foods along with alcoholic beverages with a Total Occupancy Load of 163 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

**MAYOR'S AGENT FOR HISTORIC PRESERVATION
NOTICE OF PUBLIC HEARING**

In the Matter of:

HPA Nos. 14-393 and 15-133

Applications of Vision McMillan
Partners, LLC, and the District of
Columbia Office of the Deputy Mayor
for Planning and Economic Development (“the Applicants”)

2501 (2507) First Street NW
McMillan Park Reservoir
Square 3128, Lot 800
Affected Advisory Neighborhood Commission: 5E

The public hearing upon remand in this matter will be held at 10 am, on **Friday, July 14, 2017 at 441 4th Street NW, Room 220-South**. In accordance with the Order of the Mayor’s Agent issued on March 9, 2017, the Applicants are permitted to file a single brief addressing the four issues identified in Mayor’s Agent’s Order dated January 17, 2017. Any such brief must be filed no later than June 21. Any responses thereto by opposing parties must be filed no later than July 6 (to allow for the holiday weekend). If either the Applicants or the opponents believe that issues other than the four specified in the Mayor’s Agent’s Order of January 11, 2017 must be considered on remand, they should so argue in these briefs.

The Mayor’s Agent’s order of March 9, 2017 erroneously omitted DC for Reasonable Development as a party in opposition. As parties in the prior Mayor’s Agent decision on subdivision, they may participate in the remand proceeding on issues related to subdivision.

The Applicants’ claim is that the demolition and subdivision are necessary on the public interest to construct a project of special merit.

**DISTRICT OF COLUMBIA BOARD OF ETHICS
AND GOVERNMENT ACCOUNTABILITY**

NOTICE OF FINAL RULEMAKING

The Board of Ethics and Government Accountability (“Board”), pursuant to the authority set forth in Sections 209 and 221(a)(3) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code §§ 1-1162.09 and 1162.21(a)(3) (2016 Repl.)), hereby gives notice of its adoption of a new Subsection 5704.5 to Chapter 57 (Financial Disclosures and Honoraria) of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking clarifies that late fees may be imposed on a confidential filer who fails to timely file a true, accurate and fully completed financial disclosure statement.

No comments were received on the proposed rules that were published on March 10, 2017, at 64 DCR 2534. These rules were adopted as final on June 1, 2017 and will be effective upon the date of publication of this notice in the *D.C. Register*.

Chapter 57, FINANCIAL DISCLOSURES AND HONORARIA, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Section 5704, CONFIDENTIAL FINANCIAL DISCLOSURE FILINGS BY EMPLOYEES, is amended by adding new Subsection 5704.5 to read as follows:

5704.5 In addition to any sanctions that may be available for a violation of the Code of Conduct, the Director of Government Ethics may also impose a late fee at the rate of ten dollars (\$10.00) per day (excluding Saturdays, Sundays, and holidays), up to a maximum of three hundred dollars (\$300.00), on any filer who fails to timely file a true, accurate and fully completed report.

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF PROPOSED RULEMAKING**

The Director of the District of Columbia Department of Human Resources (DCHR), with the concurrence of the City Administrator, and pursuant to sections 404(a), 1103, and 1203(m) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-604.04(a), 1-611.03, and 1-612.03(m) (2016 Supp.)); and Mayor's Order 2008-92, dated June 26, 2008, hereby gives notice of the intent to adopt the following amendments to Chapters 11 (Classification and Compensation) and 12 (Hours of Work, Legal Holidays and Leave) of Subtitle B (Government Personnel) of Title 6 (Personnel) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days after publication of this notice in the *D.C. Register*.

If adopted, the amended Sections 1126 and 1130 will require that District agencies offer salaries to a new hire and competitive appointments for a current District employee who compete for a position based on the relative value of the position and the candidate's qualifications, without regard to the candidate's salary history, unless the salary history is raised by the candidate. In addition, salary schedules under the Wage Service Rate System were changed from a six (6)-step system to a ten (10)-step system a number of years ago. DCHR proposes to amend section 1129 to reflect this change. The proposed amendment to section 1139 authorizes agencies to grant exempt time-off to FLSA-exempt employees at any grade level. The proposed amendment to section 1139 also authorizes the Chief of Police to grant exempt time-off to certain members of the Metropolitan Police Department, consistent with the amendment to section 1103(g) of the CMPA (D.C. Official Code § 1-611.03(g)) made by section 211(b) of the Neighborhood Engagement Achieves Results Amendment Act of 2016, effective June 30, 2016 (D.C. Law 21-125; 63 DCR 4659). DCHR is proposing to amend section 1155 to implement the amendment to section 1103(a)(7)(A) of the CMPA (D.C. Official Code § 1-611.03(a)(7)(A)) made by section 2 of the Active Duty Pay Differential Amendment Act of 2016 (D.C. Law 21-648; 64 DCR 949), which provides employees with military pay differential if they were or will be called to active duty for any contingency operations as defined in 10 U.S.C. § 101(a)(13) following the formal inception of Operation Odyssey Dawn in 2011. The proposed amendment to section 1199 would provide a definition of the term "competitive appointment." Finally, the proposed amendment to Subsection 1262.2 provides employees who are on military leave for training 15 days of military leave each fiscal year consistent with Section 1203(m) of the CMPA (D.C. Official Code § 1-612.03(m)).

Chapter 11, CLASSIFICATION AND COMPENSATION, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended as follows:

Subsections 1126.5, 1126.6, 1126.7 and 1126.11(c) of Section 1126, DISTRICT SERVICE SALARY SYSTEM - GENERAL PROVISIONS, are amended to read as follows:

- 1126.5 Except as provided in Subsections 1126.6 through 1126.11, 1126.21, 1126.22, and 1126.29, a new appointment shall be made at the minimum rate of the grade or pay level.

1126.6 At the discretion of the agency head, initial or first appointments to the Career Service may be made at any salary up to step 4, for positions paid on the Career Service Salary Schedule. The following factors should be considered when setting the pay:

- (a) Skill set the selectee brings to the job in addition to the minimum qualifications for the position;
- (b) Effect on agency and budget limitations;
- (c) Market value of the position; and
- (d) Internal compensation relationships.

The lead-in language in Subsection 1126.7 is amended to read as follows:

1126.7 The employing agency may set the initial rate of pay at any amount up to the midpoint range of the grade or pay level for the position. The following factors should be considered when setting the pay at an amount up to the midpoint range:

TYPE OF APPOINTMENT	PAY-SETTING RULE
<p>Initial or First (1st) Appointment with the District government</p>	<p>(a) The employing agency may set the initial rate of pay at any amount up to the midpoint range of the grade or pay level for the position. The following factors* should be considered when setting the pay at an amount up to the midpoint range:</p> <ul style="list-style-type: none"> (1) Skill set the selectee brings to the job in addition to the minimum qualifications for the position; (2) Effect on agency and budget limitations; (3) Market value of the position; and (4) Internal compensation relationships. <p>(b) For extraordinary cases, the employing agency shall request approval from the personnel authority to set the initial rate of pay at an amount above the midpoint range of the grade or pay level for the position. The personnel authority shall establish the criteria for the request, which shall be made in writing by the employing agency.</p> <p>*Note: The employing agency may not seek information about or base compensation offers on salary history, unless selectee introduces salary history</p>

	into the negotiation process.
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Paragraph (c) of Subsection 1126.11 is amended to read as follows:

- (c) The candidate’s rate of basic pay or salary history, only if raised by the candidate in salary negotiation during the hiring process.

Subsections 1129.4, 1129.5, and 1129.13 of Section 1129, WAGE SERVICE RATE SYSTEM – WITHIN-GRADE INCREASES, is amended to read as follows:

1129.4 Except as provided in Subsection 1129.6, the waiting periods for advancement to the next rate in all grades for a wage employee with a scheduled tour of duty shall be as follows:

- (a) Rates 2, 3, 4, and 5: fifty-two (52) calendar weeks of creditable service; and
- (b) Rates 6, 7, 8, 9, and 10: one hundred four (104) calendar weeks of creditable service.

1129.5 Except as provided in Subsection 1129.7, the waiting period for advancement to the next rates in all grades for a wage employee without a scheduled tour of duty shall be as follows:

- (a) Rates 3, 4, and 5: two hundred sixty (260) days of creditable service in a pay status over a period of not less than twenty-six (26) calendar weeks; and
- (b) Rates 7, 8, 9, and 10: five hundred twenty (520) days of creditable service in a pay status over a period of not less than one hundred four (104) calendar weeks.

1129.13 For a wage employee with a scheduled tour of duty, time in a nonpay status, except as provided in Subsections 1129.15 through 1129.19, shall be creditable service in the computation of a waiting period when it does not exceed an aggregate of any of the following:

- (a) Two (2) administrative workweeks in the waiting period for rates 2, 3, 4, or 5;
- (b) Four (4) administrative workweeks in the waiting period for rates 7, 8, 9, or 10.

Section 1130, CAREER SERVICE POSITION CHANGES-SETTING PAY, is amended as follows:

Subsections 1130.3 and 1130.4 are amended to read as follows:

- 1130.3 When any action moves an employee from a CS salary schedule (“current” schedule) to another grade within the same CS salary schedule or to any grade within another CS salary schedule or Wage Service rate schedule (“new” schedule), the rate of pay on the new schedule shall be determined under one (1) of the following, as appropriate:
- (a) If the representative rate of the employee’s grade in his or her current schedule is less than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a promotion, and the employee shall be entitled to one (1) of the following:
 - (1) Basic pay at the lowest rate of the new grade that is equivalent to his or her existing rate of basic pay plus two (2) step increases of the current grade;
 - (2) If the rate determined in (1) above falls between two (2) rates of the new grade, he or she shall be entitled to the higher rate; or
 - (3) If the rate determined in (1) above is higher than any rate of the new grade, he or she shall be entitled to the maximum rate of the new grade.
 - (b) If the representative rate of the new position is less than the representative rate of the employee’s existing position, the movement constitutes a “change to a lower grade.” If the representative rate of the new position is equal to the representative rate of the employee’s existing position, the movement constitutes a “reassignment.” When the movement is either a “change to a lower grade” or a “reassignment,” the agency may pay the employee as follows:
 - (1) The agency may pay the employee at any rate of the new grade that does not exceed his or her highest previous rate;
 - (2) If the employee’s highest previous rate falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate; or
 - (3) For competitive appointments to a different position, an agency may pay the employee in accordance with the pay-setting rules for

initial or first-time appointments with the District government outlined in Subsection 1126.6.

1130.4 When any action moves an employee from one Wage Service rate schedule (“current” schedule) to another grade within the same rate schedule or to any grade within another Wage Service rate schedule or CS salary schedule (“new” schedule), the rate of pay on the new schedule shall be determined under one (1) of the following, as appropriate:

(a) If the representative rate of the employee’s grade in his or her current schedule is less than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a promotion, and the employee shall be entitled to one (1) of the following:

- (1) Basic pay at the lowest rate of the new grade that is equivalent to his or her existing rate of basic pay plus a two (2) step increase of the current grade (for a rate schedule with ten (10) steps);
- (2) If the rate determined in (1) above falls between two (2) rates of the new grade, he or she shall be entitled to the higher rate; or
- (3) If the rate determined in (1) above is higher than any rate of the new grade, he or she shall be entitled to the maximum rate of the new grade.

(b) If the representative rate of the employee’s grade in his or her current schedule is equal to or more than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a reassignment (when “equal to”) or a change to lower grade (when “more than”), and the agency may pay the employee in accordance with either of the following:

- (1) The agency may pay the employee at any rate of the new grade that does not exceed his or her highest previous rate; or
- (2) If the employee’s highest previous rate falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate.

A new Subsection 1130.17 is added to read as follows:

1130.17 When an employee is converted from a term or temporary appointment to a permanent appointment at the same grade level in the Career Service pursuant to Chapter 8 of these regulations, there shall be no change to the rate of pay.

Subsections 1139.2 and 1139.5 of Section 1139, EXEMPT TIME OFF, are amended to read as follows:

1139.2 This section applies to employees subject to the District Service Salary System, the Wage Service Rate System, or the Recreation Service Rate System who are exempt from the Fair Labor Standards Act (FLSA).

...

1139.5 An agency head may credit an employee with up to eighty (80) hours of exempt time off per leave year; provided, that with the approval of the personnel authority, an agency may credit an employee with an additional forty (40) hours of exempt time off within the leave year, when the hours justifying exempt time off under Subsection 1139.3 are granted because of emergencies or other unforeseen circumstances, such as:

- (a) Work resulting from severe weather events, including excessive snow and hurricanes;
- (b) Work resulting from publicly scheduled events in the District of Columbia requiring infrastructure support; and
- (c) Emergency situations so declared by the Mayor.

Subsection 1139.9 is added to read as follows:

1139.9 The Chief of Police may grant exempt time off to uniformed members at the rank of Inspector and above, and the civilian equivalents in the Metropolitan Police Department not to exceed a total of eighty (80) hours in any consecutive twelve (12) month period in accordance with this section.

Section 1155, OPERATION ENDURING FREEDOM AND OPERATION IRAQI FREEDOM PAY DIFFERENTIAL, is amended as follows:

The section title is amended to read as follows “MILITARY ACTIVE DUTY PAY DIFFERENTIAL”.

Subsection 1155.1(a) is amended to read as follows:

1155.1 (a) Any full-time permanent, indefinite, or term employee who serves in a reserve component of the United States armed forces and who has been or will be called to active duty in preparation for, or as a result of Operation New Dawn, Operation Odyssey Dawn, or any contingency operation as defined in 10 U.S.C. § 101(a)(13), shall be entitled to apply for and receive, as applicable, a pay differential to compensate the employee for

any difference between the employee's District government basic pay and basic military pay.

Subsection 1199.99 of Section 1199, DEFINITIONS, is amended by adding a new definition for "Competitive appointment" as follows:

Competitive appointment – an appointment or reassignment to a position within the District government made through open competition to the general public.

Chapter 12, HOURS OF WORK, LEGAL HOLIDAYS AND LEAVE, is amended as follows:

Subsection 1262.2 of Section 1262, MILITARY LEAVE, is amended to read as follows:

1262.2 An employee serving in a permanent appointment, temporary appointment pending establishment of a register (TAPER), term appointment, or indefinite appointment, who is a member of a reserve component of the Armed Forces, shall be entitled to military leave for each day, but no more than fifteen (15) calendar days per fiscal year and, to the extent that it is not used in a fiscal year, it will accumulate for use in the succeeding fiscal year until it totals fifteen (15) calendar days at the beginning of a fiscal year in which he or she is on active duty, inactive-duty training under 37 U.S.C. § 101, funeral honors duty under 10 U.S.C. § 12503 and 32 U.S.C. § 115, or engaged in field or coast defense training under 32 U.S.C. §§ 502 through 505.

Comments on this proposed rulemaking should be submitted, in writing, within thirty (30) days of the date of the publication of this notice in the *D.C. Register* to Justin Zimmerman, Associate Director, Policy and Compliance Administration, D.C. Department of Human Resources, 441 4th Street, N.W., Suite 330S, Washington, D.C. 20001, or via email to Justin.Zimmerman@dc.gov. Additional copies of these proposed rules are available at the above address.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING**Z.C. Case No. 14-11E****(Text Amendments – 11 DCMR)****(Rear Yard Extensions)**

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, as amended (52 Stat. 597; D.C. Official Code § 6-641.01 (2012 Rep1.)), hereby gives notice of its intent to amend Subtitles D (Residential House (R) Zones); E (Residential Flat (RF) Zones); and U (Use Permissions) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

The proposed text amendments would clarify the Commission's intent that the matter of right rear yard additions permitted under Z.C. Case No. 14-11B (Case No. 14-11B) are meant to be measured from "any" of the adjoining or adjacent lots. The Office of Planning has apprised the Commission that the use of phrases "an adjoining property" and "an adjacent property" throughout the adopted text has resulted in assertions by building permit applicants for projects adjoining buildings on two adjacent lots that either lot can be used to measure a proposed rear addition. This interpretation is contrary to the Commission's intent when it approved Case No. 14-11B. The Commission therefore proposes to replace the phrases "an adjoining property" and "an adjacent property" with the phrase "any adjacent property" in the applicable regulations. In addition, the words "further" and "furthest" are replaced by "farther" and "farthest" and the word "adjoining" is added to the phrase "principal dwelling in 11-U DCMR §§ 301.2 and 320.2 to conform with the terminology used in the Subtitles D and E provisions being amended.

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** and underlined text and deletions are shown in ~~striketrough~~ text):

Title 11-D DCMR, RESIDENTIAL HOUSE (R) ZONES, is amended as follows:

Chapter 3, RESIDENTIAL HOUSE ZONES – R-1-A, R-1-B, R-2, AND R-3, is amended as follows:

Subsections 306.3 and 306.4 of § 306, REAR YARD, are amended to read as follows:

306.3 Notwithstanding Subtitle D §§ 306.1 and 306.2, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on ~~an~~ **any adjacent** ~~adjoining~~ property.

306.4 A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on ~~an~~ **any adjacent** adjoining property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.

Chapter 7, NAVAL OBSERVATORY RESIDENTIAL HOUSE ZONES – R-12 AND R-13, is amended as follows:

Subsections 706.3 and 706.4 of § 706, REAR YARD, are amended to read as follows:

706.3 Notwithstanding Subtitle D §§ 706.1 and 706.2, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on ~~an~~ **any adjacent** adjoining property.

706.4 A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on ~~an~~ **any adjacent** adjoining property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.

Chapter 10, FOGGY BOTTOM RESIDENTIAL HOUSE ZONE – R-17, is amended as follows:

Subsections 1006.2 and 1006.3 of § 1006, REAR YARD, are amended to read as follows:

1006.2 Notwithstanding Subtitle D § 1006.1, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on ~~an~~ **any adjacent** adjoining property.

1006.3 A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on ~~an~~ **any adjacent** adjoining property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.

Chapter 12, GEORGETOWN RESIDENTIAL HOUSE ZONES – R-19 AND R-20, is amended as follows:

Subsections 1206.3 and 1206.4 of § 1206, REAR YARD, are amended to read as follows:

1206.3 Notwithstanding Subtitle D § 1206.2, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on ~~an~~ **any adjacent** adjoining property.

1206.4 In the R-20 zone, a rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any principal residential building on ~~an~~ **any adjacent** adjoining property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.

Title 11-E DCMR, RESIDENTIAL FLAT (RF) ZONES, is amended as follows:

Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), is amended as follows:

Subsections 205.4 and 205.5 of § 205, REAR YARD, are amended to read as follows:

205.4 Notwithstanding §§ 205.1 through 205.3, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on ~~an~~ **any adjacent** adjoining property.

205.5 A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any principal residential building on ~~an~~ **any adjacent** adjoining property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle E §§ 5201.3 through 5201.6.

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

Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, is amended as follows:

Paragraph (d) of § 301.2 of § 301, MATTER-OF-RIGHT USES (RF), are amended to read as follows:

301.2 Conversion of an existing non-residential building or structure to an apartment house shall be permitted as a matter of right in an RF-1, RF-2, or RF-3 zone subject to the following conditions:

...¹

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

- (d) An addition shall not extend ~~further~~ **farther** than ten feet (10 ft.) past the ~~furthest~~ **farthest** rear wall of any **adjoining** principal residential building on ~~an~~ **any** adjacent property;

...

Paragraph (e) of § 320.2 of § 320, SPECIAL EXCEPTION USES (RF), is amended to read as follows:

320.2 Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:

...

- (e) An addition shall not extend ~~further~~ **farther** than ten feet (10 ft.) past the ~~furthest~~ **farthest** rear wall of any **adjoining** principal residential building on ~~an~~ **any** adjacent property;

...

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 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 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 Chapter 102 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled “*My Health GPS Program*.”

The *My Health GPS* program is established as a Health Home program under the authority of Section 1945 of the Social Security Act for District Medicaid beneficiaries who have three (3) or more chronic conditions. The *My Health GPS* program will be the District’s second Health Home program. *My DC Health Home*, the District’s initial Health Home program, is administered by the Department of Behavioral Health and described in Chapter 25 of Title 22-A DCMR and provides comprehensive care management services delivered by community mental health providers to Medicaid beneficiaries with serious mental illness. DHCF decided to establish the *My Health GPS* program as a second health home initiative in recognition of the unmet care management needs of Medicaid beneficiaries with multiple chronic conditions. Historically, many of these beneficiaries have not received comprehensive care management services and their care has largely gone unmanaged, resulting in the preventable utilization of fire and emergency medical services, avoidable emergency department services and hospital admissions, and poor health outcomes. In order to meet the healthcare needs of this vulnerable population, the comprehensive care management services offered through the *My Health GPS* program will be delivered by an interdisciplinary team embedded in the primary care setting, which will coordinate patient-centered and population-focused care for these beneficiaries.

Emergency action is necessary in order to maintain the health and welfare of this vulnerable population of District residents by preventing increased morbidity and mortality rates resulting from unmet healthcare needs. The crucially important services designed to meet these needs must be delivered without delay.

The corresponding State Plan Amendment (SPA) to the District of Columbia State Plan for Medical Assistance (State Plan) must be approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) and the Council of the District of Columbia (Council). The Council approved the corresponding SPA through the Fiscal Year 2017 Budget Support Emergency Act of 2016, effective July 20, 2016 (D.C. Act 21-463; 63 DCR 009843). CMS approved the corresponding SPA on February 6, 2017 with an effective date of July 1, 2017. DHCF is seeking a technical correction from CMS to conform the SPA to the approved eligibility requirements.

These emergency rules were adopted on June 12, 2017 and became effective on that date. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days

from the adoption date or until October 10, 2017, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. 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*.

A new Chapter 102, *MY HEALTH GPS PROGRAM*, is added to Title 29 DCMR, PUBLIC WELFARE, to read as follows:

CHAPTER 102 *MY HEALTH GPS PROGRAM*

- 10200 GENERAL PROVISIONS**
- 10201 ELIGIBILITY CRITERIA**
- 10202 BENEFICIARY ASSIGNMENT AND ENROLLMENT**
- 10203 BENEFICIARY DISENROLLMENT**
- 10204 *MY HEALTH GPS* ENTITY APPLICATION PROCESS**
- 10205 *MY HEALTH GPS* PROVIDER REQUIREMENTS**
- 10206 *MY HEALTH GPS* SERVICES**
- 10207 REIMBURSEMENT**
- 10208 QUALITY REPORTING REQUIREMENTS**
- 10209 INCENTIVE PAYMENTS**
- 10210 AUDITS AND REVIEWS**
- 10211 *MY HEALTH GPS* SANCTIONS, WITHDRAWAL AND TERMINATION**
- 10299 DEFINITIONS**

10200 GENERAL PROVISIONS

10200.1 The purpose of this chapter is to establish standards governing Medicaid reimbursement for Health Home services provided to District Medicaid beneficiaries with multiple chronic conditions. This program shall be known as the “*My Health GPS*” program.

10200.2 The goal of the *My Health GPS* program is to improve the integration of medical and behavioral health, community supports and social services, and is designed to result in the following outcomes for eligible beneficiaries:

- (a) Lower rates of avoidable emergency department (ED) use;
- (b) Reductions in preventable hospital admissions and re-admissions;
- (c) Reductions in healthcare costs;
- (d) Improvements in the experience of care, quality of life and beneficiary satisfaction; and

- (e) Improved health outcomes.

10200.3 Services offered through the *My Health GPS* program shall be consistent with, but not limited to, those described under 42 CFR § 440.169(d).

10201 ELIGIBILITY CRITERIA

10201.1 Except as set forth in § 10201.2, a beneficiary shall be eligible to participate in the *My Health GPS* program if the beneficiary has current diagnoses of three (3) or more of the following chronic conditions:

- (a) Asthma;
- (b) Body Mass Index higher than thirty-five (35);
- (c) Cerebrovascular disease;
- (d) Chronic obstructive pulmonary disease;
- (e) Chronic renal failure, indicated by dialysis treatment;
- (f) Diabetes;
- (g) Heart disease including:
 - (1) Cardiac dysrhythmias;
 - (2) Conduction disorders;
 - (3) Congestive heart failure;
 - (4) Myocardial infarction; and
 - (5) Pulmonary heart disease;
- (h) Hepatitis;
- (i) Human Immunodeficiency Virus;
- (j) Hyperlipidemia;
- (k) Hypertension;
- (l) Malignancies;
- (m) Mental health conditions including:

- (1) Depression;
- (2) Bipolar Disorder;
- (3) Manic Disorder;
- (4) Schizophrenia; and
- (5) Personality Disorders;

- (n) Paralysis;
- (o) Peripheral atherosclerosis;
- (p) Sickle cell anemia; and
- (q) Substance use disorder.

10201.2 The following categories of beneficiaries shall not be eligible for the *My Health GPS* program:

- (a) Beneficiaries enrolled in the Home and Community-Based Services (HCBS) Waiver for the Elderly and Individuals with Physical Disabilities, as described in Chapter 42 of Title 29 of the District of Columbia Municipal Regulations (DCMR);
- (b) Beneficiaries enrolled in the HCBS Waiver for Persons with Intellectual and Developmental Disabilities, as described in Chapter 19 of Title 29 DCMR;
- (c) Beneficiaries residing in a nursing facility;
- (d) Beneficiaries residing in an Intermediate Care Facility for Individuals with Intellectual Disabilities; and
- (e) Beneficiaries enrolled in the *My DC Health Home* program, as described in Chapter 25 of Title 22-A DCMR.

10201.3 A beneficiary who is eligible for both the *My DC Health Home* and the *My Health GPS* programs may choose to enroll in either the *My DC Health Home* or the *My Health GPS* program but may not be concurrently enrolled in both programs.

10201.4 A beneficiary may be concurrently enrolled in a DC Medicaid risk-based managed care organization and the *My Health GPS* program.

10202 BENEFICIARY ASSIGNMENT AND ENROLLMENT

- 10202.1 All beneficiaries who meet the eligibility criteria set forth in § 10201 may participate in the *My Health GPS* program.
- 10202.2 A beneficiary shall only be assigned to a single *My Health GPS* entity at any time in accordance with the process set forth below:
- (a) An eligible beneficiary shall be assigned to the *My Health GPS* entity that currently provides the beneficiary's primary care services or to a *My Health GPS* entity that is part of a corporate entity that currently provides the beneficiary's primary care services;
 - (b) If the beneficiary has a relationship with more than one (1) *My Health GPS* entity, as determined by the Department of Health Care Finance (DHCF) through a review of Medicaid claims submitted during the past twelve (12) months, the beneficiary shall be assigned to the *My Health GPS* entity seen most frequently during the review period;
 - (c) If a beneficiary who meets the criteria described in (b) has seen multiple *My Health GPS* entities with equal frequency during the review period, the beneficiary shall be assigned to the entity seen most recently during the review period; and
 - (d) If the beneficiary does not have a prior relationship with any *My Health GPS* entity, as determined by DHCF through a review of Medicaid claims submitted during the past twelve (12) months, the beneficiary shall be assigned to a *My Health GPS* entity based on the entity's capacity to serve additional beneficiaries and the geographic proximity of the beneficiary to the entity.
- 10202.3 The initial assignment of eligible beneficiaries shall occur after the initial application period described in § 10204.4(a) and shall be effective on the program implementation date. Eligible beneficiaries who enter the program after the initial assignment period shall be assigned on a quarterly basis or within thirty (30) days of receipt of a referral.
- 10202.4 After an assignment is made, DHCF shall provide the beneficiary with the following information in writing:
- (a) A clear statement that the beneficiary has been identified as eligible to participate in the *My Health GPS* program;
 - (b) A clear explanation of the benefits of the *My Health GPS* program and the services provided;

- (c) Information regarding the *My Health GPS* entity to which the beneficiary has been assigned;
- (d) A clear explanation of the beneficiary's right to select a different *My Health GPS* entity or to "opt out" of the *My Health GPS* program; and
- (e) Instructions on selecting a different *My Health GPS* entity and "opting out" of the *My Health GPS* program.

10202.5 DHCF shall inform any other provider furnishing primary care services to an eligible beneficiary of the assignment, in writing, of the following:

- (a) A statement that the beneficiary served by the provider has been determined eligible for the *My Health GPS* program and assigned to a *My Health GPS* entity;
- (b) A clear explanation of the benefits of the *My Health GPS* program and the services provided; and
- (c) Information regarding the *My Health GPS* entity to which each beneficiary has been assigned.

10202.6 A beneficiary who has been assigned to a *My Health GPS* entity shall have the right to select a different entity or to "opt out" of the *My Health GPS* program.

10202.7 A beneficiary may notify DHCF at any time that the beneficiary wishes to select a different *My Health GPS* entity or "opt out" of the program.

10202.8 A beneficiary who has been assigned to a *My Health GPS* entity and wishes to be assigned to a different entity shall notify DHCF. The assignment to the new entity shall occur as follows:

- (a) If the beneficiary notifies DHCF of the new selection prior to the twentieth (20th) day of the month, the beneficiary shall be re-assigned to the new entity effective the first (1st) day of the month following the month in which the beneficiary notified DHCF of the new selection;
- (b) If the beneficiary notifies DHCF on or after the twentieth (20th) day of the month, the beneficiary shall be re-assigned to the new entity effective the first (1st) day of the second (2nd) month following the month in which the beneficiary notified DHCF of the new selection; and
- (c) The beneficiary shall remain eligible to receive *My Health GPS* services from the beneficiary's current *My Health GPS* entity until the effective date of the beneficiary's assignment to the new entity.

- 10202.9 Any beneficiary assigned to a *My Health GPS* entity for whom the entity has not submitted an initial claim for a person centered care plan in accordance with § 10207.10 within the first two (2) quarters following the effective date of the beneficiary assignment, as described in § 10202.3, may be re-assigned to another *My Health GPS* entity in accordance with the process described in § 10202.2.
- 10202.10 If DHCF re-assigns a beneficiary to a new *My Health GPS* entity, DHCF shall provide the beneficiary the following information in writing:
- (a) A statement that the beneficiary remains eligible to participate in the *My Health GPS* program but has been re-assigned to a new *My Health GPS* entity;
 - (b) A clear explanation of the benefits of the *My Health GPS* program and the services provided;
 - (c) The reason the beneficiary has been re-assigned to a new *My Health GPS* entity;
 - (d) Information regarding the new *My Health GPS* entity to which the beneficiary has been assigned;
 - (e) A clear explanation of the beneficiary’s right to select a different *My Health GPS* entity or to “opt out” of the *My Health GPS* program; and
 - (f) Instructions on selecting a different *My Health GPS* entity and “opting out” of the *My Health GPS* program.
- 10202.11 If DHCF re-assigns a beneficiary to a new *My Health GPS* entity, DHCF shall notify the entity to which the beneficiary was previously assigned of the re-assignment in writing, including the following information:
- (a) A clear statement explaining why the beneficiary has been re-assigned;
 - (b) Specific reference to the applicable sections of the rules, statute or provider manual; and
 - (c) The effective date of the re-assignment.
- 10202.12 The effective date of a beneficiary’s enrollment in the *My Health GPS* program shall be the date on which the *My Health GPS* provider completes the components of the beneficiary’s person-centered plan of care in accordance with § 10207.10.

10203 BENEFICIARY DISENROLLMENT

10203.1 DHCF shall disenroll an enrolled beneficiary from the *My Health GPS* program if:

- (a) The beneficiary's *My Health GPS* entity has not submitted claims for reimbursement for *My Health GPS* services provided to the beneficiary for three (3) consecutive quarters and DHCF has determined through an internal review that the beneficiary is no longer actively participating in the *My Health GPS* program; or
- (b) DHCF determines that an enrolled *My Health GPS* beneficiary no longer meets the eligibility requirements as set forth under § 10201.

10203.2 If DHCF takes action to disenroll an enrolled beneficiary from the *My Health GPS* program as set forth in § 10203.1, DHCF shall issue a written notice to the beneficiary at least thirty (30) calendar days prior to the effective date of the intended disenrollment, which shall contain the following information:

- (a) A clear statement of the intended action to disenroll the beneficiary from the *My Health GPS* program;
- (b) An explanation of the reason(s) for the intended action;
- (c) Citations to the laws or regulations supporting the intended action;
- (d) An explanation of the beneficiary's right to request that DHCF reconsider its decision to disenroll the beneficiary, including the timeframe and procedures for making a request for reconsideration;
- (e) An explanation of the beneficiary's right to request a Fair Hearing, including the timeframe and procedures for requesting a hearing; and
- (f) The circumstances under which the beneficiary's current *My Health GPS* services will be continued if a reconsideration or Fair Hearing is requested.

10203.3 A request for reconsideration of the decision to disenroll a beneficiary made pursuant to § 10203.2(d) must be submitted in writing, by mail, fax, or in person, to DHCF within thirty (30) calendar days of the date of the notice of disenrollment described in § 10203.2. The request for reconsideration shall include information and documentation as follows:

- (a) A written statement by the beneficiary, or the beneficiary's designated representative, describing the reason(s) why the decision to disenroll the beneficiary should not be upheld;

(b) A written statement by a clinician familiar with the beneficiary's health care needs describing the reason(s) why the decision to disenroll the beneficiary should not be upheld; and

(c) Any additional, relevant documentation in support of the request.

10203.4 For beneficiaries currently receiving *My Health GPS* services, a timely filed request for reconsideration will stay the termination of services until a reconsideration decision is issued.

10203.5 DHCF shall issue a reconsideration decision no more than thirty (30) calendar days from the date of receipt of the documentation required in § 102033.

10203.6 If DHCF decides to uphold the disenrollment determination, the reconsideration decision shall contain the following:

(a) A description of all documents that were reviewed;

(b) The justification(s) for the intended action(s) and the effective date of the action(s);

(c) An explanation of the beneficiary's right to request a Fair Hearing, including the timeframes and procedures for requesting a hearing; and

(d) The circumstances under which *My Health GPS* services will be provided during the pendency of a Fair Hearing.

10203.7 A request to appeal the reconsideration decision issued pursuant to § 10203.5 must be submitted within ninety (90) calendar days of the date of issuance of the reconsideration decision by requesting a Fair Hearing with the Office of Administrative Hearings in writing, in person, or by telephone, in accordance with 1 DCMR § 2971.

10203.8 DHCF shall not disenroll the beneficiary from the *My Health GPS* program while a Fair Hearing is pending if a beneficiary files the Fair Hearing request prior to the effective date of the proposed action to disenroll the beneficiary.

10204 MY HEALTH GPS ENTITY APPLICATION PROCESS

10204.1 The following types of organizations may become *My Health GPS* entities:

(a) Primary care clinical individual practices;

(b) Primary care clinical group practices; and

- (c) Federally Qualified Health Centers.

10204.2 In order to be eligible to become a *My Health GPS* entity, organizations described in § 10204.1 shall:

- (a) Be enrolled as a D.C. Medicaid provider in accordance with the requirements set forth in Chapter 94 of Title 29 DCMR;
- (b) Have no current or pending investigations, exclusions, suspensions or debarment from any federal, State or District healthcare program; and
- (c) Have no outstanding overpayment from DHCF.

10204.3 In addition to the minimum requirements set forth in §§ 10204.1 and 10204.2, each applicant shall be required to:

- (a) Provide proof of National Committee for Quality Assurance (NCQA) Patient-Centered Medical Home (PCMH) Level Two recognition (or successor version of equivalent recognition) or proof that the organization has initiated the NCQA PCMH application process for the prospective *My Health GPS* entity and that the recognition has been achieved within twelve (12) months of the date of submission of the *My Health GPS* application;
- (b) Demonstrate use of certified electronic health record (EHR) technology to support the creation and execution of a person-centered plan of care for each beneficiary;
- (c) Provide twenty-four (24) hour, seven (7) days per week access to clinical advice, including culturally appropriate translation and interpretation services for beneficiaries with limited English proficiency;
- (d) Demonstrate the availability of an interdisciplinary team with sufficient capacity to serve eligible beneficiaries including, at a minimum, qualified practitioners to fill each of the roles described in §§ 10205.3 and 10205.4;
- (e) Demonstrate the ability to deliver all *My Health GPS* services in accordance with the requirements described in § 10206, either directly through the organization or through a subcontractor;
- (f) Establish and maintain data sharing agreements with other healthcare providers as necessary in order to comply with all applicable requirements of the Health Insurance Portability and Accountability Act of 1996, effective August 21, 1996 (Pub. L. 104-191, 110 Stat. 1936); and

- (g) Provide proof of enrollment in the Chesapeake Regional Information System for Patients (CRISP) or comparable system, to receive hospital and emergency department alerts for enrolled beneficiaries.

10204.4 DHCF shall review applications from organizations described in § 10204.1 to become *My Health GPS* entities at the following times:

- (a) Applications shall initially be accepted for a thirty (30) day period which occurs prior to the program implementation date and which shall be communicated to all prospective *My Health GPS* entities on the DHCF website at: <http://dhcf.dc.gov>; and
- (b) Following the initial thirty (30) day application period, applications shall be reviewed on an ongoing basis.

10204.5 A prospective *My Health GPS* entity shall not be eligible for the initial assignment of eligible beneficiaries as described in § 10202.3, if the application is not received within the thirty (30)-day period described in § 10204.4(a) and approved by DHCF.

10204.6 Approval of a prospective *My Health GPS* entity's application shall be contingent upon the entity's successful completion of a readiness review.

10204.7 DHCF shall return each application that is incomplete and afford the applicant two (2) opportunities to re-submit the application.

10204.8 If the applicant does not meet all of the requirements set forth in this chapter, DHCF shall deny enrollment in the *My Health GPS* program and issue a notice consistent with the requirements set forth in Chapter 94 of Title 29 DCMR.

10205 MY HEALTH GPS PROVIDER REQUIREMENTS

10205.1 Each *My Health GPS* provider shall contain an approved interdisciplinary team of practitioners, as described within this section, embedded within the primary care setting of an organization described in § 10204.1.

10205.2 Each *My Health GPS* provider shall be adequately staffed, consistent with the requirements set forth in this section, by healthcare professionals who meet all applicable licensure and certification requirements of the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2012 Repl. & 2016 Supp.)) and attendant regulations contained in Title 17 DCMR.

10205.3 Each *My Health GPS* provider serving lower-acuity (Group One) beneficiaries, as determined using the criteria set forth in § 10207.3, shall be comprised, at a

minimum, of the following practitioners, or comparable practitioners as approved by DHCF on a case-by-case basis as set forth below:

- (a) A Health Home Director, who has a Master's level education in a health-related field;
- (b) A Nurse Care Manager, who has an advanced practice nursing license or a Bachelor of Nursing degree with appropriate care management experience; and
- (c) A Peer Navigator, who is a health educator capable of linking beneficiaries with the health and social services they need to achieve wellness, who has either completed at least forty (40) hours of training in, or has at least six (6) months of experience in, community health.

10205.4 In addition to the practitioners described in § 10205.3, each *My Health GPS* provider serving higher-acuity (Group Two) beneficiaries, as determined using the criteria set forth in § 10207.3, shall also include the following practitioners, or practitioners with comparable qualifications as approved by DHCF on a case-by-case basis:

- (a) A Care Coordinator, who has a Bachelor's degree in social work or has a Bachelor's degree in a health-related field with at least three (3) years' experience in a healthcare or human services field; and
- (b) A licensed Clinical Pharmacist, who is a Doctor of Pharmacy with experience in direct patient care environments, including but not limited to experience providing services in medical centers and clinics.

10205.5 The minimum staffing ratios for providers are as follows:

- (a) For *My Health GPS* providers serving lower-acuity (Group One) beneficiaries, the following minimum staffing ratios are required:
 - (1) Health Home Director: One half (0.5) full-time employee per four hundred (400) beneficiaries;
 - (2) Nurse Care Manager: One (1) full-time employee per four hundred (400) beneficiaries; and
 - (3) Peer Navigator: One (1) full-time employee per four hundred (400) beneficiaries;
- (b) For *My Health GPS* providers serving higher-acuity (Group Two) beneficiaries, the following minimum staffing ratios are required:

- (1) Health Home Director: The equivalent of one-half (0.5) of a full-time employee's hours worked per four hundred (400) beneficiaries;
- (2) Nurse Care Manager: Two (2) full-time employees per four hundred (400) beneficiaries;
- (3) Peer Navigator: The equivalent of three and one-half (3.5) of the hours a full-time employee works per four hundred (400) beneficiaries;
- (4) Care Coordinator: Two (2) full-time employees per four hundred (400) beneficiaries; and
- (5) Clinical Pharmacist: The equivalent of one-half (0.5) of the hours full-time employee works per four hundred (400) beneficiaries.

10205.6 Each *My Health GPS* entity shall demonstrate that all its *My Health GPS* providers comply with the minimum staffing ratios set forth in § 10205.5 no later than the end of the second quarter following the effective date of the entity's enrollment in the *My Health GPS* program. A *My Health GPS* entity shall continue to comply with all minimum staffing ratios for the duration of the entity's enrollment in the program.

10205.7 If a *My Health GPS* entity fails to comply with the requirements set forth in § 10205.6, the entity may only be allowed to retain the number of beneficiaries whose needs are met by the entity's current *My Health GPS* providers. Any remaining beneficiaries may be re-assigned to another *My Health GPS* entity.

10205.8 If all *My Health GPS* providers within a *My Health GPS* entity have maximized capacity to serve the entity's enrolled beneficiaries in accordance with the staffing ratios outlined in § 10205.5 and the entity is contacted by a beneficiary who wishes to receive *My Health GPS* services from any of its *My Health GPS* providers, the entity shall notify DHCF within one (1) business day of receiving a beneficiary's request for services.

10205.9 If beneficiaries are re-assigned to another *My Health GPS* entity pursuant to § 10205.7, DHCF shall notify the entity to which the beneficiaries were previously assigned of the re-assignment in writing consistent with the requirements set forth in § 10202.11.

10205.10 If DHCF re-assigns a beneficiary to a new *My Health GPS* entity, DHCF shall inform the beneficiary of the re-assignment in accordance with § 10202.10.

10205.11 Each *My Health GPS* provider shall conduct outreach to each beneficiary in accordance with the following timeframes:

- (a) The provider shall conduct outreach by the end of the second quarter following the effective date of the entity's enrollment for all beneficiaries initially assigned to the entity as described in § 10202.3; and
- (b) The provider shall conduct outreach by the end of the second quarter following the effective date of the beneficiary's assignment for all beneficiaries subsequently assigned to the entity as described in § 10202.3.

10205.12 Each *My Health GPS* provider shall document the outreach activity performed pursuant to § 10205.11 by including the following information in each beneficiary's EHR:

- (a) The date and time the activity was performed;
- (b) The identity of the *My Health GPS* provider staff member who performed the activity;
- (c) A description of the setting in which the activity was performed; and
- (d) A description of the activity, including mode of communication.

10205.13 In order to maintain enrollment as a *My Health GPS* entity, each organization described in § 10204.1 shall:

- (a) Participate in activities supporting the successful implementation of the *My Health GPS* program, including, but not limited to:
 - (1) Trainings to foster professional competency and development of best practices related to person-centered planning, chronic disease self-management, and related topics;
 - (2) Continuous quality improvement tasks, monitoring and performance reporting;
 - (3) District-wide initiatives to support the exchange of health information; and
 - (4) Evaluations required by the Centers for Medicare and Medicaid Services (CMS), DHCF or its agent;
- (b) Maintain compliance with all requirements set forth in this chapter; and
- (c) Maintain compliance with all terms and conditions set forth in the entity's D.C. Medicaid provider agreement including all modifications, as well as with all applicable federal and District laws.

10205.14 Each *My Health GPS* entity shall enter into a Memorandum of Agreement (MOA) with each D.C. Medicaid Managed Care Organization (MCO). The MOA shall set forth the division of responsibilities between the MCO and the *My Health GPS* entity.

10206 MY HEALTH GPS SERVICES

10206.1 Each *My Health GPS* provider shall provide the following services to eligible beneficiaries:

- (a) Comprehensive Care Management, as described in § 10206.3;
- (b) Care Coordination, as described in § 10206.4;
- (c) Health Promotion, as described in § 10206.5;
- (d) Comprehensive Transitional Care, as described in § 10206.6;
- (e) Individual and Family Support Services, as described in § 10206.7; and
- (f) Referral to community and social support services, as described in § 10206.8.

10206.2 All *My Health GPS* services shall be delivered in accordance with best practice protocols developed by the Nurse Care Manager or practitioner with comparable qualifications, as approved by DHCF, of the *My Health GPS* provider and documented in the *My Health GPS* provider's certified EHR.

10206.3 Comprehensive Care Management shall consist of the creation, documentation, execution and maintenance of a person-centered plan of care. Activities included in the delivery of Comprehensive Care Management services include, but are not limited to, the following:

- (a) Conducting an in-person comprehensive biopsychosocial needs assessment to collect behavioral, primary, acute and long-term care information from all health and social service providers appropriate for a particular beneficiary, including providers specific to pediatric beneficiaries, to inform development of the person-centered plan of care;
- (b) Developing a person-centered plan of care that reflects the beneficiary's unique cultural needs and is developed in a language or literacy level that the beneficiary can understand, which is documented and maintained in the *My Health GPS* provider's certified EHR system and includes the following components:

- (1) A list of the beneficiary's chronic conditions;
 - (2) Issues identified during the comprehensive biopsychosocial needs assessment described in (a);
 - (3) Identification of the beneficiary's strengths and needs;
 - (4) Individualized goals that address the beneficiary's chronic conditions and the issues identified during the assessment;
 - (5) Identification of interventions needed to support the beneficiary in meeting the individualized goals; and
 - (6) A plan to review the beneficiary's progress toward the individualized goals at set intervals and to revise the person-centered plan of care as appropriate;
- (c) Updating the person-centered plan of care in the *My Health GPS* provider's certified EHR system as follows:
- (1) Every twelve (12) months if the beneficiary has had no significant change in health condition;
 - (2) Each time the beneficiary has a significant change in health condition; and
 - (3) Within fifteen (15) days of discharge each time the beneficiary has an unplanned inpatient stay; and
- (d) Monitoring the beneficiary's health status and documenting the beneficiary's progress toward the goals contained in the person-centered plan of care, including amending the plan of care as needed.

10206.4 Care Coordination shall consist of implementation of the person-centered plan of care through appropriate linkages, referrals, and coordination with needed services and supports. Care Coordination services include, but are not limited to, the following:

- (a) Scheduling appointments and providing telephonic appointment reminders;
- (b) Assisting the beneficiary in navigating health and social services systems, including behavioral health and housing supports as needed;

- (c) Providing community-based outreach and follow-up, including face-to-face contact with beneficiaries in settings in which they reside, which may include shelters, the streets or other locations for homeless beneficiaries;
- (d) Providing outreach and follow-up through remote means to beneficiaries who do not require in-person contact;
- (e) Ensuring that all regular screenings are conducted through coordination with primary care or other appropriate providers;
- (f) Ensuring medication reconciliation has been completed;
- (g) Assisting with transportation to routine and urgent care appointments;
- (h) Assisting with transportation for health-related activities;
- (i) Assisting with completion of requests for durable medical equipment;
- (j) Obtaining health records and consultation reports from other providers;
- (k) Participating in hospital and emergency department transitions of care;
- (l) Coordinating with Fire and Emergency Medical Services and DHCF initiatives to promote appropriate utilization of emergency medical and transport services;
- (m) Facilitating access to urgent care appointments and ensuring appropriate follow-up care; and
- (n) Ensuring that the beneficiary is connected to and maintains eligibility for any public benefits to which the beneficiary may be entitled, including Medicaid.

10206.5

Health Promotion shall consist of the provision of health education to the beneficiary, as well as family members or other caregivers when appropriate, that is specific to the beneficiary's chronic conditions and needs as identified in the person-centered plan of care. Health Promotion services include, but are not limited to, the following:

- (a) Assisting the beneficiary in developing a self-management plan to promote health and wellness, including activities such as substance abuse prevention, smoking prevention or cessation, and nutrition counseling;
- (b) Connecting the beneficiary with peer or recovery supports;
- (c) Providing support to improve the beneficiary's social network;

- (d) Educating the beneficiary about accessing care in appropriate settings, including appropriate utilization of the 911 system;
- (e) Assessing the beneficiary's understanding of his or her health conditions and motivation to engage in self-management;
- (f) Using coaching and evidence-based practices such as motivational interviewing to enhance the beneficiary's understanding of his or her health conditions and motivation to achieve health and social goals; and
- (g) Ensuring that health promotion activities align with the beneficiary's stated health and social goals.

10206.6 Comprehensive Transitional Care shall consist of the planned coordination of transitions between healthcare providers and settings in order to reduce emergency department and inpatient admissions, readmissions and length of stay. Comprehensive Transitional Care services shall include the following:

- (a) Conducting in-person outreach to the beneficiary prior to discharge or within twenty-four (24) hours after discharge to support transitions from inpatient to other care settings, including the following activities:
 - (1) Reviewing the discharge summary and instructions;
 - (2) Ensuring that medication reconciliation has been completed;
 - (3) Ensuring that follow-up appointments and tests are scheduled and coordinated;
 - (4) Assessing the patient's risk status for readmission or other failure to obtain appropriate community-based care;
 - (5) Arranging for follow-up care, if indicated in the discharge plan;
 - (6) Planning for appropriate clinical care post-discharge, including home health services or other necessary skilled care;
 - (7) Planning for appropriate housing support services post-discharge, including facilitating linkages to temporary or permanent housing
 - (8) Arranging transportation for transitional care and follow-up appointments as needed; and

- (9) Scheduling appointments for the beneficiary with a primary care provider or appropriate specialist(s) within one (1) week of discharge.

10206.7 Individual and Family Support Services shall consist of activities that assist the beneficiary and his or her support network (including family members and authorized representatives) in identifying and meeting the beneficiary's biopsychosocial needs and accessing necessary resources as identified in the person-centered plan of care. Individual and Family Support Services include, but are not limited to, the following:

- (a) Facilitating beneficiary access to the following resources:
 - (1) Medical transportation services;
 - (2) Language interpretation services;
 - (3) Housing assistance services; and
 - (4) Any other social services needed by the beneficiary;
- (b) Educating the beneficiary in self-management of his or her chronic conditions;
- (c) Providing opportunities for family members and authorized representatives to participate in assessment activities and development of the person-centered plan of care;
- (d) Ensuring that all *My Health GPS* services are delivered in a manner that is culturally and linguistically appropriate;
- (e) Assisting the beneficiary in establishing and maintaining a network of natural supports;
- (f) Promoting the beneficiary's personal independence;
- (g) Including the beneficiary's family members and authorized representatives in quality improvement processes, including administering surveys to capture their experience with all *My Health GPS* services;
- (h) Providing beneficiaries with access to their EHR or other clinical information, and providing access to their family members and authorized representatives if the beneficiary provides written authorization to do so; and

- (i) Developing family support materials and services, including creating family support groups where appropriate.

10206.8 Referral to community and social support services shall consist of the process of connecting beneficiaries to resources to help them overcome access or service barriers, increase self-management skills, and achieve overall health, as identified in the person-centered plan of care, and ensuring that the referral is completed. Referrals to community and social support services may include but are not limited to:

- (a) Wellness programs, including but not limited to smoking cessation, fitness, and weight loss programs;
- (b) Support groups specific to the beneficiary's chronic condition(s);
- (c) Substance abuse treatment services, including support groups, recovery coaches, and twelve (12)-step programs;
- (d) Housing resources, including tenancy sustaining services;
- (e) Social integration services, including psychiatric rehabilitation and peer support or consumer-run programs to foster recovery and community re-integration;
- (f) Financial assistance, such as Temporary Assistance for Needy Families or Social Security;
- (g) Supplemental Nutrition Assistance Program;
- (h) Employment and educational programs or training;
- (i) Legal assistance resources;
- (k) Faith-based organizations; and
- (l) Child care.

10206.9 Each *My Health GPS* entity shall ensure that enrolled beneficiaries do not receive services that duplicate *My Health GPS* services, as described in this chapter, through any other Medicaid-funded program.

10207 REIMBURSEMENT

10207.1 DHCF shall reimburse *My Health GPS* entities for services described in § 10206 using a per member per month (PMPM) payment structure.

- 10207.2 DHCF shall establish two (2) distinct PMPM rates. The PMPM rate for higher acuity (Group Two) beneficiaries shall be higher than the PMPM rate for lower acuity (Group One) beneficiaries, reflecting the greater anticipated needs of Group Two beneficiaries for *My Health GPS* services and the additional *My Health GPS* provider staff required to serve Group Two beneficiaries.
- 10207.3 DHCF shall use a nationally-recognized risk adjustment tool to determine the acuity level of each beneficiary. Based upon the results of the analysis, DHCF shall place the beneficiary into the appropriate acuity group.
- 10207.4 A *My Health GPS* entity may request re-determination of a beneficiary's assigned acuity level as follows:
- (a) If re-determination is requested, a *My Health GPS* entity shall submit clinical documentation of a significant change in the beneficiary's health status to DHCF in the manner specified in the *My Health GPS* manual; and
 - (b) If the documentation submitted in accordance with the *My Health GPS* manual by the *My Health GPS* entity is complete, DHCF shall re-determine the beneficiary's acuity level in accordance with the procedure set forth in § 10207.3.
- 10207.5 DHCF shall provide the *My Health GPS* entity with written notification of the results of the re-determination described in § 10207.4, including a copy of the re-determination analysis.
- 10207.6 The base PMPM rates for both Group One and Group Two beneficiaries shall be established based on the staffing model described in §§ 10205.3 through 10205.5, and adjusted to take into account regional salaries, including fringe benefits. The rates shall also take into account the average expected service intensity for beneficiaries and shall be determined in accordance with the requirements of 42 USC § 1396a(a)(30)(A).
- 10207.7 Two (2) payment enhancements shall be added to the base PMPM rates for both Group One and Group Two beneficiaries to:
- (a) Reflect the *My Health GPS* provider's overhead or administrative costs; and
 - (b) Support the *My Health GPS* provider in procuring, using, or modifying health information technology.
- 10207.8 DHCF shall review the PMPM rates for both Group One and Group Two beneficiaries on an annual basis to ensure that both rates are consistent with requirements set forth in 42 USC § 1396a(a)(30)(A).

- 10207.9 The PMPM rates for both Group One and Group Two beneficiaries shall be listed in the D.C. Medicaid fee schedule, available at: www.dc-medicaid.com.
- 10207.10 In order to receive an initial PMPM payment for an eligible beneficiary, a *My Health GPS* provider shall:
- (a) Inform the beneficiary about available *My Health GPS* program services;
 - (b) Obtain the beneficiary's informed consent to receive *My Health GPS* program services in writing; and
 - (c) Complete the following components of the person-centered plan of care in accordance with the standards for Comprehensive Care Management set forth in § 10206.3:
 - (1) Conduct an in-person needs assessment in accordance with § 10206.3(a);
 - (2) Enter available clinical information and information gathered at the in-person needs assessment into the person-centered plan of care which shall include individualized goals pursuant to § 10206.3(b)(4); and
 - (3) Retain documentation demonstrating the delivery of each of the activities described in (1) and (2) above.
- 10207.11 In order to receive a subsequent PMPM payment for an eligible beneficiary, a *My Health GPS* provider shall complete the person-centered plan of care in accordance with the standards set forth in § 10206.3, provide a copy of the completed plan of care to the beneficiary, and deliver at least one (1) *My Health GPS* program service to the beneficiary within the calendar month as follows:
- (a) For Group One beneficiaries, the service(s) provided during the month may be delivered face to face or remotely; and
 - (b) For Group Two beneficiaries, at least one (1) service provided during the month shall be delivered face to face.
- 10207.12 Each *My Health GPS* provider shall document each program service and activity provided in each beneficiary's EHR. Any Medicaid claim for program services shall be supported by written documentation in the EHR which clearly identifies the following:

- (a) The specific service(s) rendered and descriptions of each identified service sufficient to document that each service was provided in accordance with the requirements set forth in § 10206;
- (b) The date and time the service(s) were rendered;
- (c) The *My Health GPS* provider staff member who provided the services;
- (d) The setting in which the service(s) were rendered;
- (e) The beneficiary’s person-centered plan of care provisions related to the service(s) provided; and
- (f) Documentation of any further action required for the beneficiary's well-being as a result of the service(s) provided.

10207.13 Each claim for a *My Health GPS* service shall meet the requirements of § 10206 and shall be documented in accordance with § 10207.12 in order to be reimbursed.

10208 QUALITY REPORTING REQUIREMENTS

10208.1 Each *My Health GPS* entity shall report to DHCF, quarterly, on the following two (2) measure sets:

- (a) CMS “Core Set of Health Care Quality Measures for Health Home Programs” which may be located at the CMS website at: <https://www.medicaid.gov/state-resource-center/medicaid-state-technical-assistance/health-homes-technical-assistance/downloads/health-home-core-set-manual.pdf>, in accordance with 42 USC § 1396w-4(g); and
- (b) The performance measures set forth in the table below:

My Health GPS Pay-for-Performance Measures				
Measure Name	Measure Domain	National Quality Forum Number	Steward	Description

<p>1.Total Resource Use</p>	<p>Efficiency</p>	<p>1598</p>	<p>Health Partners</p>	<p>A risk adjusted measure of the frequency and intensity of services utilized by <i>My Health GPS</i> beneficiaries. Resource use includes all resources associated with treating <i>My Health GPS</i> beneficiaries including professional, facility inpatient and outpatient, pharmacy, lab, radiology, ancillary and behavioral health services.</p>
<p>2. Total Cost of Care</p>	<p>Efficiency</p>	<p>1604</p>	<p>Health Partners</p>	<p>A risk adjusted measure of <i>My Health GPS</i> entity’s cost effectiveness at managing <i>My Health GPS</i> beneficiaries. Total cost of care includes all costs associated with treating <i>My Health GPS</i> beneficiaries including professional, facility inpatient and outpatient, pharmacy, lab, radiology, ancillary and behavioral health services.</p>
<p>3. Plan All-Cause Readmission</p>	<p>Utilization</p>	<p>1768</p>	<p>NCQA</p>	<p>For <i>My Health GPS</i> patients eighteen (18) years of age and older, the number of acute inpatient stays during the measurement year that were followed by an acute readmission for any diagnosis within thirty (30) calendar days and the predicted probability of an acute readmission. Data is reported in the following categories:</p> <ol style="list-style-type: none"> 1. Count of Index Hospital Stays (denominator) 2. Count of thirty (30)-Day Readmissions (numerator) 3. Average adjusted Probability of Readmission

4. Potentially Preventable Hospitalization	Utilization	N/A	Agency for Healthcare Research and Quality	Percentage of inpatient admissions among <i>My Health GPS</i> beneficiaries for specific ambulatory care conditions that may have been prevented through appropriate outpatient care.
5. Low-Acuity Non-Emergent Emergency Department Visits	Utilization	N/A	DHCF	Percentage of avoidable low-acuity non-emergent ED visits among <i>My Health GPS</i> beneficiaries.
6. Reconciled Medication List	Process	0646	American Medical Association-Physician Consortium for Performance Improvement	Percentage of <i>My Health GPS</i> beneficiaries, regardless of age, discharged from an inpatient facility (<i>e.g.</i> , hospital inpatient or observation, skilled nursing facility, or rehabilitation facility) to home or any other site of care, or their caregiver(s), who received a reconciled medication list at the time of discharge.
7. Timely Transmission of Transition Record	Process	0648	American Medical Association-Physician Consortium for Performance Improvement	The percentage of <i>My Health GPS</i> beneficiaries, regardless of age, discharged from an inpatient facility (<i>e.g.</i> , hospital inpatient or observation, skilled nursing facility, or rehabilitation facility) to their home or any other site of care for whom a transition record was transmitted to the <i>My Health GPS</i> entity within twenty-four (24) hours of discharge.

10208.2 DHCF shall notify *My Health GPS* entities of any changes in the performance measures or measure specifications in § 10208.1(b) through transmittals issued to *My Health GPS* entities at least ninety (90) days before the reporting of the data required for the measure begins.

10208.3 The baseline measurement period to determine the initial attainment and individualized improvement thresholds for measures outlined in § 10208.1(b) shall begin July 1, 2017 and end on June 30, 2018.

- 10208.4 All subsequent attainment and individualized improvement thresholds shall be determined for measures outlined in § 10208.1(b) on an annual basis from January 1 through December 31, unless otherwise specified by DHCF.
- 10208.5 Each *My Health GPS* entity shall utilize certified EHR technology to collect and report all data required for the quality measures described in §§ 10208.1(a) and 10208.1(b).
- 10208.6 Each *My Health GPS* entity shall submit hybrid data as required by CMS and DHCF in accordance with protocols outlined in the *My Health GPS* provider manual.
- 10208.7 Each *My Health GPS* entity shall report each sentinel event to DHCF within twenty-four (24) hours of occurrence in accordance with the procedure set forth in the *My Health GPS* provider manual.
- 10208.8 Each *My Health GPS* entity may also be required to submit an annual program evaluation report to DHCF, which may include, but is not limited to, the following components:
- (a) The *My Health GPS* entity's approach to delivering services;
 - (b) Barriers to the current delivery of *My Health GPS* services;
 - (c) Interventions unique to the *My Health GPS* entity; and
 - (d) Strategies to improve future delivery of *My Health GPS* services.

10209 INCENTIVE PAYMENTS

- 10209.1 DHCF shall administer two (2) incentive payment programs for *My Health GPS* entities, as follows:
- (a) A person-centered plan of care incentive payment program, as described in § 10209.2; and
 - (b) A pay-for-performance incentive program, as described in §§ 10209.3 through 10209.13.
- 10209.2 During the first (1st) quarter of the first year of the *My Health GPS* program, all *My Health GPS* entities shall be eligible for a single incentive payment for each eligible beneficiary to support development of the person-centered plan of care. In order for an entity to receive the incentive payment, its *My Health GPS* provider(s) shall meet all requirements of § 10207.10 within the first ninety (90) calendar days following the program implementation date.

- 10209.3 Each *My Health GPS* entity shall participate in the *My Health GPS* pay-for-performance incentive program for all four (4) quarters of each measurement year. If an entity is not enrolled in the *My Health GPS* program for all four (4) quarters of a measurement year, the following provisions regarding participation in the pay-for-performance incentive program apply:
- (a) If a *My Health GPS* entity enrolls in the *My Health GPS* program after the first day of the first quarter of the measurement year, the entity shall not be eligible for the performance payment described in § 10209.13 for that measurement year, but shall receive the full amount of the percentage withheld for that measurement year, as described in § 10209.6; and
 - (b) If a *My Health GPS* entity is enrolled in the *My Health GPS* program on the first (1st) day of the first quarter of the measurement year but is no longer enrolled in the program on the last day of the last quarter of the measurement year, the entity shall not be eligible for either the performance payment described in § 10209.13 or any portion of the percentage withheld for that measurement year, as described in § 10209.6.
- 10209.4 A *My Health GPS* entity's performance in the pay-for-performance incentive program will be assessed against the entity's attainment or individualized improvement thresholds developed during the periods outlined in §§ 10208.3 and 10208.4.
- 10209.5 DHCF shall inform all *My Health GPS* entities of the attainment and individualized improvement thresholds for each of the measures outlined in § 10208.1(b) prior to the start of each measurement year of the pay-for-performance incentive program.
- 10209.6 The first (1st) measurement year for the pay-for-performance incentive program shall begin on October 1, 2018. *My Health GPS* entities shall be subject to a percentage withheld from every PMPM payment for services rendered during the measurement year, as follows:
- (a) Measurement Year One (Fiscal Year 2019): Ten percent (10%);
 - (b) Measurement Year Two (Fiscal Year 2020): Fifteen percent (15%); and
 - (c) Measurement Year Three (Fiscal Year 2021) and all subsequent performance periods: Twenty percent (20%).
- 10209.7 *My Health GPS* entities shall be assessed based on either attainment or improvement on the measures described in § 10208.1(b) on an annual basis for the pay-for-performance incentive program. If a *My Health GPS* entity did not meet or exceed its attainment threshold, then DHCF shall assess whether the *My*

Health GPS entity met or exceeded its individualized improvement threshold. The following guidelines are set forth below:

- (a) A *My Health GPS* entity must meet or exceed the seventy-fifth (75th) percentile based on the attainment threshold; or
- (b) A *My Health GPS* entity must demonstrate a statistically significant improvement based on the individualized improvement threshold. A statistically significant improvement has a probability of 0.05 that the improvement was not due to random error. DHCF shall perform the appropriate statistical analysis (*e.g.*, t-test) to determine that the performance between measurement years is a result that cannot be attributed to chance.

10209.8 DHCF shall provide written notification of the attainment and individualized improvement thresholds to each *My Health GPS* entity after all measures are received and validated for the pay-for-performance incentive program.

10209.9 A *My Health GPS* entity may opt to aggregate its beneficiary population with another *My Health GPS* entity's population for the purposes of calculating attainment or improvement on any of the required measures described in § 10208.1(b) in the pay-for-performance incentive program subject to the following conditions:

- (a) Each *My Health GPS* entity shall notify DHCF of its selection of the aggregation option no later than September 1st prior to the measurement year;
- (b) *My Health GPS* entities opting to aggregate their populations together shall do so for calculation of all measures during a given baseline or measurement year;
- (c) *My Health GPS* entities opting to aggregate their populations together must do so for calculation of all measures during a given baseline or measurement year;
- (d) Each *My Health GPS* entity shall report data that is identifiable for the *My Health GPS* entity's individual performance, along with the aggregated data;
- (e) A *My Health GPS* entity shall elect the option to aggregate annually and may change its selection, including opting against pooling or opting to pool with a different *My Health GPS* entity, on an annual basis; and
- (f) When a *My Health GPS* entity has opted to aggregate beneficiaries, performance is measured for the aggregated *My Health GPS* entity

throughout the duration of the measurement year unless one (1) of the aggregated entities withdraws from the *My Health GPS* program during the measurement year. If one (1) of the *My Health GPS* entities that has opted to aggregate beneficiaries withdraws before the measurement year is complete, the remaining *My Health GPS* entity’s performance will be measured based on the remaining *My Health GPS* beneficiaries.

10209.10 For each measurement year, the maximum amount of funding available to qualifying *My Health GPS* entities for the pay-for-performance incentive program shall be equal to one and one-half (1.5) times the measurement year withhold amount percentage, as outlined in § 10209.6.

10209.11 To determine the *My Health GPS* entity’s annual performance in the pay-for-performance incentive program, DHCF shall score each participating *My Health GPS* entity’s performance in three (3) measurement domains. This scoring will be determined as follows:

- (a) A maximum of one hundred (100) points will be awarded to each *My Health GPS* entity’s across the efficiency, utilization, and process domains described in § 10208.1(b);
- (b) Each measure in the domain is assigned points by dividing the total points by the number of measures in each domain. Points for each domain are described in the table set forth in (c);
- (c)

<i>My Health GPS</i> Entity Performance Measure Point Distribution Methodology			
	Measurement Year 1 (FY 2019)	Measurement Year 2 (FY 2020)	Measurement Year 3 and on (FY 2021 -)
Total Efficiency Domain Points <i>(allowed points per measure)</i>	50 <i>(25)</i>	50 <i>(25)</i>	50 <i>(25)</i>
Total Utilization Domain Points	36 <i>(12)</i>	50 <i>(16.66)</i>	50 <i>(16.66)</i>
Total Process Domain Points	14 <i>(7)</i>	0	0
Total Performance Points	100	100	100

- (d) Points for each measure shall be awarded in cases where a *My Health GPS* entity meets either the attainment or improvement threshold based on the

prior measurement year's performance as described below:

- (1) A *My Health GPS* entity shall receive points if it met or exceeded the seventy-fifth (75th) percentile attainment benchmark;
 - (2) A *My Health GPS* entity performing below the attainment benchmark may be able to receive the allowed points per measure as described in (c) for each measure if it has met or exceeded its improvement threshold described in § 10209.7(b); and
 - (3) If a *My Health GPS* entity neither attains nor improves performance on a given measure, zero (0) points will be awarded for that measure;
- (e) The amount of the incentive payment that a *My Health GPS* entity shall be eligible to receive shall be calculated as follows:
- (1) Sum points awarded for each measure in the domain to determine the domain totals;
 - (2) Sum domain totals to determine total performance points;
 - (3) Divide total performance points by the maximum allowed points to determine the performance period percentage; and
 - (4) The amount in (3) shall be multiplied by one and one-half (1.5) times the performance period withhold amount for the *My Health GPS* entity, calculated in accordance with the withhold amount percentage for the measurement year, as set forth in § 10209.6.

10209.12 If *My Health GPS* entities have aggregated beneficiaries together for determination of performance in the pay-for-performance incentive program, the award percentage for the aggregated entities shall be applied to each *My Health GPS* entity's maximum incentive payment amount to determine the *My Health GPS* entities performance award individually.

10209.13 Beginning with FY2019, and annually thereafter, performance payments for the pay-for-performance incentive program shall be calculated and distributed after the conclusion of each measurement year once all measures are calculated and have been validated for each *My Health GPS* entity.

10210 AUDITS AND REVIEWS

10210.1 DHCF shall perform audits of *My Health GPS* entities to ensure that Medicaid payments for *My Health GPS* services are consistent with efficiency, economy

and quality of care, and made in accordance with federal and District conditions of payment.

- 10210.2 DHCF audits of *My Health GPS* entities shall be conducted when necessary to investigate and maintain program integrity.
- 10210.3 DHCF shall perform audits of claims submitted by *My Health GPS* entities, including using statistically valid scientific sampling, to determine the appropriateness of *My Health GPS* services rendered and billed to Medicaid to ensure that Medicaid payments can be substantiated by documentation that meets the requirements set forth in § 10207.12 and are made in accordance with all requirements of this chapter and all other applicable federal and District laws.
- 10210.4 If DHCF determines that any claim(s) submitted by a *My Health GPS* entity were not submitted in accordance with all requirements of this Chapter and all other applicable federal and District laws, DHCF shall deny the identified claim(s) and recoup those monies erroneously paid to a *My Health GPS* entity following the period of Administrative Review, as set forth in § 10210.6.
- 10210.5 If DHCF recoups monies erroneously paid to a *My Health GPS* entity for denied claims, DHCF shall issue a Proposed Notice of Medicaid Overpayment Recovery (PNR) to the *My Health GPS* entity, which sets forth the reasons for the recoupment, the amount to be recouped, and the procedures and timeframes for requesting an Administrative Review of the PNR.
- 10210.6 The *My Health GPS* entity shall have thirty (30) calendar days from the date of the PNR to request an Administrative Review, which may be extended for good cause. The *My Health GPS* entity may submit documentary evidence and written argument against the proposed action to DHCF in the request for an Administrative Review. If the *My Health GPS* entity fails to respond to the PNR within thirty (30) calendar days or by the extended deadline if good cause has been granted, DHCF shall issue a Final Notice of Medicaid Overpayment Recovery (FNR), which shall include the procedures and timeframes for requesting an appeal.
- 10210.7 DHCF shall review the documentary evidence and written argument submitted by the *My Health GPS* entity against the proposed action described in the PNR. After this review, DHCF may cancel its proposed action, amend the reasons for the proposed recoupment and adjust the amount to be recouped. DHCF shall then issue a FNR, which shall include the procedures and timeframes for requesting an appeal.
- 10210.8 The *My Health GPS* entity may appeal the FNR by filing a written hearing request with the Office of Administrative Hearings within fifteen (15) calendar days from the date of the FNR. The written notice requesting an appeal shall include a copy of the FNR, description of the item to be reviewed, the reason for review of the

item, the relief requested, and any documentation in support of the relief requested.

- 10210.9 Filing an appeal shall not stay any action to recover any overpayment.
- 10210.10 In lieu of the off-set of future Medicaid payments, the *My Health GPS* entity may choose to send a certified check made payable to the District of Columbia Treasurer in the amount of the funds to be recouped within thirty (30) calendar days following the period of Administrative Review as set forth in § 10210.6.
- 10210.11 Each *My Health GPS* entity shall allow access to all relevant records and program documentation during an on-site audit or review to DHCF, its designee, other authorized District of Columbia government officials, the Centers for Medicare and Medicaid Services (CMS), and representatives of the United States Department of Health and Human Services.
- 10210.12 Each *My Health GPS* entity shall facilitate audits and reviews by maintaining the required records and by cooperating with the authorized personnel assigned to perform audits and reviews.

10211 MY HEALTH GPS SANCTIONS, WITHDRAWAL AND TERMINATION

- 10211.1 DHCF may determine at any time during a *My Health GPS* entity's enrollment in the program that the entity has failed to meet one (1) or more requirements of program participation, and may request the submission of a Corrective Action Plan (CAP) to remedy the identified issue(s). All *My Health GPS* entities shall be required to submit a proposed Corrective Action Plan (CAP) under circumstances including, but not limited to, the following:
- (a) Failure to meet any requirements set forth in this chapter;
 - (b) Failure to comply with all terms of the D.C. Medicaid Provider Agreement; or
 - (c) Failure to meet any quality standards using the measures described in § 10208.1.
- 10211.2 If DHCF identifies a *My Health GPS* entity's non-compliance in any of the areas described in § 10211.1, DHCF shall notify the entity of the identified issue(s) and a timeframe for submission of a proposed CAP to remedy the issue(s).
- 10211.3 If a *My Health GPS* entity is notified of a non-compliance issue as set forth in § 10211.2 and fails to submit a proposed CAP within the timeframe identified in the notification, DHCF shall notify the entity of the failure to submit the proposed CAP and may impose the following sanctions:

- (a) Deny further assignments of beneficiaries;
- (b) Deny incentive payments as described in §10209.1;
- (c) Seek repayment from the *My Health GPS* entity for services rendered during the time period of non-compliance; or
- (d) Terminate the entity's participation in the *My Health GPS* program.

10211.4 A proposed CAP shall include, at minimum, the following components:

- (a) A comprehensive statement of the non-compliance issue identified in the notice issued pursuant to § 10211.2;
- (b) The entity's proposed course of action for resolving the identified non-compliance issue;
- (c) Identification of the staff members responsible for resolving the issue;
- (d) Timeframes for execution of the proposed course of action; and
- (e) Designation of reporting periods for providing updates to DHCF.

10211.5 DHCF shall review each proposed CAP to determine whether it meets all requirements set forth in § 10211.4.

10211.6 If an entity's proposed CAP fails to meet any of the requirements set forth in § 10211.4, DHCF shall notify the entity of the identified deficiencies in the proposed CAP and provide a timeframe in which the CAP must be re-submitted.

10211.7 Once the proposed CAP meets all requirements set forth in § 10211.4, DHCF shall approve the CAP and monitor the entity's progress towards timely correction of all deficiencies. If the *My Health GPS* entity fails to resolve the deficiencies, DHCF may impose the sanctions described in § 10211.3.

10211.8 If DHCF determines that any of the actions set forth in §§ 10211.3 or 10211.7 are necessary, DHCF shall issue a notice to the entity containing the following information:

- (a) A clear statement of the intended action;
- (b) The effective date of the intended action;
- (c) An explanation of the reason(s) for the intended action;

- (d) Specific reference to the particular sections of the statutes, regulations or provider manual supporting the intended action; and
 - (e) Information regarding the entity's right to dispute the allegations and to submit evidence to support his or her position.
- 10211.9 The *My Health GPS* entity may submit documentary evidence to refute DHCF's argument for imposition of an alternative sanction within thirty (30) days of the date of the notice described in § 10211.8.
- 10211.10 DHCF may extend the thirty (30) day period prescribed in § 10211.10 for good cause on a case-by-case basis.
- 10211.11 If DHCF determines that any of the actions set forth in §§ 10211.3 or 10211.7 is necessary after the *My Health GPS* entity has issued a response under § 10211.9, DHCF shall issue a final notice to the entity at least fifteen (15) days before the imposition of the alternative sanction, including the following information:
- (a) The reason for the decision;
 - (b) The effective date of the sanction;
 - (c) Information regarding the right to appeal the decision by filing a hearing request with the Office of Administrative Hearings and the timeframe and procedures for filing a hearing request; and
 - (d) If applicable, information regarding the transfer of beneficiaries to another *My Health GPS* entity and the timeframe for completing the transfer.
- 10211.12 If the *My Health GPS* entity files a hearing request with the Office of Administrative Hearings within fifteen (15) days of the date of the notice described in § 10211.11, then the effective date of the proposed action shall be stayed until the Office of Administrative Hearings has rendered a final decision.
- 10211.13 If a *My Health GPS* entity wishes to withdraw from the program or to remove a provider from the *My Health GPS* portion of its D.C. Medicaid Provider Agreement, the entity shall take the following action:
- (a) If the entity wishes to withdraw from the program, the entity shall give ninety (90) days written notice of the intended withdrawal to DHCF, which includes a comprehensive plan to transfer all of the entity's affected beneficiaries to another *My Health GPS* provider or entity; and
 - (b) If the entity wishes to remove a provider from the *My Health GPS* portion of its D.C. Medicaid Provider Agreement, the entity shall give ninety (90) days written notice of the intended removal to DHCF, which includes a

comprehensive plan to transfer all of the entity's affected beneficiaries to another *My Health GPS* provider or entity and execute a modified *My Health GPS* Agreement.

10299 DEFINITIONS

Beneficiary - An individual deemed eligible for and in receipt of services provided through the District Medicaid program.

Corporate Entity – An organization that holds a single Employer Identification Number, as defined in 26 CFR § 301.7701-12.

Fair Hearing – A procedure whereby the District provides an opportunity for a hearing to any person whose claim for assistance is denied consistent with the requirements set forth in 42 CFR §§ 431.200 *et seq.*

Federally Qualified Health Center - An organization that meets the definition set forth in Section 1905(1)(2)(B) of the Social Security Act (42 USC § 1396d(1)(2)(B)).

District Fiscal Year - A twelve (12) month period beginning on October 1st and ending on September 30th.

Hybrid Data – A combination of administrative data (*i.e.* claims, encounters, and vital records) and clinical data contained in medical records.

My Health GPS Entity – A primary care clinical individual practice, primary care clinical group practice, or Federally Qualified Health Center currently enrolled as a District Medicaid provider that incorporates a *My Health GPS* provider into its primary care service delivery structure.

My Health GPS Provider – An approved interdisciplinary team that delivers *My Health GPS* services within a *My Health GPS* entity.

Opt Out – The process by which a beneficiary chooses not to participate in the *My Health GPS* program.

Outreach - Active and progressive attempts at beneficiary engagement, including direct communication (*i.e.*, face-to-face, mail, email, telephone) with the beneficiary or the beneficiary's designated representative.

Performance Period – A full District fiscal year, beginning in Fiscal Year 2019.

Sentinel Event – Any unanticipated event in a healthcare setting resulting in death or serious physical or psychological injury to a patient and which is not related to the natural course of the patient's illness.

Transition Record - The document containing information regarding a patient's diagnosis and treatment received during an inpatient stay that is transmitted to relevant providers following the patient's discharge.

Comments on the proposed rule shall be submitted, in writing, to Claudia Schlosberg, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, N.W., Suite 900S, 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 after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-145
June 14, 2017

SUBJECT: Appointment — Interim Director, Office of Disability 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.), and by section 4 of the Disability Rights Protection Act of 2006, effective March 8, 2007, D.C. Law 16-239; D.C. Official Code § 2-1431.03(c) (2016 Repl.), it is hereby **ORDERED** that:

1. **CHRISTINA MITCHELL** is appointed Interim Director, Office of Disability Rights, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2015-246, dated November 16, 2015.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to June 12, 2017.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

**ACHIEVEMENT PREPARATORY PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS**

SPED and Custodial Services

Achievement Prep PCS is seeking competitive bids for the following services:

- 1) Custodial Services
- 2) Special Education and Mental Health Services

Please find RFP specifications at www.achievementprep.org under “News”. Proposals must be received by 5:00PM on Friday, July 7, 2017. Please send proposals to bids@achievementprep.org and include “RFP for Custodial Services” or “RFP for SPED Services” in the heading as appropriate.

**DISTRICT OF COLUMBIA
OFFICE OF THE MAYOR
OFFICE ON AGING**

NOTICE OF FUNDING AVAILABILITY

Fiscal Year 2018 Lead Agency – Senior Wellness Center Ward 8 Competitive Grant

The DCOA seeks to award grants to community-based organizations to provide a full range of services in Ward 8. The service scope for this RFA includes providing a ward-based continuum of services for 1) active seniors engaging them in prevention health and education, and intergenerational volunteer supporting by programs; 2) specialized services to people with disabilities (ages 18 to 59) to easily access resources and support services needed to effectively navigate long-term care options to remain independent and connected to the community; and 3) services to homebound and isolated seniors linking them to needed supports that prevent

Funding is available for one applicant to serve Ward 8 in the District of Columbia. A total of \$1,373,467 is available through the DC Office on Aging from both Federal and District appropriated funds.

The purpose of these funds is to complement existing educational services and start up programs that target the senior population living in the District of Columbia. Examples of the service areas include, but are not limited to the following:

- case assessment/case management;
- congregate meals;
- counseling;
- health promotion;
- home delivered meals;
- nutrition counseling;
- nutrition education;
- recreation socialization;
- transportation of home-delivered meals;
- transportation to site and activities;
- weekend congregate meals;
- weekend home delivered meal service;
- disease prevention and medication management; and
- Provide operational oversight for Congress Heights Senior Wellness Center located at 3500 Martin Luther King Jr., Avenue 20032

In addition, the operator of the Lead Agency and Congress Heights Senior Wellness Center has the following responsibilities:

1. Develop and implement a needs assessment to identify the needs in the target community;

2. Ensure coordination and cooperation between the Ward 8 community, Lead Agency, and Senior Wellness Center;
3. Develop and implement a structured community outreach program; and
4. Establish a Members Advisory Council to serve as advisors to help develop a coordinated service delivery system; and
5. Engage in person-centered training and practices in providing services to participants.

Applicants who apply to this Request for Application must design services to meet the complex and ever-changing needs of the elderly individuals with the greatest economic and/or social needs, with particular emphasis on the low-income minority elderly.

Nonprofit organizations with places of business within the physical boundaries of the District of Columbia are eligible to apply. For-Profit organizations with places of business within the physical boundaries of the District of Columbia are also eligible to apply, but must not include profit-making activities in their grant application.

The RFA will be released on June 26, 2017. A pre-application conference will be held June 30, 2017, 2:00 p.m. at the DC Office on Aging, first floor conference room, and the deadline for submission is August 7, 2017, at 4:30 p.m. Applications can be obtained from the D.C. Office on Aging, 500 K Street, NE, Washington, DC 20002. The RFA will also be available on the DC Office of Aging's website, www.dcoa.dc.gov and the Office of Partnerships and Grants website, www.opgd.dc.gov.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, JUNE 28, 2017
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Jake Perry, Donald Isaac, Sr.

- Protest Hearing (Status)** **9:30 AM**
Case # 17-PRO-00027; 2012 9th Street Café, LLC, t/a Garden State, 2012 9th Street NW, License #105646, Retailer CT, ANC 1B
Application for a New License
This hearing has been continued to July 19, 2017 at 9:30 am.
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-CMP-00024; Notta Bike or Bar, LLC, t/a Meridian Pint, 3400 11th Street NW, License #80606, Retailer CT, ANC 1A
No ABC Manager on Duty
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-CC-00027; Capitol Market, LLC, t/a Capitol Market, 2501 North Capitol Street NE, License #91021, Retailer B, ANC 5E
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-CMP-00063; TGR, Inc., t/a Cities DC, 1909 K Street NW, License #77812, Retailer CR, ANC 2B
Failed to File Quarterly Statements
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-CC-00017; Minnesota Store, LLC, t/a Minnesota Store, 3728 Minnesota Ave NE, License #95245, Retailer B, ANC 7F
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Board's Calendar

June 28, 2017

Show Cause Hearing (Status) 9:30 AM

Case # 16-CMP-00793; M & M Beer & Wine, Inc., t/a M & M Market, 3544 East Capitol Street NE, License #78461, Retailer B, ANC 7F
No ABC Manager on Duty

Show Cause Hearing (Status) 9:30 AM

Case # 17-CC-00034; Pester John's Corporation, t/a Wisemillers Grocery & Deli, 1236 36th Street NW, License #5950, Retailer B, ANC 2E
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Show Cause Hearing (Status) 9:30 AM

Case # 17-CMP-00043; Matchbox, LLC, t/a The Matchbox, 711-713 H Street NW, License #60581, Retailer CT, ANC 2C
No ABC Manager on Duty

Show Cause Hearing (Status) 9:30 AM

Case # 17-CMP-00230; Pica Taco, Inc., t/a Pica Taco, 1406 Florida Ave NW License #85707, Retailer DR, ANC 1B
No ABC Manger on Duty

Show Cause Hearing* 10:00 AM

Case # 16-CC-00163; Foggy Bottom Grocery, LLC, t/a FoBoGro, 2140 F Street NW, License #82431, Retailer B, ANC 2A
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age, No ABC Manager on Duty

Show Cause Hearing* 11:00 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 Ave, No ABC Manager on Duty

BOARD RECESS AT 12:00 PM

ADMINISTRATIVE AGENDA

1:00 PM

Protest Hearing* 1:30 PM

Case # 16-PRO-00116; Green Island Heaven & Hell, Inc., t/a Green Island Café/Heaven & Hell (The), 2327 18th Street NW, License #74503, Retailer CT ANC 1C

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, JUNE 28, 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-015251 – **1720 Club** – Retail – C – Nightclub – No Location
[Licensee did not pay Safekeeping fee within 30 days of approval.]

ABRA-071333 – **The 51st State Tavern** – Retail – C – Tavern – 2512 L Street NW
[Licensee did not pay Safekeeping fee within 30 days of approval.]

ABRA-089394 – **Buckeye + Bear** – Retail – C – Nightclub – 1730 M Street NW
[The licensee has requested cancellation.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, JUNE 28, 2017 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request for Change of Hours. *Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:* Sunday-Thursday 11am to 2am, Friday-Saturday 11am to 3am. *Proposed Hours of Operation:* Sunday-Thursday 11am to 3am, Friday-Saturday 11am to 4:30am. ANC 5C. SMD 5C07. The Establishment has a pending Protest and a pending Show Cause Hearing. No conflict with Settlement Agreement. *Sip*, 1812 Hamlin Street NE, Retailer CT, License No. 095164.

2. Review Request for Change of Hours inside premises and for Entertainment Endorsement. *Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:* Sunday-Thursday 11am to 2am, Friday-Saturday 11am to 3am. *Approved Hours of Live Entertainment:* Sunday-Thursday 7pm to 12am, Friday-Saturday 7pm to 1am. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:* Sunday-Thursday 10am to 2am, Friday-Saturday 10am to 3am. *Proposed Hours of Live Entertainment:* Sunday-Thursday 6pm to 2am, Friday-Saturday 6pm to 3am. ANC 2B. SMD 2B08. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Local 16*, 1600 U Street NW, Retailer CR, License No. 060467.

3. Review Request for Change of Hours for Summer Garden. *Approved Hours of Operation and Alcoholic Beverage Sales and Consumption for Summer Garden:* Sunday-Saturday 11am to 11pm. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Summer Garden:* Sunday-Saturday 8am to 11pm. ANC 6E. SMD 6E02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *BKK Cookshop*, 1700 New Jersey Avenue NW, Retailer CR, License No. 086393.

4. Review Application for Sidewalk Café with seating for 50 patrons. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Sidewalk Café:* Sunday-Thursday 10am to 10:30pm, Friday-Saturday 10am to 12am. ANC 6E. SMD 6E01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *French Quarter Brasserie*, 1544 9th Street NW, Retailer CT, License No. 106136.

-
5. Review Application for Entertainment Endorsement to provide Live Entertainment. ***Proposed Hours of Entertainment:*** Sunday -Saturday 7pm to 12am. ANC 6E. SMD 6E01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***French Quarter Brasserie***, 1544 9th Street NW, Retailer CT, License No. 106136.
-

6. Review Application for Tasting Permit. ANC 1A. SMD 1A08. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Giant Liquors***, 3504 Georgia Avenue NW, Retailer A Liquor Store, License No. 074791.
-

***In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

CARLOS ROSARIO PUBLIC CHARTER SCHOOL**REQUEST FOR QUOTES****Achieve 3000 Subscription Software**

Carlos Rosario School seeks RFQ for continuation of our Achieve 3000 subscription software. We are seeking cost proposals for this solution or a comparable differentiated learning solution. Quotes are due via email to Gwen Ellis gellis@carlosrosario.org by COB June 30, 2017. To receive a copy of the RFQ, contact Gwen Ellis at 202-797-4700.

CENTER CITY PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS****School Bus Purchase**

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

Center City PCS would like to purchase a school bus to provide transportation for students from six charter schools located in the District of Columbia. The goal is to acquire two school buses to transport students for school events and activities throughout the year.

To obtain copies of full RFPs, please visit our website: www.centercitypcs.org/contact/request-for-proposal. The full RFPs contain guidelines for submission, applicable qualifications, and deadlines.

Contact Person:

Mr. Kelly Dickens

kdickens@centercitypcs.org

CITY ARTS & PREP PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****Student Assessment and Professional Development Services**

City Arts & Prep Public Charter School intends to enter into a sole source contract with The Achievement Network for student assessment and professional development services to help identify and close gaps in student learning for the upcoming school year.

- City Arts & Prep Public Charter School constitutes the sole source for The Achievement Network for student assessment services and professional development that will lead to student achievement.
- For further information regarding this notice contact bids@ingenuityprep.org no later than **3:00 pm, July 3, 2017**.

**D.C. CRIMINAL CODE REFORM COMMISSION
NOTICE OF PUBLIC MEETING**

**WEDNESDAY, JULY 5, 2017 AT 2:00 PM
441 4TH STREET N.W., ROOM 1112, WASHINGTON, D.C., 20001**

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, July 5, 2017 at 2pm. The meeting will be held in Room 1112 of the Citywide Conference Center on the 11th Floor of 441 Fourth St., N.W., Washington, DC. The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or richard.schmechel@dc.gov.

MEETING AGENDA

- I. Welcome and Announcements
- II. Discussion Items:
 - a. Advisory Group Written Comments on:
 - i. Second Draft of Report No. 2, Recommendations for Chapter 2 of the Revised Criminal Code—Basic Requirements of Offense Liability
 - ii. First Draft of Report No. 5, Recommendations for Chapter 8 of the Revised Criminal Code—Offense Classes & Penalties
 - b. First Draft of Report No. 6, Recommendations for Chapter 8 of the Revised Criminal Code—Penalty Enhancements
 - c. Advisory Group Memo No. 10—Penalty Enhancements
 - d. First Draft of Report No. 7, Recommendations for Chapter 3 of the Revised Criminal Code—Definition of a Criminal Attempt
 - e. Advisory Group Memo No. 11—Definition of a Criminal Attempt
- III. Adjournment.

DC INTERNATIONAL PUBLIC CHARTER SCHOOL**INVITATION FOR BID****Accounting Services & Leadership Search Firm**

RFP for Accounting Services: DC International School is seeking competitive bids for Accounting services. Accounting firms will be required to do payroll, produce monthly financial and board reports, create yearly budgets, analyze monthly financial results, preparation and support for auditing, monitor and report on \$50m plus facilities financing with complex debt, perform grant reporting, and be intimately familiar with charter school operations. DCI will open SY 17-18 with approximately 800 students. Bids must include evidence of experience in field, qualifications and estimated fees. If interested, please request a full scope from rfp@dcinternationalschool.org. Proposals must be received no later than the close of business Friday, July 7, 2017.

RFP for Leadership Search Firm: DC International School is seeking proposals from qualified Executive Search Firms to assist in their national search efforts for the selection of an Educational Leader. The Search Firm should specialize in recruitment for senior level positions in the public education industry. Bids must include evidence of experience in field, qualifications and estimated fees. Please send proposals to rfp@dcinternationalschool.org. Proposals must be received no later than the close of business Friday, July 7, 2017.

EAGLE ACADEMY PUBLIC CHARTER SCHOOL**INVITATION FOR BID****Bread Distributor**

Eagle Academy PCS is advertising the opportunity to bid on the delivery of bread products to children enrolled at the school for the 2017-2018 school year with a possible extension of (2) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **6/23/17** from **Vernal Crooms at (202) 469-9994** or vcrooms@eagleacademypcs.org:

Proposals will be accepted at **3400 Wheeler Road, SE, Washington, DC 20032** on **7/14/17**, no later than **2 p.m.**

All bids not addressing all areas as outlined in the IFB will not be considered.

EDUCARE DC
REQUEST FOR PROPOSALS

Janitorial Services

Educare DC is soliciting proposals for comprehensive janitorial services. **Proposals are due no later than 5:00 PM on July 24, 2017.** The complete RFP with supporting documentation can be obtained from the school's website – www.educaredc.org or contacting by email:

Dianna Washington

Administrative Manager

dWASHINGTON@educaredc.org

Requested Services

Educare DC is seeking competitive proposals from organizations to provide comprehensive janitorial services for our organization. Educare DC is a 501(c) 3 organization based in a new state-of-the-art facility in the Parkside-Kenilworth neighborhood of Ward 7. The school currently serves 157 low-income children (ages 6 weeks to 5 years) and their families with a high quality, research-based early childhood program.

Assumptions and Agreements

Proposals will not be returned. Educare DC reserves the right to dismiss a proposal without providing a reason. Educare DC reserves the right to terminate a contract at any time.

Submission Information

Proposals must include all requested information indicated in the official RFP. Please send final proposals to dWASHINGTON@educaredc.org.

Basis for Award of Contract

Educare DC reserves the right to award a contract as it determines to be in the best interest of the school.

Locally-Owned, Minority-Owned, Female-Owned and Small Businesses are encouraged to apply.

Proposals must be received by July 24, 2017, 5:00PM EST. Late proposals will not be accepted.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDING AVAILABILITY (NOFA)

FISCAL YEAR 2018

DC Environmental Literacy Advancement Grant (ELAG)

Request for Applications (RFA) Release Date: July 21, 2017

The Office of the State Superintendent of Education (OSSE), Division of Health and Wellness, is soliciting applications for the District of Columbia Environmental Literacy Advancement Grant pursuant to the Environmental Literacy Program Amendment Act of 2016, amending the Healthy Schools Act of 2010 (D.C. Law 18-209; D.C. Code § 38-825.02). The Act establishes an environmental literacy program within OSSE to promote environmental literacy in DC public schools and requires OSSE to establish an Environmental Literacy Leadership Cadre, comprised of teachers from DC public elementary schools, which shall be responsible for implementing the DC Environmental Literacy Plan in accordance with OSSE guidance. The purpose of the grant is to increase the capacity of nonprofit and community-based organizations (CBOs) to provide environmental education programs to District elementary schools represented in the 2017-19 Environmental Literacy Leadership Cadre and alumni schools.

Eligibility: OSSE will make this grant available through a competitive process. Eligible applicants must be nonprofits or CBOs with 501(c)(3) status.

Award Period: The grant period begins Oct. 2, 2017 and ends on Sept. 30, 2019.

Available Funding for Award: The total funding available for this award period is \$800,000. For the 2018 fiscal year, the total amount of anticipated funding is \$400,000.

An external review panel or panels will be convened to review, score, and rank each application. The review panel(s) will be composed of neutral, qualified, professional individuals selected for their expertise, knowledge or related experiences. The application will be scored against a rubric and application will have multiple reviewers to ensure accurate scoring. Upon completion of its review, the panel(s) shall make recommendations for awards based on the scoring rubric(s). OSSE's Division of Health and Wellness will make all final award decisions.

For additional information regarding this grant competition, please contact:

Grace Manubay
Environmental Literacy Coordinator
Division of Health and Wellness, Office of the State Superintendent of Education
Grace.Manubay@dc.gov

The RFA and all supporting documents will be available on <http://grants.osse.dc.gov> or by contacting Grace Manubay at Grace.Manubay@dc.gov.

ELSIE WHITLOW STOKES COMMUNITY FREEDOM PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Multiple Services**

Elsie Whitlow Stokes PCS invites all interested and qualified vendors to submit proposals for the below services. Proposals are due no later than 12 PM, June 30, 2017. The RFP with bidding requirements and supporting documentation can be obtained by contacting procurement@ewstokes.org

Advertising and Marketing Services, Assessment and Instructional Data Support and Services, Insurance, Classroom Furniture, Fixtures, and Equipment, Computer Hardware and Software, Computers, Curriculum Materials, Utilities-Electricity, etc, Information Technology Equipment and Services, Instructional Support Services, IT Supplies, Janitorial Supplies/Services, Outdoor/Play space Furniture, Fixtures and Equipment, Printer and Copier Services, School Supplies, Special Education and Therapeutic Services, Special Education Assessment and Textbooks, Transportation Services

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 (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6851) to Advance Auto Inc., to operate one (1) reverse flow automotive paint spray booth at the facility located at 1850 Adams St NE, Washington, DC 20018. The contact person for the facility is Asfaw Woldegebriel at (240) 636-8080.

Emissions Estimate:

AQD estimates that the potential to emit volatile organic compounds (VOC) from the automotive paint spray booth will not exceed 3.12 tons per year.

The proposed emission limits are as follows:

- a. No chemical strippers containing methylene chloride (MeCl) shall be used for paint stripping at the facility. [20 DCMR 201.1]
- b. The Permittee shall not use or apply to a motor vehicle, mobile equipment, or associated parts and components, an automotive coating with a VOC regulatory content calculated in accordance with the methods specified in this permit that exceeds the VOC content requirements of Table I below. [20 DCMR 718.3]

Table I. Allowable VOC Content in Automotive Coatings for Motor Vehicle and Mobile Equipment Non-Assembly Line Refinishing and Recoating

Coating Category	VOC Regulatory Limit As Applied*	
	(Pounds per gallon)	(Grams per liter)
Adhesion promoter	4.5	540
Automotive pretreatment coating	5.5	660
Automotive primer	2.1	250
Clear coating	2.1	250
Color coating, including metallic/iridescent color coating	3.5	420
Multicolor coating	5.7	680
Other automotive coating type	2.1	250
Single-stage coating, including single-stage metallic/iridescent coating	2.8	340
Temporary protective coating	0.50	60
Truck bed liner coating	1.7	200

Coating Category	VOC Regulatory Limit As Applied*	
	(Pounds per gallon)	(Grams per liter)
Underbody coating	3.6	430
Uniform finish coating	4.5	540

*VOC regulatory limit as applied = weight of VOC per volume of coating (prepared to manufacturer's recommended maximum VOC content, minus water and non-VOC solvents)

- c. Each cleaning solvent present at the facility shall not exceed a VOC content of twenty-five (25) grams per liter (twenty-one one-hundredths (0.21) pound per gallon), calculated in accordance with the methods specified in this permit, except for [20 DCMR 718.4]:
 - 1. Cleaning solvent used as bug and tar remover if the VOC content of the cleaning solvent does not exceed three hundred fifty (350) grams per liter (two and nine-tenths (2.9) pounds per gallon), where usage of cleaning solvent used as bug and tar remover is limited as follows:
 - A. Twenty (20) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with four hundred (400) gallons or more of coating usage during the preceding twelve (12) calendar months;
 - B. Fifteen (15) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with one hundred fifty (150) gallons or more of coating usage during the preceding twelve (12) calendar months; or
 - C. Ten (10) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with less than one hundred fifty (150) gallons of coating usage during the preceding twelve (12) calendar months;
 - 2. Cleaning solvents used to clean plastic parts just prior to coating or VOC-containing materials for the removal of wax and grease provided that non-aerosol, hand-held spray bottles are used with a maximum cleaning solvent VOC content of seven hundred eighty (780) grams per liter and the total volume of the cleaning solvent does not exceed twenty (20) gallons per consecutive twelve-month (12) period per automotive refinishing facility;
 - 3. Aerosol cleaning solvents if one hundred sixty (160) ounces or less are used per day per automotive refinishing facility; or
 - 4. Cleaning solvent with a VOC content no greater than three hundred fifty (350) grams per liter may be used at a volume equal to two-and-one-half percent (2.5%) of the preceding calendar year's annual coating usage up to a maximum of fifteen (15) gallons per calendar year of cleaning solvent.
- d. The Permittee may not possess either of the following [20 DCMR 718.9]:

1. An automotive coating that is not in compliance with Condition (b) (relating to coating VOC content limits); and
 2. A cleaning solvent that does not meet the requirements of Condition (c) (relating to cleaning solvent VOC content limits).
- e. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]
- f. Visible emissions shall not be emitted into the outdoor atmosphere from the paint booth. [20 DCMR 201.1, 20 DCMR 606, and 20 DCMR 903.1]

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available 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, P.E.
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 July 24, 2017 will be accepted.

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

IDEA PUBLIC CHARTER SCHOOL**INVITATION FOR BID****Food Service Management Services**

IDEA Public Charter School is advertising the opportunity to bid on the delivery of paper good and small kitchen equipment to children enrolled at the school for the 2017-2018 school year with a possible extension of (4) one year renewals. All kitchen items must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on 6/23/17 from **Nicole Seward at 202-399-4750 or www.ideapcs.org**.

Proposals will be accepted at **1027 45th Street, NE, Washington, DC 20019** on **7/14/17**, not later than **2 p.m.**

All bids not addressing all areas as outlined in the IFB will not be considered.

KIPP DC PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS****Interior Renovation**

KIPP DC is soliciting proposals from qualified vendors for Interior Renovation. The RFP can be found at <https://www.kippdc.org/procurement>. Proposals should be uploaded to the website no later than 5:00 PM EST, on July 5, 2017. Questions can be addressed to lorraine.ramos@kippdc.org and jsalsbury@pmmcompanies.com.

NOTICE OF INTENT TO ENTER SOLE SOURCE CONTRACTS**Supplemental Health Care Services**

KIPP DC intends to enter into a sole source contract with One Medical for supplemental health care services. The decision to sole source is due to the provider's unique service model offering one-of-a-kind flexibility, accessibility, and personalized service to our staff. The cost of the contract will be approximately \$76,950.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-21**

March 3, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-21

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

On February 13, 2017, you submitted a FOIA request to MPD seeking “all records related to the theft of Jarrod Sharp’s Honda Civic in 2002.” On February 14, 2017, MPD contacted you requesting proof of your identity and clarification of your request to assist the MPD’s search for responsive records. On February 16, 2017, you responded to MPD to inquire about the status of your request, providing neither proof of identification nor clarification.

On February 16, 2017, MPD denied your request. In its denial, MPD explained that information about private citizens in law enforcement records involves personal privacy concerns protected by D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C). MPD asserted, as a result, that it does not disclose specific law enforcement records without authorization from the subject of the request. MPD claims that under FOIA it would not disclose records about you to a third party without authorization; therefore, MPD did not disclose records about you to you without proof of your identification. Additionally, MPD asserts that your request did not sufficiently describe the records sought because you failed to provide any of the following details: the complaint number, the date of the incident, the location of the incident, or any specific vehicle identifying information.

You appealed MPD’s denial, contending that MPD unlawfully placed your request on hold and MPD improperly denied your request because DC FOIA does not require proof of identification for FOIA requests. On February 24, 2017, MPD sent this Office its response to your appeal.¹ In its response, MPD reasserted §§ 2-534(a)(2) and (a)(3)(C) stating that, without proof of identification to show authorization for release, the disclosure of law enforcement records would

¹ A copy of MPD’s response is attached.

Mr. Jarrod Sharp
Freedom of Information Act Appeal 2017-21
March 3, 2017
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amount to an unwarranted invasion of privacy. Further, MPD reasserts that the request did not provide sufficiently detailed information.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this appeal is whether the law enforcement records relating to the specific theft of a vehicle are exempt from disclosure under DC FOIA because releasing them, without authorization, would constitute an unwarranted invasion of privacy.

D.C. Official Code § 2-534(a)(2) (“Exemption 2”) provides an exemption from disclosure for “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is determining whether a sufficient privacy interest exists. *Id.*

Similarly, D.C. Official Code § 2-534(a)(3)(C) (“Exemption 3”) exempts disclosure of information contained in “[i]nvestigatory records compiled for law-enforcement purposes” that would “[c]onstitute an unwarranted invasion of privacy.” Exemption 3 lacks the key word “clearly” that is contained in Exemption 2, and therefore is a broader privacy privilege. Here, the standard of Exemption 3 applies because MPD’s records related to stolen vehicles are compiled for law enforcement purposes.

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep’t of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep’t. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Moreover, there is a sufficient privacy interest in recorded witness statements. *See Fitzgibbon v. CIA*, 911 F.2d 755, 767 (1990) (finding a “‘strong interest’ of individuals, whether they be suspects, witnesses, or investigators, ‘in not being associated unwarrantedly with alleged criminal activity.’”). As a result, this Office finds that there is a substantial privacy interest in MPD’s records pertaining to a stolen vehicle.

Mr. Jarrod Sharp
Freedom of Information Act Appeal 2017-21
March 3, 2017
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Further, this Office finds that redaction of personally identifiable information in the records would not sufficiently protect privacy interests due to the specificity of the request. As the subject of the requested records, you would be able to waive your privacy interest in the records, provided your ability to prove your identity. Ordinarily, proof of identity is not required to submit a FOIA request; however, in this instance MPD requested that you verify your identity to prove your ability to waive the privacy protection of Exemption 3.

The second part of a privacy analysis of Exemption 3 examines whether the individual privacy interest is outweighed by the public interest. The Supreme Court has stated that this analysis must be conducted with respect to the central purpose of FOIA, which is

‘to open agency action to the light of public scrutiny.’” *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of ‘full agency disclosure unless information is exempted under clearly delineated statutory language,’ *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens’ right to be informed about “what their government is up to.” Official information that sheds light on an agency’s performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency’s own conduct.

Reporters Comm. for Freedom of Press, 489 U.S. at 772-773.

Courts have consistently held that the purpose of FOIA is to inform citizens of “what their government is up to.” *Id.* “This inquiry . . . should focus not on the general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld.” *Schrecker v. United States Dep’t of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (internal citations omitted). Information is deemed valuable under FOIA when it would permit public scrutiny of an agency’s behavior or performance. *Id.* at 666.

You have not articulated any interest in favor of disclosure. As a result, there is a cognizable privacy interest and no countervailing public interest. Further, you have not provided to MPD sufficient authorization to waive the privacy interest of the records. As a result, MPD properly withheld the records pursuant to Exemption 3(C). Having determined that Exemption 3 prohibits disclosure of responsive records, we need not address whether your request reasonably described the records sought.

Mr. Jarrod Sharp
Freedom of Information Act Appeal 2017-21
March 3, 2017
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Conclusion

Based on the foregoing, we affirm MPD's decision.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2017-22 & 2017-23**

March 3, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Requests 2017-22, 2017-23

Dear Mr. Sharp:

This letter responds to the administrative appeals¹ you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the District Department of Transportation (“DDOT”) failed to timely respond to requests for records that you sent to DDOT.

Background

On February 13, 2017, you submitted two requests to DDOT: one for all records relating to yourself and the other for all records related to a specific notice of infraction and superior court case. On February 14, 2017, DDOT requested clarification to your requests and placed the requests on hold. On February 16, 2017, you appealed DDOT’s action, claiming that “DDOT has unlawfully placed this request on-hold [sic].”

When this Office notified DDOT of your appeal, DDOT responded that it had received your initial requests only a few days before, and that it had not denied your requests. Specifically, DDOT noted that it reached out to you on February 14, 2017, asking you to clarify your broad search requests. This communication was made pursuant to 1 DCMR § 402.5. In accordance with this regulation, DDOT placed your requests on hold, pending clarification from you as to what you are seeking. On February 14, 2017, you responded to DDOT and limited your request for records relating to yourself to all records created in a 2-year period. When DDOT asked you to specify further, you declined to narrow the terms of your request, stating “[t]he request stands as written.” You did not respond to DDOT’s attempt to clarify your request for records related to the notice of infraction and court case.

Analysis

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who

¹ These appeals have been consolidated into one determination because both involve the same agency and a similar issue.

Mr. Jarrod Sharp
Freedom of Information Act Appeals 2017-22, 2017-23
March 3, 2017
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represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

This Office’s jurisdiction is limited to reviewing a District agency’s denial of the right to inspect public records. *See* D.C. Official Code §2-537. DDOT’s position is that your right to inspect records was neither expressly nor constructively denied.

DDOT’s decision to place your requests on hold to seek clarification is not an unlawful denial but rather in accordance with applicable statutes and regulations. The DC FOIA mandates that agencies respond to “request[s] reasonably describing any public record.” D.C. Official Code § 2-532(c). The District of Columbia Municipal Regulations further clarify how an agency should respond to a request that does not reasonably describe a public record. The FOIA officer is supposed to contact the requester for additional information. 1 DCMR § 402.5. DDOT’s February 14, 2017 communication was made pursuant to 1 DCMR § 402.5 in an attempt to clarify overly broad and confusing requests. The deadline for responding to an overly broad request is suspended until the FOIA officer receives additional information that reasonably describes the public records sought. 1 DCMR § 405.6. As a result, DDOT was acting in accordance with 1 DCMR § 405.6 when it placed your requests on hold pending clarification.

Under D.C. Official Code § 2-532(e), a constructive denial occurs when an agency fails to respond within the timing requirements established in D.C. Official Code §§ 2-532(c) and (d). Because DDOT’s FOIA Officer did not receive your request until February 13, 2017, the agency was still within its statutory timeframe to respond to your request when you filed your appeal. Therefore, at the time of filing, you had not yet been constructively denied.

Your request for “any and all documents and e-mails that refer or relate to” yourself does not reasonably describe a public record. *Dale v. IRS*, 238 F. Supp. 2d 99, 104 (D.D.C. 2002) (describing a request for all records about a requester as: “Such a request does not describe the records sought with ‘reasonably sufficient detail’ in light of both statutory guidance and case law.”) Instead, your request asks public officials to comb through every single agency record that, without any guidance in identifying the context in which a public agency would be discussing or interacting with a private citizen. This Office agrees with DDOT, that your request for records about yourself is overly broad. Limiting the search to all records created or maintained by an agency over a 2-year period did not cure your deficient request. DDOT is not obligated to conduct a search until you have provided additional information that reasonably describes a public record, as your request is not considered received by the agency until you have furnished additional information. 1 DCMR §§ 402.5, 405.6.

Mr. Jarrod Sharp
Freedom of Information Act Appeals 2017-22, 2017-23
March 3, 2017
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DDOT was also correct to place your request for documents relating to a specific notice of infraction on hold. As DDOT indicated to you via email on February 14, 2017, notices of infractions are not documents maintained by DDOT. By choosing to not provide context to your request of DDOT for a record that it does not normally maintain, you have asked the agency to conduct a fishing expedition for a separate agency's records in the hopes that something exists. *See Truitt v. Dep't of State*, 897 F.2d 540, 545 (1990 (“A ‘description’ of a requested document would be sufficient if it enabled a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort.”)) This request of yours does not reasonably describe a public record maintained by DDOT, and DDOT does not have to conduct a search absent your compliance with the regulations. 1 DCMR §§ 402.5, 405.6.

DDOT was obligated to provide you with “[e]very reasonable effort . . . to assist in the identification and location of requested records.” 1 DCMR § 402.5. DDOT has surpassed this burden, responding to you promptly by email, and offering to discuss the matter with you in person or over the phone. Nevertheless, on February 14, you declined to provide additional information to further clarify your request for records related to yourself beyond limiting the scope of the search to a 2-year period. You have declined to clarify in any way your request regarding the notice of infraction. Your requests will resume being processed once you have provided information “sufficient to permit the identification and location of the record . . . without an unreasonable amount of effort.” 1 DCMR 402.5

Conclusion

In light of the foregoing, we hereby dismiss your appeals as prematurely filed; however, the dismissal is without prejudice to you to assert any challenge, by separate appeals, to DDOT's subsequent response or failure to respond once you have narrowed your searches to reasonable ones.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Karen Calmeise, Hearings/FOIA Officer, DDOT (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-24**

March 10, 2017

VIA ELECTRONIC MAIL

Jarrold Sharp

RE: FOIA Appeal 2017-24

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Motor Vehicles ("DMV") improperly withheld records you requested under the DC FOIA.

Background

On February 14, 2017, you submitted a request to the DMV for all records related to a notice of infraction and a Superior Court case. Additionally, you request communications among DMV employees that related to "Jarrod Sharp." Finally, you requested "the ex parte communication sent by DC DMV to the Superior Court." The DMV responded to your request on February 23, 2017, providing you with all the responsive records to the first part of your request. However, the DMV informed you that no responsive records were found for communications among DMV staff or ex parte communications. The DMV informed you that it was charging production fees pursuant to District regulations under 1 DCMR 408.1(c).

On February 24, 2017, you appealed¹ the DMV's response challenging the adequacy of the DMV's search, specifically related to the ex parte communication with the court, and you renewed your request for a fee waiver. You assert that there was an ex parte communication because "the Court confirms receipt of the communication and used its contents to rule in the ... case."

The DMV provided its response to your appeal to this office on February 28, 2017.² The DMV's response reiterates that all responsive documents pertaining to the notice of infraction and the Superior Court case were disclosed. The response also asserts that the individual employees mentioned in the request were queried and no further responsive documents were found.

¹ You filed an additional appeal of the same request on March 3, 2017, again challenging the adequacy of DMV's search. It is unclear why you filed the additional appeal while the initial appeal was pending. The additional appeal is incorporated in this decision.

² A copy of the DMV's declaration is attached.

Mr. Jarrod Sharp
Freedom of Information Act Appeal 2017-24
March 10, 2017
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Regarding the ex parte communication, the DMV asserts that no such record exists; rather, the DMV provided its file to the court clerk and a copy of the Order

Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Com’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of your appeal is that DMV did not conduct an adequate search for the records you requested related to ex parte communications. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.*

Mr. Jarrod Sharp
Freedom of Information Act Appeal 2017-24
March 10, 2017
Page 3

Here, the DMV denies that any ex parte communication was made in the case that is the subject of your request. Regarding your claim that “the Court confirms receipt of the communication,” the DMV offers the explanation the the communication received by the court was the file customarily provided to the court’s clerk. Additionally, all responsive documents related to the notice of infraction and Superior Court were disclosed, and the DMV queried all of the individual employees named in the request. Therefore, DMV has identified the relevant record repositories likely to contain responsive documents and has searched them. As a result, we conclude that DMV has conducted an adequate search.

Regarding your fee waiver request, prior determinations have found that the jurisdiction of administrative appeals does not encompass fee disputes unless the fee amount is deemed a constructive denial.³ Here, the \$9.00 fee charged by the DMV is authorized by District regulations under 1 DCMR 408.1(c). You have not presented any evidence that the \$9.00 fee amounts to a constructive denial of your request, as a result we find that we lack jurisdiction to consider the DMV’s decision regarding your request for a fee waiver.

Conclusion

Based on the foregoing, we affirm the DMV’s decision and hereby dismiss your appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Kelly J. Davis, Assistant General Counsel, DMV (via email)

³ See e.g., Freedom of Information Act Appeal 2014-04, Freedom of Information Act Appeal 2013-56, Freedom of Information Act Appeal 2013-26, Freedom of Information Act Appeal 2012-30, Freedom of Information Act Appeal 2012-21.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-25**

March 13, 2017

VIA ELECTRONIC MAIL

Mr. G. Harold Christian

RE: FOIA Appeal 2017-25

Dear Mr. Christian:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal you assert that the Office of the Chief Financial Officer ("OCFO") insufficiently responded to a request you submitted to OCFO on October 7, 2016.

Upon receiving your appeal on February, 28 2017, this Office notified OCFO and requested that it provide us with a response. On March 6, 2016, OCFO sent this Office correspondence explaining that the records you seek were provided to you. In your appeal you noted that you had requested records on "cash" and that the records provided to you said "non cash instruments." The OCFO clarified to this Office that despite the name, the chart OCFO provided you listing "non cash instruments" is inclusive of what you requested.¹ OCFO has further offered to provide you with additional records if you are able to specify what you are seeking. We accept OCFO's representation that it is not withholding records from you.

This Office's jurisdiction is limited to reviewing the withholding of records. D.C. Official Code § 2-537(a). Having found that OCFO has not withheld records from you, we hereby dismiss this matter.

This is the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Stacie Mills, Assistant General Counsel, OCFO (via email)

¹ OCFO's communications with this Office are attached for your review.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-26**

March 17, 2017

VIA ELECTRONIC MAIL

Mr. Mark Eckenwiler

RE: FOIA Appeal 2017-26

Dear Mr. Eckenwiler:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”), alleging that the District Department of Transportation (“DDOT”) failed to respond to a request you submitted to DDOT.

Background

In specific, you contend that you submitted a FOIA request to DDOT by email on February 2, 2017, and that as of the date of your appeal (March 3, 2017), “DDOT has made no response of any kind other to [sic] acknowledge receipt of the request (via email on Feb. 2 from Karen R. Calmeise, Esq.)” You further contend that DDOT’s failure to timely respond to your request constitutes a denial thereof.

This Office notified DDOT of your appeal and asked the agency to respond. On March 14, 2017, DDOT sent this Office a response, including a copy of an email exchange between DDOT and you that occurred on February 2 and 3, 2017.¹ The email exchange indicates that upon receiving your request on February 2, 2017, DDOT’s FOIA officer, Ms. Calmeise, responded an hour later by acknowledging your request and asking you to submit it on the District government’s online FOIA portal. You responded to Ms. Calmeise the same day, asking, “May I construe this response as a denial?” The following morning, February 3, 2017, Ms. Calmeise replied, “No, just forwarding you the online link in order to have you put your request into the FOIA system . . . This is not a denial. Your input insures that the request is not mistyped or input in error. I am in the office now if you wish or need clarification.”

Ms. Calmeise asserts that you did not respond to her February 3, 2017 email, and that DDOT should not be construed as having denied your request because Ms. Calmeise specifically stated in her last email to you that your request was not being denied. Ms. Calmeise further indicates that DDOT is in the process of responding to your request.

¹ Copies of the documents DDOT sent are attached.

Mr. Mark Eckenwiler
Freedom of Information Act Appeal 2017-26
March 17, 2017
Page 2

Analysis

FOIAXpress, the online portal through which Ms. Calmeise requested you submit your FOIA request, was launched by the District government in 2014 to provide FOIA requesters with a centralized system to submit FOIA requests and appeals to various District agencies. The system allows FOIA officers to track and respond to requests, and it allows FOIA requesters to check the status of their submissions and read frequently-requested public records. There is no requirement that a FOIA request be submitted through FOIAXpress in order to be processed; however, it is the District government's preferred method for processing requests, and agencies are encouraged to use the system to ensure that requests are timely and properly addressed.

The day after you emailed your request to Ms. Calmeise, she informed you - in response to your query - that DDOT had not denied your request. She also invited you to contact her for clarification, presumably if you were unwilling or unable to enter the request into FOIAXpress. Because the two of you were engaged in an ongoing email exchange, we find it understandable that Ms. Calmeise interpreted your lack of response to mean that you would be entering your request into the portal or that you had decided not to pursue it. In either event, we disagree with your position that DDOT "made no response of any kind" to you other than to acknowledge receipt of your request on February 2, 2017.

Conclusion

The failure of a public body to comply with a request within the statutory timeframe shall be deemed a denial of the request under D.C. Official Code § 2-532(e). When an agency fails to disclose a public record, the Mayor shall compel the agency to do so. *See* D.C. Official Code § 2-537. Here, DDOT has indicated to this Office that it is searching for responsive documents and will send them to you within 5 business days of the date of this decision. Based on this representation, we dismiss your appeal as moot; provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to DDOT's substantive response.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Karen R. Calmeise, Esq., Hearings/FOIA Officer, DDOT (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-27**

March 13, 2017

VIA ELECTRONIC MAIL

Mr. Joshua Louria

RE: FOIA Appeal 2017-27

Dear Mr. Louria:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal you assert that the Deputy Mayor for Education ("DME") insufficiently responded to a request you submitted to DME on February 8, 2017.

After you filed your appeal, DME addressed your concerns. You subsequently withdrew your appeal in an email to this Office sent on March 6, 2017.

We acknowledge that the appeal has been withdrawn and as a result this Office will not issue a substantive decision.

Sincerely,

Mayor's Office of Legal Counsel

cc: Catherine Peretti, OCFO (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-28**

March 20, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod S. Sharp

RE: FOIA Appeal 2017-28

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal is based on a FOIA request you submitted to the District of Columbia Public Schools ("DCPS"). You allege in your appeal that DCPS' determination with respect to your request was "utterly unresponsive."

In response to your appeal, DCPS advised this Office that a DCPS employee assisted you in retrieving the information you were seeking. You then sent an email to this individual indicating that you were rescinding your appeal.¹

Since you have withdrawn your appeal, this Office will not be issuing a substantive decision on the matter.

Respectfully,

Mayor's Office of Legal Counsel

cc: Eboni Govan, Attorney Advisor, DCPS (via email)

¹ A copy of this email exchange is attached.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-29**

March 20, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-29

Dear Mr. Sharp:

This letter responds to two administrative appeals you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeals, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

These appeals are closely related to the decision in FOIA Appeal 2017-21, which this Office issued on March 3, 2017. In FOIA Appeal 2017-21, we upheld MPD’s decision to deny your FOIA request for “all records related to the theft of Jarrod Sharp’s Honda Civic in 2002” because you failed to demonstrate authorization for the release of records implicating personal privacy and you failed to sufficiently specify your request for MPD to conduct a search. On the same day that the decision in FOIA Appeal 2017-21 was issued, you submitted a new request to MPD for the same records. For the subsequent request, you included additional information that the theft took place near Dupont Circle. On March 6, 2017, MPD denied your renewed request for the same reasons that it denied your prior request. You filed an appeal on the same day, stating that the MPD should “redact any information deemed to be personal or confidential.”

On March 17, 2017, while your appeal was pending, you filed another request to MPD for the same records. Again, you further refined your request stating that the theft took place “in or about March 2002.” In this request you also “solemnly affirm” that you are in fact Jarrod Sharp. On the same day, MPD closed your request as duplicative. Also on the same day, you appealed MPD’s response. This appeal only stated: “Appeal improper and unlawful denial.”

Regarding your first renewed appeal, FOIA Appeal 2017-21 already addressed your argument about the redaction of personal information. Due to the specificity of the request it is not possible to use redaction to protect the privacy interest at issue. The remedy for such a specific request would be to demonstrate authorization from the individual whose privacy interests are at stake, in this case “Jarrod Sharp.” Merely writing in your request that you personally affirm your identity as “Jarrod Sharp” is neither adequate proof of identity nor sufficient authorization to waive the privacy interests in the records. As a result, the responsive records, if any exist, would necessarily be withheld in their entirety.

Mr. Jarrod Sharp
Freedom of Information Act Appeal 2017-29
March 20, 2017
Page 2

Regarding your second renewed appeal, on its own it does not raise a cognizable argument. Taken in the context of your prior requests and appeals for the same records, it is duplicative and this Office reaches the same conclusion.

Based on the foregoing, we affirm MPD's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-30**

March 20, 2017

VIA REGULAR U.S. MAIL

Mr. Andre M. LaFontaine, III

RE: FOIA Appeal 2017-30

Dear Mr. LaFontaine:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Office of Open Government ("OOG") failed to adequately respond to FOIA requests you submitted to the OOG in July 2016 and January 2017.

Background

This Office reviewed your appeal, including the copies you provided us with of the two FOIA requests at issue. The first request is dated July 7, 2016. The request is not addressed to a specific District official, employee, or agency; rather, the greeting on the letter is "To Freedom of Information Act [sic]." There is also no address on the letter indicating to where you sent it. The request seeks notes, medical records, and letters to and from correctional facilities in Iowa, Oklahoma, Indiana, Wisconsin, and Minnesota. Your second FOIA request is addressed to "The Office of Open Government, Freedom of Information Act."¹ The request seeks a writ of execution of property pertaining to a correctional facility in Iowa as well as transcripts from grand jury proceedings and sentencing hearings.

In response to your second FOIA request, the Office of Open Government advised you that: (1) it has no record of having received your July 2016 request; (2) The OOG does not maintain the records you are requesting of it; and (3) the OOG does not have the authority to compel the release of records from other jurisdictions or federal agencies. As a result, the OOG administratively closed your January 2017 request.

Upon receiving your appeal, this Office notified the OOG and requested that it respond. The OOG explained that it does not maintain the records you are seeking.² Because the OOG does not maintain the records, it could not conduct a search for them.

Discussion

¹ There is no date on the request; however, the OOG indicates that it received it on January 18, 2017.

² A copy of the OOG's response is attached.

Mr. Andre M. LaFontaine
Freedom of Information Act Appeal 2017-30
March 20, 2017
Page 2

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body ...” *Id.* at § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. Under the DC FOIA, an agency is required to disclose public records if they are “retained by a public body.” D.C. Official Code § 2-502(18). Here, as the OOG has advised you, it is an independent office under the Board of Ethics and Government Accountability for the Government of the District of Columbia. The OOG has no affiliation with and does not retain records pertaining to correctional agencies or criminal proceedings.

Conclusion

Based on the foregoing, we affirm the OOG’s decision to administratively close your request and hereby dismiss your appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Traci L. Hughes, Esq., Director, OOG (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-31**

March 21, 2017

VIA ELECTRONIC MAIL

Mr. Michael Ayele

RE: FOIA Appeal 2017-31

Dear Mr. Ayele:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Behavioral Health ("DBH") failed to adequately respond to a request you submitted for your medical records in December of 2016.

In January DBH informed you that FOIA pertains to public records and that DBH would not disclose your individual medical records under FOIA due to the Health Insurance Portability and Accountability Act (HIPAA); however, you had an individual right to receive your medical records after providing DBH with adequate authorization. After you filed your appeal, DBH sent you a reminder of the authorization necessary to receive your medical records. You submitted the authorization to DBH on Saturday, March 18, 2017, and DBH provided you with your medical records Monday, March 20, 2017.

As your appeal was based on DBH's failure to adequately respond to your FOIA request, we consider your appeal to be moot, and it is dismissed. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Matthew Caspari, General Counsel, DBH (via email)
Lauren E. Hnatowski, Assistant General Counsel, DBH (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-32**

March 28, 2017

VIA ELECTRONIC MAIL

Mr. Jesse Regnier

RE: FOIA Appeal 2017-32

Dear Mr. Regnier:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537. In your appeal you assert that the Department of Consumer and Regulatory Affairs ("DCRA") did not respond to a request you submitted to DCRA on January 25, 2017.

After you filed your appeal, DCRA addressed your concerns. You subsequently withdrew your appeal in an email to DCRA sent on March 28, 2017.

We acknowledge that the appeal has been withdrawn and as a result this Office will not issue a substantive decision.

Sincerely,

Mayor's Office of Legal Counsel

cc: Runako Allsopp, DCRA (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-33**

March 22, 2017

VIA ELECTRONIC MAIL

Mr. Walter Lopez

RE: FOIA Appeal 2017-33

Dear Mr. Lopez:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the District Department of Transportation ("DDOT") failed to adequately respond to a request you submitted on January 24, 2017, for records related to a restaurant and address.

On February 13, 2017, DDOT attempted to disclose 105 pages of responsive records with redactions for personal privacy pursuant to D.C. Official Code § 2-534(a)(2). It appears you did not receive DDOT's response, because on March 20, 2017, this office received your appeal which stated that DDOT closed your FOIA request without sending you any correspondence or acknowledgement. After you filed your appeal, DDOT contacted you again and provided this Office with a receipt stating that on March 21, 2017, someone on your behalf physically received the records responsive to your FOIA request from DDOT.

DDOT has demonstrated to this Office that it responded your request. As your appeal was based on DDOT's failure to adequately respond to your FOIA request, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive response DDOT sent.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Karen R. Calmeise, FOIA Officer, DDOT (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-34**

April 3, 2017

VIA EMAIL

Ms. Stacy Amador

RE: FOIA Appeal 2017-34

Dear Ms. Amador:

This letter responds to the administrative appeal submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In the appeal, you assert that the District of Columbia Department of Corrections (“DOC”) did not adequately respond to a request for records under the DC FOIA.

Background

On December 28, 2016, your office submitted a FOIA request, on behalf of Mr. David Stewart, to DOC seeking records related to Mr. Stewart from a three month time period. On February 14, and March 7, 2017, DOC responded by providing responsive medical and psychological records.

This appeal challenges the adequacy of DOC’s search. The appeal asserts that DOC did not provide investigation records and that responsive DOC records should have included an incident form completed on or after November 2, 2016.

DOC provided this Office with a response to your appeal.¹ In its response, DOC describes an additional search that it conducted after your appeal was filed. After conducting this second search, DOC identified two classes of documents it had not found in its previous search: (1) records relating to an ongoing investigation; and (2) records relating to a complaint of sexual harassment. The records relating to sexual harassment were provided to your office but were redacted pursuant to D.C. Official Code § 2-534(a)(2) and (a)(3)(C), and the records relating to the ongoing investigation were withheld in their entirety pursuant to D.C. Official Code § 2-534(a)(3)(A)(i).²

¹ A copy of DOC’s response is attached.

² DOC’s response provides the incomplete citation of “D.C. Code § 2-534(a)(3).” We presume DOC is withholding the responsive records in their entirety pursuant to D.C. Official Code § 2-534(a)(3)(A)(i), which prevents disclosure of investigatory records that would interfere with enforcement proceedings.

Ms. Stacy Amador
Freedom of Information Act Appeal 2017-34
April 3, 2017
Page 2

In response, you have furnished to this Office and DOC a copy of an authorization for release of records, signed by Mr. Stewart.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Search

The primary issue raised by your appeal is whether DOC conducted an adequate search for the records at issue. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in

Ms. Stacy Amador
Freedom of Information Act Appeal 2017-34
April 3, 2017
Page 3

fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Your appeal challenges the adequacy of DOC's search and requests a "more thorough search of records pertaining to ... Mr. David Stewart . . ." On appeal, DOC conducted an additional search and provided to this Office a more detailed description of its search efforts. DOC identified the relevant location for records responsive to investigative records as the Office of Investigative Services. DOC clarified that the type of investigation referenced on appeal is a type of record that is normally maintained in a segregated record system within the Office of Investigative Services, which had not been searched until DOC received additional information. When this segregated system was searched, DOC identified two categories of responsive documents: (1) records relating to an ongoing investigation; and (2) records relating to a complaint of sexual harassment. DOC provided you with a redacted copy of the records pertaining to a complaint of sexual harassment. DOC withheld in its entirety records relating to the ongoing investigation. Based on the description and documentation DOC provided in response to your appeal, we find that the search it conducted was adequate.

Personal Privacy – Reasonable Redaction

DOC redacted the names and other identifiers of third parties in the released report pursuant to D.C. Official Code § 2-534(a)(2) and (a)(3)(C). Summarily, this Office finds redactions of this type to be proper, and to be consistent with past decisions relating to protecting personal privacy interests when releasing records.

Interference with Enforcement Proceedings

The documents being withheld in their entirety are a separate matter. On appeal DOC has cited to "D.C. Code § 2-534(a)(3)" – which without further information is ambiguous. If DOC is instead citing to § 2-534(a)(3)(A)(i), a claim that release would interfere with an ongoing enforcement proceeding, then it must provide more clarity. Location of a record in an investigative file is not enough to prevent disclosure; in order to withhold an investigatory record a release must foreseeably harm an enforcement proceeding. *Crooker v. ATF*, 789 F.2d 64, 65-67 (D.C. Cir. 1986) (finding that agency failed to demonstrate that disclosure would interfere with enforcement proceedings). As a result, we find that DOC has not sufficiently described the potential interference to enforcement proceedings to allow withholding the responsive records in their entirety. Further, it does not appear that DOC addressed the segregability of the withheld records, whether portions may be disclosed without causing the harms contemplated under D.C. Official Code § 2-534(a)(3) et seq.

Conclusion

Based on the foregoing, we affirm DOC's decision in part and remand in part. Within 10 business days from the date of this decision, DOC shall either: (1) provide you with previously withheld records; or (2) clarify to you by letter the nature of each withheld record and the exemption asserted for each such record. This constitutes the final decision of this Office; you may file a separate appeal for a subsequent denial.

Ms. Stacy Amador
Freedom of Information Act Appeal 2017-34
April 3, 2017
Page 4

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Oluwasegun Obebe, Records, Information & Privacy Officer, DOC (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-35**

April 4, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-35

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

This appeal is closely related to the decisions in FOIA Appeals 2017-21 and 2017-29, which this Office issued on March 3, 2017, and March 20, 2017, respectively. In both appeals, we upheld MPD's decision to deny your FOIA requests for records related to the theft of Jarrod Sharp's Honda Civic in 2002. On the same day that the decision in FOIA Appeal 2017-29 was issued, you submitted a new request to MPD for "the incident number (CCN) associated with the theft of Jarrod Sharp's Honda Civic in or about March 2002." On its face this FOIA request is improper because it is a query for specific information rather than a request for records. *See* D.C. Official Code § 2-532(a). If your question were to be interpreted as a valid request, the records sought would be identical to those in FOIA Appeals 2017-21 and 2017-29, records related to the theft of Jarrod Sharp's Honda Civic in 2002. As a result, on March 21, 2017, MPD denied your renewed request as duplicative. You filed an appeal on the same day based on MPD's alleged "unlawful FOIA denial for lack of search and lack of cognizable legal exception."

As stated, the request at issue is improper under FOIA because it asks for specific information rather than government records. Even if a request "is not a model of clarity," agencies are expected to give a reasonable interpretation to the request's terms and overall content. *See, e.g., LaCedra v. EOUSA*, 317 F.3d 345, 347-48 (D.C. Cir. 2003). We find that MPD made a reasonable interpretation concluding that the request at issue here was duplicative of the requests in FOIA Appeals 2017-21 and 2017-29. As a result, MPD properly denied a request that was invalid on its face and duplicative when reasonably interpreted as a valid FOIA request.

Mr. Jarrod Sharp
Freedom of Information Act Appeal 2017-35
April 4, 2017
Page 2

Based on the foregoing, we affirm MPD's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-36**

April 5, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-36

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

On March 20, 2017, you submitted a FOIA request for “a detailed report of all police reports, requested via the FOIA since 1 Jan 2016, that refer, relate, and/or make reference to the identity of the relevant requestor.” Your request further asks that “[f]or each identified instance, please document whether or not identification was requested, and if so, what sort of identification was provided, and, if not, why not. Also, in each case, please detail whether the report was provided to the requestor.”

On March 21, 2017, MPD denied your request, stating that “we do not have a report which is responsive to your request and our databases are unable generate such reports.”

On March 22, 2017, you appealed MPD’s denial, stating, “I hereby appeal the unlawful denial of this FOIA request for the following reasons including but not limited to: lack of adequate search and a lack on [sic] reliance on legal authority. The MPD surely maintains a list of FOIA requests and denials.”

This Office notified MPD of you appeal. MPD responded by reaffirming its position that no responsive records exist.¹ MPD’s response was based on MPD’s FOIA Officer’s “knowledge of the records the FOIA office maintains regarding appeals and of the capabilities of the department’s FOIA request tracking system.”

¹ A copy of MPD’s response is attached.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Search

The primary issue raised by your appeal is whether MPD conducted an adequate search for the records at issue. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Mr. Jarrod Sharp
Freedom of Information Act Appeal 2017-36
April 5, 2017
Page 3

On appeal you state that “The MPD surely maintains a list of FOIA requests and denials.” We first note that the FOIA request on appeal was not for “a list of FOIA requests and denials” but for “a detailed report of all police reports, requested via the FOIA ... that refer, relate, and/or make reference to the identity of the relevant requestor.” Second, speculation that a document exists is not enough for this Office to conclude that MPD’s search was inadequate.

Here the MPD FOIA officer, based on his personal knowledge, stated that no reports of the type requested exist. Because no such report is maintained, MPD did not conduct a search. This was proper because MPD reasonably determined that no relevant record repository existed to search. MPD further represents that their database lacks the capability to produce such a report. We accept MPD’s determinations, and conclude that MPD’s search was adequate.

Creating New Records

Your request more closely resembles an interrogatory or a request for MPD to create a new record. MPD has no obligations under FOIA to create a new record or to answer interrogatories. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency “has no duty either to answer questions unrelated to document requests or to create documents.”); *see also* FOIA Appeal 2014-41. The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009). As a result, MPD is not obligated to create a specific and detailed report for you.

Conclusion

Based on the foregoing, we affirm MPD’s decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-37**

April 6, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-37

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

On March 22, 2017, you submitted a FOIA request for "a list of all full or partial FOIA denials issued by the MPD that were overturned on appeal by the Mayor's Office and/or a court of law." For each denial, you requested a "copy of the Mayor's Office and/or the court's decision and legal rationale."

On March 23, 2017, MPD denied your request, stating that it did not possess a "list or report which is responsive to your request." Additionally, MPD's denial informed you of two sources to obtain administrative appeal decisions, a website and the District of Columbia Register.

On March 23, 2017, you appealed MPD's denial, stating, "I hereby appeal this unlawful FOIA denial for the reasons including, but not limited to, the following: lack of adequate search; lack of legal authority for denial; and arbitrary and capricious application of FOIA requirements. Surely, the MPD maintains a list of recent FOIA decisions that were overturned on appeal."

This Office notified MPD of your appeal. MPD's FOIA officer responded with a statement explaining its determination that no responsive records exist.¹ The FOIA officer's response states "[b]ased on my personal knowledge of the records which are maintained regarding appeals, I know that no list has been created which is responsive to the FOIA request of Mr. Sharp."

Discussion

¹ A copy of the FOIA officer's statement is attached.

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It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Search

The primary issue raised by your appeal is whether MPD conducted an adequate search for the records at issue. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* However, a search for records is unnecessary when it was supported by an agency attestation that a person familiar with the records maintained by the agency determines that no responsive records are maintained. *See Espino v. DOJ*, 869 F. Supp. 2d 25, 28 (D.D.C. 2012) (upholding a decision not to search when agency declarations stated that agency did not maintain requested records); *Thomas v. Comptroller of the Currency*, 684 F. Supp. 2d 29, 33

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(D.D.C. 2010) (affirming a decision not to search when an agency determined that given its system of records, “there was no reasonable expectation of finding responsive documents”).

On appeal you state “[s]urely, the MPD maintains a list of recent FOIA decisions that were overturned on appeal.” You offer no evidence or rational basis to support your speculation that MPD retains responsive documents. In contrast, the MPD FOIA officer asserted in response to your appeal that based on his personal knowledge no records of the type requested exist. Because no such records are maintained, MPD did not conduct a search. This was proper because MPD reasonably determined that no relevant record repository existed to search. We accept MPD’s determinations, and conclude that MPD’s response to your request was adequate.

Creating New Records

An adequate search does not require FOIA officers to act as personal researchers on behalf of requesters. *See, e.g., Bloeser v. DOJ*, 811 F. Supp. 2d 316, 321 (D.D.C. 2011) (“FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters...”); *Lamb v. IRS*, 871 F. Supp. 301, 304 (E.D. Mich. 1994) (finding requests outside scope of FOIA when they require legal research, are unspecific, or seek answers to interrogatories).

Your request more closely resembles an interrogatory or a request for MPD to create a new record. MPD has no obligations under FOIA to create a new record or to answer interrogatories. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency “has no duty either to answer questions unrelated to document requests or to create documents.”); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36. The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009). As a result, MPD is not obligated to create a specific compilation of FOIA determinations for you. MPD has already informed you of two sources where you can obtain decisions for FOIA appeals, and we note that the Office of the Secretary for the District of Columbia posts annual reports on FOIA appeals available at <https://os.dc.gov/page/annual-reports>. None of these resources are created or maintained by MPD; therefore, MPD’s response to your request was adequate.

Conclusion

Based on the foregoing, we affirm MPD’s decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-38**

April 7, 2017

VIA ELECTRONIC MAIL

Mr. Jordan Rau

RE: FOIA Appeal 2017-38

Dear Mr. Rau:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that District of Columbia Public Schools (“DCPS”) improperly withheld records you requested under the DC FOIA.

Background

On February 10, 2017, you submitted a FOIA request for all DCPS documents relating to teachers associated with the LEAP Teacher Professional Development Program.

On March 20, 2017, DCPS granted your request, providing you with responsive documents and directing you to online DCPS school budgets.

On March 22, 2017, you appealed DCPS’s denial, challenging “the integrity of the search for record.” In support of your appeal, you argue that additional responsive documents should exist because of inconsistencies between the records DCPS provided and your personal knowledge of the LEAP program as it relates to a specific school.

This Office notified DCPS of your appeal. DCPS responded¹ by explaining the search that it conducted of the DCPS’s Office of Instructional Practice. DCPS’s response “acknowledges that responsive documentation does exist”² as not all responsive documents were located in the centralized repository that was searched. DCPS explains that the records are not centralized because decisions related to LEAP can be made by principals at the school level, and that schools are not required to report to Office of Instructional Practice in real time. As a result, DCPS proffers that providing you with “100% current and accurate” documentation would be difficult and could amount to the creation of new records, which DCPS is not obligated to do under DC FOIA. DCPS’s response ends by offering to provide additional responsive records if you agree to limit the scope of your request to the schools that you enumerated in your appeal.

¹ DCPS’s response is attached to this decision.

² This Office assumes that this is in addition to what has already been produced.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Search

The primary issue raised by your appeal is whether DCPS conducted an adequate search for the records you are seeking. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in

Mr. Jordan Rau
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fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

On appeal you challenge DCPS's search as incomplete because the records DCPS provided to you are inconsistent with your personal knowledge of a specific school.

Here, the DCPS FOIA officer identified the Office of Instructional Practice as the repository most likely to contain responsive records and conducted a search there. In DCPS's response to this appeal, "DCPS acknowledges that [additional] responsive documentation does exist" and offers an explanation as to why such additional documentation would not be located in the centralized repository at the Office of Instructional Practice; namely, because individual schools are not required to report this information in real time. It does not appear from DCPS's response that DCPS searched for responsive records at the school level, or reached out to school principals to provide responsive documents that reflect the "autonomy to determine LEAP personnel and LEAP structures that work best in [the principal's] unique school environment."

A search is reasonable when it is conducted not just of the repository most likely to contain responsive records, but of all repositories likely to contain responsive records. *Hall v. CIA*, 881 F. Supp. 2d 38, 59 (D.D.C. 2012) ("only searching the databases 'most likely' to contain responsive documents does not satisfy FOIA, as it may preclude record systems that are less likely than others to contain responsive documents, yet may still likely contain them."); *Steinberg v. United States Dep't of the Treasury*, No. 93-2348, slip op. at 8 (D.D.C. Sept. 18, 1995) (declaring that search solely of one repository was inadequate when 'it is reasonable to conclude that additional systems exist,' and that it would not be unduly burdensome to search other systems). Here, DCPS has acknowledged that additional records exist, and has identified where they would be located (maintained at the school level) but has appeared to not have searched these locations. Based on DCPS's representations, we conclude that DCPS's search was inadequate.

A subsequent search conducted by DCPS should be inclusive of all schools, unless you agree to limit the scope of your search in the manner contemplated by DCPS's response. It is our reading of your appeal that you identified specific schools as examples to indicate that the original search was inadequate, and you did not intend to limit your request. DCPS has not argued that your request is overly broad, *see* 1 DCMR § 402.5, and DCPS's offer to provide additional responsive records for specific schools within 3 days indicates to this Office that the type of record requested is identifiable and producible.

Creating New Records

DCPS is obligated to search all record repositories likely to contain a responsive record, but it has no obligation under FOIA to create a new record or to answer interrogatories. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency "has no duty either to answer questions unrelated to document requests or to create documents."). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21

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(D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009). As a result, DCPS is not obligated to create a report for you if one does not already exist.

DCPS expressed concern in its response, that it would have to “engage in follow-up that would include making amendments to documents and databases containing responsive information,” in order to provide “documentation that is 100% current and accurate.” DCPS is not obligated to provide you with information that is current and accurate; instead DCPS is obligated to identify responsive records existing at the time your request was made, and to provide them to you after reviewing them for applicable exemptions. If DCPS would like to update reports to present you with up-to-date information, DCPS is free to do so, but DCPS is not obligated to do so under DC FOIA.

Conclusion

Based on the foregoing, we remand DCPS’s decision. DCPS shall, within the 10 business days of the date of this decision, conduct an additional search using your original search terms (unless you consent to change them) and provide non-exempt responsive records to you on a rolling basis. If no additional responsive records are found from the second search, DCPS shall notify you by letter with a description of the search it conducted. You may challenge DCPS’s subsequent response by filing a separate appeal.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Eboni J. Govan, Attorney Advisor, DCPS (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-39**

March 30, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod S. Sharp

RE: FOIA Appeal 2017-39

Dear Mr. Sharp:

This letter responds to the above-captioned administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal is based on a DC FOIA request you submitted to the Metropolitan Police Department ("MPD"). You allege in your appeal that, among other things, MPD closed your request without any notice.

This Office notified MPD of your appeal on March 27, 2017. The following day, you advised us via email that you were withdrawing your appeal because you received responsive documents from MPD.

Since you have withdrawn your appeal, this Office will not be issuing a substantive decision on the matter.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-40**

April 10, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-40

Dear Mr. Sharp:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

On March 21, 2017, you submitted a FOIA request for “records that refer and/or relate to the MPD’s use of Stingray equipment, and/or other cell site simulators, since 1 January 2010.”

On March 24, 2017, MPD denied your request, stating exemptions pursuant to D.C. Official Code §§ 2-534(a)(1), (2), (3)(C), and (3)(E) prevented disclosure of the records.

On March 27, 2017, you appealed MPD’s denial, stating, “I hereby appeal this unlawful FOIA. The request was closed without any notice. I appeal for the reasons including but not limited to: (1) lack of legal basis for denial; (2) lack of required notice; and (3) lack of adequate search.”

This Office notified MPD of your appeal. MPD’s response reaffirmed its decision to deny your FOIA request and included a statement from a FOIA officer explaining the decision not to search for certain responsive records that would be exempt from disclosure in their entirety.¹

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C.

¹ A copy of MPD’s response and the FOIA officer’s statement are attached.

Mr. Jarrod Sharp
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Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Search

One of the primary issues in your appeal is whether MPD conducted an adequate search for the records at issue. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.*

A similar request to MPD, for records related to Stingray devices, was addressed by this Office in FOIA Appeal 2015-37. In response to the request in FOIA Appeal 2015-37, MPD withheld some records in their entirety and produced several other records with redactions pursuant to exemptions under D.C. Official Code §§ 2-534(a)(1), (a)(2), (a)(3)(E), and (6). In contrast, MPD’s response here was to withhold all records in their entirety. Further, MPD now claims that a search for responsive records is not required because any responsive records would be exempt from disclosure in their entirety. Based on MPD’s prior disclosures for a similar request, this Office cannot agree with MPD’s assertion that no responsive record could be disclosed. As a result, we find that MPD did not conduct an adequate search.

Mr. Jarrod Sharp
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Reasonable Redaction

D.C. Official Code § 2-534(b) requires that an agency produce “[a]ny reasonably segregable portion of a public record . . . after deletion of those portions” that are exempt from disclosure. The phrase “reasonably segregable” is not defined under DC FOIA and the precise meaning of the phrase as it relates to redaction and production has not been settled. *See Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 322 n.16 (D.C. Cir. 1982). To withhold a record in its entirety, one interpretation is that an agency must demonstrate that exempt and nonexempt information are so inextricably intertwined that the excision of exempt information would produce an edited document with little to no informational value. *See Antonelli v. BOP*, 623 F. Supp. 2d 55, 60 (D.D.C. 2009).

Here, MPD has not conducted a search for responsive records; therefore, no review for segregability has been performed. In FOIA Appeal 2015-37 after reviewing a selection of responsive records, this Office agreed with MPD’s decision that certain training materials and manuals were properly withheld in their entirety under Exemptions 3(E) and 6 as reasonable redaction was not feasible. However, several responsive records were disclosed with redactions in response to the request at issue in FOIA Appeal 2015-37. As a result, MPD’s application of exemptions here was overbroad and MPD should review responsive records to determine which portions can be disclosed.

Conclusion

Based on the foregoing, we remand MPD’s decision. MPD shall conduct a reasonable search for responsive records and provide non-exempt responsive records, subject to redaction, to you on a rolling basis.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-41**

April 5, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-41

Dear Mr. Jarrod Sharp:

This letter responds to the administrative appeal you submitted to the Mayor asserting that the Office of the Attorney General for the District of Columbia ("OAG") improperly withheld records you requested under the District of Columbia Freedom of Information Act ("DC FOIA").

D.C. Official Code §2-537 establishes the Mayor's jurisdiction to review denials of DC FOIA requests issued by public bodies. Under D.C. Official Code §2-537(a-2),¹ the Mayor does not have jurisdiction over DC FOIA denials issued by OAG; instead, individuals may institute proceedings in the Superior Court of the District of Columbia. As a result, the Mayor has no authority to adjudicate your appeal. In order to appeal OAG's response to your FOIA request, you must pursue the appellate process established under D.C. Official Code §2-537(a-2).

Based on the foregoing, we hereby dismiss your appeal. This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Anna Kent, Assistant Attorney General, OAG (via email)

¹ This section was added to the D.C. Official Code by D.C. Law 21-36, Fiscal Year 2016 Budget Support Act of 2015.

MUNDO VERDE PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Dairy Distributor Company**

Mundo Verde is advertising the opportunity to bid on the delivery of dairy products to children enrolled at the school for the 2017-2018 school year with a possible extension of (2) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Request for Proposal (RFP) such as; student data, days of service, meal quality, etc. may be obtained beginning on **June 23, 2017** from **Kelsey Weisgerber at 202-750-7060** or kweisgerber@mundoverdepcs.org.

Proposals will be accepted at 30 P Street NW on **July 14, 2017** not later than **10:30 a.m.**

All bids not addressing all areas as outlined in the RFP will not be considered.

**THE NOT-FOR-PROFIT HOSPITAL CORPORATION
BOARD OF DIRECTORS
NOTICE OF PUBLIC MEETING**

LARUBY Z. MAY, BOARD CHAIR

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will convene at 9:00 a.m. on Wednesday, June 28, 2017. The meeting will be held at 1310 Southern Avenue, SE, Washington, DC 20032, in Conference Rooms 1/2/3. Notice of a location, time change, or intent to have a closed meeting will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

DRAFT AGENDA

- I. CALL TO ORDER**
- II. DETERMINATION OF A QUORUM**
- III. APPROVAL OF AGENDA**
- IV. READING AND APPROVAL OF MINUTES**
Wednesday, May 24, 2017
- V. CONSENT AGENDA**
 - A. Dr. Julian R. Craig, Chief Medical Officer
 - B. Dr. Mina Yacoub, Medical Chief of Staff
- VI. EXECUTIVE MANAGEMENT REPORT**
Luis A. Hernandez, Chief Executive Officer
- VII. COMMITTEE REPORT**
Finance Committee
- VIII. OTHER BUSINESS**
 - A. Old Business
 - B. New Business
- IX. ANNOUNCEMENTS**

NOTICE OF INTENT TO CLOSE. The NFPHC Board hereby gives notice that it may close the meeting and move to executive session to discuss collective bargaining agreements, personnel, and discipline matters. D.C. Official Code §§2 -575(b)(2)(4A)(5),(9),(10),(11),(14).

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

NOTICE OF PUBLIC MEETING FOR
THE WALTER REED LOCAL REDEVELOPMENT AUTHORITY
COMMUNITY ADVISORY COMMITTEE
PURSUANT TO D.C. OFFICIAL CODE § 10-1906

The District will hold a public meeting for the Walter Reed Local Redevelopment Authority (LRA) Community Advisory Committee (CAC) at the following time and location:

Date: Monday, June 26, 2017

Time: 6:30 p.m. - 8:00 p.m.

**NEW LOCATION:
Fort Stevens Recreation Center
1327 Van Buren Street, NW
Washington, DC 20012**

PROPOSED AGENDA

- I. 6:30 pm LRA Project Overview and Update
 - a. Liquor License Moratorium Update
 - b. Aspen Street Temporary Sidewalk Update

- II. 6:40 pm Master Development Team Overview and Update
 - a. Construction Update
 - b. Site Operations Update
 - c. Buildings V/U and I/J- Design Update
 - d. Interim Use Activities

- III. 7:30 pm DC Department of Health- Abatement Activities
 - a. Rodent Control-Construction
 - b. DOH Regulations and Requirements

- IV. 8:00 pm Adjourn

For questions, please contact Randall Clarke, Walter Reed Local Redevelopment Authority Director at 202-727-6365 or randall.clarke@dc.gov or Malaika Abernathy Scriven at 202-545-3123 or Malaika.abernathy2@dc.gov.

DISTRICT OF COLUMBIA RETIREMENT BOARD
NOTICE OF INVESTMENT COMMITTEE MEETING

June 22, 2017
10:00 a.m.

DCRB Board Room
900 7th Street, N.W.
Washington, D.C 20001

The District of Columbia Retirement Board (DCRB) will hold an Investment Committee meeting on Thursday, June 22, 2017, at 10:00 a.m. to consider investment matters. The meeting will be held at 900 7th Street, N.W., 2nd floor, DCRB Boardroom, Washington, D.C. 20001. A general agenda for the open portion of the meeting is outlined below.

Please call one (1) business day prior to the meeting to ensure the meeting has not been cancelled or rescheduled. For additional information, please contact Deborah Reaves, Executive Assistant/Office Manager at (202) 343-3200 or Deborah.Reaves@dc.gov.

AGENDA

- | | | |
|------|--|--------------------|
| I. | Call to Order and Roll Call | Chair Warren |
| II. | Approval of Investment Committee Meeting Minutes | Chair Warren |
| III. | Chair's Comments | Chair Warren |
| IV. | Chief Investment Officer's Report | Ms. Morgan-Johnson |

At this point, the investment committee meeting will be closed in accordance with D.C. Code §2-575(b)(1), (2), and (11) and §1-909.05(e) to deliberate and make decisions on investments matters, the disclosure of which would jeopardize the ability of the DCRB to implement investment decisions or to achieve investment objectives.

- | | | |
|-----|----------------|--------------|
| V. | Other Business | Chair Warren |
| VI. | Adjournment | |

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA
RECOMMENDATIONS FOR APPOINTMENTS AS NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after August 1, 2017.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on June 23, 2017. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary
 Recommendations for appointment as DC Notaries Public

Effective: August 1, 2017
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Allen	Michelle F.	Association for Childhood Education International 1200 18th Street, NW, Suite 700	20036
Anderson	Pamela	Self (Dual) 2103 Ridgecrest Court, SE, Apartment 201	20020
Anderson	Cheryl	District of Columbia Child and Family Services Agency 200 I Street, SE	20003
Ayers	Carolyn Ann	Department of Veterans Affairs 425 I Street, NW	20001
Bailey-Edmondson	Whitney	Hessell Aluise and Neun, P.C 1100 17th Street, NW	20036
Banks	Tracy M.	Reynolds & Associates, Inc 1430 G Street, NE	20002
Barlow	Stephen	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Bingham	Elizabeth S.	United States House of Representatives HT 60, Capitol Building	20515
Bradford	Ross M.	National Trust for Historic Preservation 2600 Virginia Avenue, NW, Suite 1100	20037
Brockman	C J	District of Columbia Child and Family Services Agency 2001 I Street, SE	20003
Brooks	Nathaniel	Self 1707 Gainesville Street, SE, Apartment 101	20020
Brooks	Brandynicole	District of Columbia Child and Family Services Agency 200 I Street, SE	20003
Canales	Javier	Hudson Cook, LLP 1909 K Street, NW	20006

**D.C. Office of the Secretary
Recommendations for appointment as DC Notaries Public**

Effective: August 1, 2017

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Clark	Kaylette	Self (Dual) 4738 Benning Road, SE, #203	20019
Curtis	Brittany	Children's Law Center 616 H Street, NW, Suite 300	20001
Danaher	Kathryn A.	Green Seal, Inc. 1001 Connecticut Avenue, NW, #827	20036
Dodson	Patricia	Polsinelli PC 1401 Eye Street, NW, Suite 800	20005
Dompere	Kwaku K.	Fidelity Investments 1900 K Street, NW	20006
Drummond	Karen Yolanda	U.S Department of Justice, Civil Division 450 5th Street, NW	 20044
Elling	Nicholas	Self 3905 Mansion Court, NW	20007
Ellsworth	Christina A.	Dupont Fabros Technology, Inc. 401 9th Street, NW, Suite 600	20004
Elmore	Helen A.	U.S. Grains Council 20 F Street, NW, Suite 600	20001
Flores	Christina	American College of Cardiology 2400 N Street, NW	20037
Franklin	Rosemary E.	Housing and Urban Development (HUD) 425 7th Street, SW	20410
Gustin	Lynne A.	Wilmer Cutler Pickering Hale and Dorr, LLP 1875 Pennsylvania Avenue, NW	20006
Harrison	Lorraine B.	Lawyers Choices Suites, Inc. 910 17th Street, NW, Suite 800	20006
Heath	Melvin J.	Self 3651 Veazey Street, NW	20008
Helfrich	David G.	Avenue Settlement Corporation 2401 Pennsylvania Avenue, NW, Suite H	20037

D.C. Office of the Secretary
 Recommendations for appointment as DC Notaries Public

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Hungerford	Joan	Office of the Attorney General for the District of Columbia 441 4th Street, NW, Suite 630 South	20001
Jenkins	Sheila P.	E. Keith Edwards State Farm Insurance Agency 7813 Georgia Avenue, NW	20012
King	Loretta	Multistate Tax Commission 444 North Capitol Street, NW	20001
Kinkade	Linda S.	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Legesse	Selamawit	Self 3500 14th Street, NW	20010
Maziarz	Caitlin B.	Legal Services Corporation 3333 K Street, NW, 3rd Floor	20007
McCue	Suzanne	Credit Union National Association (CUNA) 601 Pennsylvania Avenue, NW, South Building, Suite 600	20004
McDonald	Rhonda M.	Hunton & Williams 2200 Pennsylvania Avenue, NW	20037
McQueen	Ashley N.	LAYC Career Academy PCS 3047 15th Street, NW	20009
Miles	Chole Alexis	MHM Financial Services, Inc. 3801 Commodore Joshua Barney Drive, NE	20018
Mims	Shirley L.	District of Columbia Child and Family Services Agency 200 I Street, SE	20003
Morgan	Lorielle A.	Hunsucker Goodstein PC 5335 Wisconsin Avenue, NW, Suite 410	20015
Morman	Freddie G.	Self (Dual) 618 S Street, NW	20001

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Recommendations for appointment as DC Notaries Public****Effective: August 1, 2017
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Newton	Tammy S.	DTI Global 1875 Eye Street, NW	20006
Olender	Thomas W.	Derenberger & Page 1430 S Street, NW	20009
Oruh	Samuel Nduka	MedStar Washington Hospital Center 110 Irving Street, NW	20010
Parks	Phyllis J.	U.S. Postal Service 475 L'Enfant Plaza, SW	20260
Perkins	Angela D.	MedStar Washington Hospital Center 110 Irving Street, NW	20010
Ponce	Carlos	Wells Fargo 3314 Wisconsin Avenue, NW	20016
Portillo-Aparcio	Madeline D.	The UPS Store 1300 Pennsylvania Avenue, NW, Suite 190	20004
Post	Gloria J.	National Association of Attorneys General 2030 M Street, NW, 8th Floor	20036
Purucker	Matt	Bennett Group, Inc 1230 31st Street, NW	20007
Rosenberg	Aaron	Claridge House Cooperative, Inc. 950 25th Street, NW	20037
Sahilu	Eskedar	TD Bank 4849 Wisconsin Avenue, NW	20016
Satterfield	Judy	District of Columbia Child and Family Services Agency 200 I Street, SE	20003
Saxton-King	Pamela	Self 1415 G Street, NE	20002
Shaw	Cynthia S.	Blank Rome, LLP 1825 Eye Street, NW	20006

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 Recommendations for appointment as DC Notaries Public

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Sloan	Julia Devin	Compass 1313 14th Street, NW	20005
Stull	Trevon	Transportation Federal Credit Union 800 Independence Avenue, SW, # 128	20591
Thompson	Y	Self (Dual) 3818 Blaine Street, NE	20019
Tolliver	Sequitta D.	Apple Tree Learning Public Charter School 415 Michigan Avenue, NE	20017
Van Zandt-Waters	Aimée	Crowley, Hoge & Fein, P.C 1730 Rhode Island Avenue, NW, Suite 1015	20036
Walsh	Ryan	Arent Fox 1717 K Street, NW	20006
Ward	Rachel A.	DBT Development Group 400 7th Street, SE	20003
Weary	Rochelle L.	Self 1212 Sumner Road, SE	20020
White-Wiggins	Yvette	Biotechnology Innovation Organization 1201 Maryland Avenue, SW, Suite 900	20024
Whitlow	Anastasia	Van Ness East Condominium 2939 Van Ness Street, NW	20008
Wimer	Elaine Patterson	LeClairRyan 815 Connecticut Avenue, NW, Suite 620	20006
Zemede	Sewbesew	The UPS Store 1380 Monroe Street, NW	20010

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

REVISED NOTICE OF FUNDING AVAILABILITY (NOFA)

DC MAIN STREETS

(Georgetown, Kennedy Street/Upper 14th Street NW, Lower Georgia Avenue, and Minnesota Avenue Target Areas)

The Department of Small and Local Business Development (DSLBD) is soliciting applications from eligible applicants to operate a DC Main Streets program (“the Program”) in four service areas (listed below). This revised NOFA includes a newly added service area for Kennedy Street/Upper 14th Street, NW. **The submission deadline is Friday, August 4, 2017 at 2:00 p.m.**

Through this grant, DSLBD will designate and fund four DC Main Streets programs (organizations), which will develop the following programs and services.

- Assist business districts with the retention, expansion and attraction of neighborhood-serving retail stores.
- Unify and strengthen the commercial corridor.

Eligible applicants are DC-based nonprofit organizations which are current on all taxes.

DSLBD will **award** one grant for **each** of the following **service areas** (i.e., a total of three grants).

- Georgetown (Ward 2)
- Kennedy Street /Upper 14th Street, NW (Ward 4)
- Lower Georgia Avenue (Ward 1)
- Minnesota Avenue (Ward 7)

Each designated Program will receive \$175,000 in grant funding and technical assistance to support commercial revitalization initiatives.

The DC Main Streets grant award is a recurring grant, which can be renewed annually as long as the grantee continues to meet the standards for accreditation by the National Main Street Center. The FY 2018 **grant performance period** is October 1, 2017 through September 30, 2018.

The **Request for Application** (RFA) includes instructions and guidance regarding application preparation. DSLBD will post the RFA on or before **Friday, June 23, 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. DSLBD will host an Information Session on Thursday June 29, 2017 at 3:00 p.m. at DSLBD’s office (441 4th Street, NW, #805 South Washington DC 20001). A photo ID is required to enter the building.

Application Process: Interested applicants must complete an online application on or before **Friday, August 4, 2017 at 2:00 p.m.** Applicants submitting incomplete applications will be notified by Monday, August 7, 2017 and will have two business days to upload missing information. Corrected applications are due on Wednesday August 9, 2017 at 2 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.**

Selection Process: DSLBD will select grant recipients through a competitive application process that will assess the Applicant's eligibility, experience, and capacity. DSLBD will determine grant award selection and notify all applicants of their status via email on or before Wednesday September 7, 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 DSLBD grant agreement as issued (sample document will be provided with the online application) and to starting services on October 1, 2017.

For more information, contact Cristina Amoruso, DC Main Streets Coordinator, at the Department of Small and Local Business Development at (202) 727-3900 or cristina.amoruso@dc.gov.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18897-A of Julian Hunt and Lucrecia Laudi, pursuant to 11 DCMR Subtitle Y, § 705.1, for a two-year time extension of BZA Order No. 18897 approving variances from the nonconforming structure requirements under § 2001.3(a)(b)(1) and (2)¹, the lot occupancy requirements under § 403.2, and the rear yard requirements under § 404.1, to allow construction of an addition to an existing single family dwelling and conversion to a flat in the DC/R-4 (RF-2)² District at premises 1504 Swann Street N.W. (Square 191, Lot 817).

HEARING DATES (Original Application):	January 13, February 10, March 24, May 5, and June 16, 2015
DECISION DATE (Original Application):	June 16, 2015
FINAL ORDER ISSUANCE DATE (Order No. 18897):	June 25, 2015
TIME EXTENSION DECISION DATE:	June 7, 2017

**SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 18897**

The Underlying BZA Order

On June 16, 2015, the Board of Zoning Adjustment (the "Board") approved the Applicant's request pursuant to the Zoning Regulations of 1958 under 11 DCMR § 3103.2, for variances from the nonconforming structure requirements under § 2001.3(a)(b)(1) and (2), the lot occupancy requirements under § 403.2, and the rear yard requirements under § 404.1, to allow construction of an addition to an existing single family dwelling and conversion to a flat in the DC/R-4 (RF-2) District at premises 1504 Swann Street N.W. (Square 191, Lot 817). The Board issued its written order ("Order") on June 25, 2015. Pursuant to 11 DCMR § 3125.9 (now Subtitle Y § 604.11 of the 2016 Regulations), the Order became final on April 27, 2015 and took effect 10 days later.

¹ This and all other references to the relief granted in Order No. 18897 are to provisions that were in effect the date the Application was heard and decided by the Board of Zoning Adjustment (the "1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text (the "2016 Regulations"). The repeal of the 1958 Regulations has no effect on the validity of the Board's original decision or the validity of Order No. 18897.

² The zone name has changed as a result of the update of the zoning regulations as described in footnote 1. New zone names went into effect on September 6, 2016. The zone name of the property was DC/R-4 at the time of the original approval and is now RF-2.

Under the Order and pursuant to 11 DCMR § 3130 (now Subtitle Y § 702.1 of the 2016 Regulations), the Order was valid for two years from the time it was issued -- until June 25, 2017. (Exhibits 1 and 3.)

Motion to Extend Validity of the Order Pursuant to 11 DCMR Subtitle Y § 705.1

On April 24, 2017, the Applicant submitted an application for a time extension requesting that the Board grant a two-year extension of Order No. 18897. This request for extension is pursuant to Subtitle Y § 705 of the Zoning Regulations, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

Criteria for Evaluating Motion to Extend

Pursuant to Subtitle Y § 705.1(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. The record reflects that the Applicant served all parties at least 30 days in advance of the public meeting. The only other party to the original application included the affected Advisory Neighborhood Commission (“ANC”) which is ANC 2B. (Exhibit 5.)

Pursuant to Subtitle Y § 705.1(b), the Applicant indicated in its request that there has been no substantial change in any of the material facts upon which the Board based its original approval of the application. (Exhibit 5.)

Under Subtitle Y § 705.1(c), good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria: (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant’s reasonable control; (2) an inability to secure all required governmental agency approvals by the expiration date of the Board’s order because of delays that are beyond the applicant’s reasonable control; or (3) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant’s reasonable control.

The Applicant stated that there is good cause for the extension due to an eight-month delay in obtaining the building permit from the Department of Consumer and Regulatory Affairs (“DCRA”), necessitating this request for more time to negotiate a loan and bid the project out to contractors before the Order expires. The Applicant requests a two-year extension of Order No. 18897 because additional time is required to bid the project and obtain project financing. To demonstrate good cause, the Applicant submitted evidence to support its claim that the Applicant experienced delays in obtaining the permits at DCRA. (Exhibits 4 and 5.)

The Merits of the Request to Extend the Validity of the Order Pursuant to 11 DCMR Subtitle Y § 705.1

The Board finds that the motion has met the criteria of Subtitle Y § 705.1 to extend the validity of the underlying order. To meet the requirements of Subtitle Y § 705.1(a), the record reflects that the Applicant served the parties to the application and all parties were allowed at least 30

days to respond. The only parties to the case were the Applicant and ANC 2B. ANC 2B did not submit a report regarding the time extension request. The Office of Planning (“OP”) submitted a timely report recommending approval of the request for the time extension. (Exhibit 7.) No party to the application objected to an extension of the Order.

As required by Subtitle Y § 705(b), the Applicant demonstrated that there is no substantial change in any of the material facts upon which the Board based its original approval in Order No. 18897. There have also been no substantive changes to the Zone District classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Board's order that would affect the approval.

To meet the burden of proof for "good cause" required under Subtitle Y § 705.1(c), the Applicant provided a statement and other evidence regarding their efforts to secure the necessary government approvals and the eight-month delay in obtaining a permit. The major delays involved many changes. The project consists of construction of an addition to the single-family house at 1504 Swann Street, N.W. in order to build an addition to the Applicant's primary residence to facilitate “aging-in-place.” As part of the original approval, the Board granted variances from the nonconforming structure requirements under § 2001.3(a)(b)(1) and (2), the lot occupancy requirements under § 403.2, and the rear yard requirements under § 404.1 of the 1958 Regulations. The Applicant is seeking the time they need to negotiate a loan and bid the project out to contractors before undertaking construction. (Exhibit 5.)

In evaluating the extension request, the Board considered the Applicant's good faith and diligent efforts to move forward with the approved project on the Property. The Applicant indicated that it has every intention of proceeding with this addition to their residence, as shown by their efforts to respond to various government entities' requests as demonstrated by workflow routing slips attached to the time extension request. (Exhibit 5.) According to the OP report, the Applicant received the Order in June 2015 and submitted building permit plans to DCRA in August of 2016. The permit review process at DCRA took eight months with the building permit (B1611765) being issued in March 2017. The Applicant has indicated that additional time is required to bid the project and obtain project financing. (Exhibit 7.)

Given the totality of the conditions and circumstances described above and in the information that was provided, the Board finds that the Applicant satisfied the “good cause” requirement under Subtitle Y § 705.1(c), specifically meeting the criteria for Subtitle Y § 705.1(c)(2). The Board finds that the delay in securing the necessary governmental approvals is beyond the Applicant's reasonable control and that the Applicant demonstrated that it has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

OP expressed its support for the project and recommended approval of the requested time extension. OP, in its report dated May 26, 2017, reviewed the application for the extension of the Order for "good cause" pursuant to 11 DCMR Subtitle Y § 705.1, and noted that the Applicant had demonstrated that: (a) the application had been served on ANC 2B with time for the ANC to respond; (b) there had been no substantive change in the Zoning Regulations that would impact

the material facts upon which the Board based its original approval; and (c) there have been no recorded changes or significant development project in the square or its immediate surroundings that would impact the Board's original approval. Further, OP noted that the Applicant needed the time extension of the Board's previous approval because the Applicant has not been able to obtain the required project financing or bid out the project due to the delay in obtaining a building permit. OP indicated that it had reviewed the materials submitted by the Applicant and has no objection to the requested two-year time extension. (Exhibit 7.) Having given OP's recommendation great weight, the Board concludes that extension of the approved relief is appropriate under the current circumstances and that the Applicant has met the burden of proof for a time extension under Subtitle Y § 705.1.

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.

Pursuant to 11 DCMR Subtitle Y § 702, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 18897-A for a two-year time extension of Order No. 18897, which Order shall be valid until **June 25, 2019**, within which time the Applicant must file plans for the proposed project with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: 4-0-1 (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter A. Shapiro, 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: June 14, 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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Order No. 18938-A on the Motion for Reconsideration in the Application of Gina Eppolito and Frances Slakey, pursuant to 11 DCMR § 3104.1¹, for a special exception under § 223 to allow a two-story rear addition with cellar, not meeting the lot occupancy requirements of § 403, the open court requirements of § 406, and the nonconforming structure requirements of § 2001.3, at a one-family dwelling in the CAP/R-4 District a premises 325 5th Street, S.E. (Square 820, Lot 17).

HEARING DATE: April 21, 2015

DECISION DATE: April 21, 2015

ORDER ISSUANCE DATE: October 15, 2015

**DECISION DATES ON MOTION
FOR RECONSIDERATION:** November 24, 2015 and January 19, 2016

ORDER DENYING MOTION FOR RECONSIDERATION

On October 15, 2015, the Board of Zoning Adjustment (the “Board”) issued a final order granting the application of Gina Eppolito and Frances Slakey (the “Applicant”). Specifically, the Board granted the Applicant’s request for a special exception to allow a two-story rear addition at her residence in the CAP/R-4 zone. During the hearing the Board granted party status in opposition to Robert Shelton and Mark (Clarence) Flynn, both of whom own and reside at the adjacent row dwelling to the north of the subject property. Mr. Shelton and Mr. Flynn were represented during the proceedings by Claude Bailey, Esq., and participated fully in the proceedings before the Board, urging the Board to deny the application. The Board also received reports from the Advisory Neighborhood Commission (“ANC”) 6B, and the District of Columbia Office of Planning (“OP”), both recommending approval of the application.

The Motion for Reconsideration

On November 2, 2015, the Board received two electronic filings from Mr. Shelton and Mr. Flynn (the “Movant”): (1) A Motion for Reconsideration (“Motion”, Ex. 58) and, (2) A statement (copied to their attorney, Mr. Bailey) requesting a “5-day extension of time” because the Movant

¹ This and all other references to the relief granted in Order No. 18938 are to provisions that were in effect the date the Application was heard and decided by the Board of Zoning Adjustment (the “1958 Regulations”), but which were repealed as of September 6, 2016 and replaced by new text (the “2016 Regulations”). The repeal of the 1958 Regulations has no effect on the validity of the Board’s original decision or the validity of Order No. 18938.

and Mr. Bailey were out of town during the days following the issuance of the Board's Order approving the application. (Ex. 57.)

Waiver of the timely filing requirement and service requirement

The Board's Order of approval was issued on October 15, 2015 and was served on the Movant and their counsel by email on that day. Pursuant to 11 DCMR § 3126.2, which was among the Board's Rules of Practice and Procedure in place when the Order was issued and the Motion filed, a motion for reconsideration of any Board decision must be filed within 10 days from the date of issuance of the final written order reflecting that decision, or in this case by October 25, 2015. Thus, the Movant's Motion for Reconsideration was eight days late. The Movant requested an "extension" of five days, but did not request a formal waiver of the rule contained in § 3126.2.

Pursuant to 11 DCMR § 3126.3, also in place when the Motion was filed, the Movant was required to serve all parties to the underlying case at the time the Motion was filed. Neither the Motion for Reconsideration nor the "extension" request contained an Affidavit of Service indicating whether the Applicant or the ANC² were served.

On November 24, 2015, the Motion for Reconsideration came before the Board at a Public Meeting. Since the Movant was in attendance at the Public Meeting³, the Board called him to the table and asked whether the Applicant or the ANC were served with the Motion for Reconsideration and the Statement Requesting an "Extension" of time. The Movant replied that he did not serve the Applicant or the ANC because he believed the electronic filing was sufficient.

Under 11 DCMR § 3100.5 (the 1958 Regulations), the Board had the authority to waive the timely filing and service requirements relating to the Motion for Reconsideration, provided there is "good cause" to do so and "the waiver will not prejudice the rights of any party and is not otherwise prohibited by law." The Board found that the Movant being out of town constituted "good cause" for a filing that was eight days late, and that there would be no prejudice to the Applicant on that account. Similarly, the Board waived the requirement that service on all parties occur *at the time of filing*, but directed the Movant to promptly serve the Applicant and the ANC in this case. The Board also continued the Motion for Reconsideration to the Board's January 19, 2016 Public Meeting calendar to allow for service by the Movant and a potential Response to the Motion.

On November 24, 2015, the Movant submitted a statement indicating he had delivered the Motion for Reconsideration to the Applicant and her architect, Jennifer Fowler, and had

² The ANC was an automatic party to the proceeding pursuant to 11 DCMR § 3199.1(b)(2).

³ The purpose of a Public Meeting is for the Board to deliberate and render a decision. The Board is not required to hear testimony, but is not prohibited from doing so.

delivered the Motion to the ANC chair at her residence. The statement also indicated that the Motion was sent by regular mail to the ANC at its business address, and to the Board, and OP. (Ex. 60.) The Movant submitted an additional statement indicating that on November 25, 2015, he served the ANC at its web-described email address and the ANC chair at her email address. (Ex. 61.) The Applicant filed a Response to the Motion on January 4, 2016. (Ex. 62), and the Movant submitted a “Further Clarification of Motion for Reconsideration”. (Ex. 63.)

Waiver of the timely filing of a “Response”

Pursuant to 11 DCMR § 3126.5 under the 1958 Regulations, a Response to a Motion for Reconsideration must be filed within seven days after the Motion was filed and served. As explained above, although the Motion was filed on November 2, 2015, it was not served until November 24, 2015 after the Board directed that the Applicant be served. Thus, the Applicant’s Response (filed on January 4, 2016) was untimely. Given that the Board waived the rules for the Movant -- both timely filing and service rules -- and the Applicant relied upon her architect for the preparation of a Response, the Board finds that “good cause” exists to waive the rule and extend the Applicant’s time for filing a Response. Moreover, the Movant did not complain of any prejudice to him that would result from the waiver of this requirement. In fact, the Movant had ample time to address the Response and even submitted an additional filing before the Board’s continuation date. (Ex. 63.) Therefore, the Board finds that the rule requiring the filing of a Response within seven days may be waived pursuant to the criteria in 11 DCMR § 3100.5.

Acceptance of Movant’s “Further Clarification of Motion for Reconsideration”

As noted, on January 11, 2017, the Movant submitted an additional filing titled “Further Clarification of Motion for Reconsideration by Parties in Opposition” (Ex. 63.) The Board’s Rules of Practice and Procedure provide only for the filing of a Motion for Reconsideration and a Response. However, for the most part, this additional filing repeats the same points made in the Movant’s initial Motion. Therefore, the Board will allow it into the record.

Merits of the Motion for Reconsideration

Subsection 3126.4 of the 1958 Regulations requires that a motion for reconsideration must “state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion and the relief sought.” The Movant asserts several claims of error, none of which have merit.

The Movant first alleges that there were “four inaccuracies” in the Applicant’s filings. He cites, for example, inaccuracies and errors in the Applicant’s measurements of the existing and proposed structure and the Applicant’s calculations of the existing and proposed lot occupancy at the property. However, the Board considered all relevant evidence when making Findings of Fact concerning measurements and lot occupancy calculations, and does not agree that these findings were in error. Regarding the measurements, in Finding of Fact No. 16, the Board found:

The Applicant filed revised site plans (Exhibit 43) and revised architectural plans (Exhibit 53) to correct certain measurements in the original drawings that understated the length of the planned addition relative to the adjacent property at 523 5th Street. The proposed addition will extend the length of the dwelling 21 feet 11 inches beyond the rear of the adjacent property at 523 5th Street, owned by the Opposition Party.

Likewise, regarding lot occupancy calculations, in Finding of Fact No.11, the Board found:

Section 403 of the Zoning Regulations requires that each structure in an R-4 zone have a maximum lot occupancy of 60%. The proposed addition will increase the existing lot occupancy from 60.8% to 63.6%. Therefore, the proposal requires relief from the requirements of § 403.

The measurements and lot occupancy calculations were certified by Jennifer Fowler, a licensed architect, and were also reviewed by the OP staff. Thus, the Board's findings on these issues were based on substantial evidence in the record.

Second, the Movant contends that it was error for the Board to rely on the Applicant's sun study when it evaluated the project impacts on the neighbor's light and air.⁴ The Movant disputes the "foundation" of the sun study, stating it looked only at the impact of an additional four feet of structure, rather than examining the impact of the addition in its entirety. (Motion, p. 3.) However, as even the Movant acknowledges, OP's representative testified that the sun study showed the *entirety* of the proposed wall (Hearing Transcript "Tr." of April 21, 2015, p. 50; Motion, p. 3). Also, the Board's findings make clear that it was assessing the impact of the proposed addition *in its entirety*. (Findings of Fact 14-20.)

Third, the Movant also disputes that the Board was required to give great weight to the ANC's issues and concerns. (Motion, p. 5-6.) However, the District of Columbia Court of Appeals has consistently held that the "BZA is required by the D.C. Code and its own organic regulations to give issues and concerns raised by the ANC 'great weight,'" *Concerned Citizens of Brentwood v. D.C. Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993), *quoting*, *Levy v. District of Columbia Board of Zoning Adjustment*, 570 A.2d 739, 746 (D.C. 1990).

Fourth, the Movant asserts that he was not afforded adequate time to review and rebut the ANC report, which was dated April 20, 2015 and hand delivered during the public hearing on April 21, 2015. The Board must give great weight to an ANC report whenever it is received prior to the commencement of deliberations. *See* D.C. Official Code § 1-309.10 (d) (d)(3)(A). ("The issues and concerns raised in the recommendations of the Commission shall be given great weight

⁴ Finding of Fact No.20 states that "The Applicant's sun study demonstrated that there would only be slight increases to the shadow cast on the rear of the property to the north that would be of limited duration on both a daily and annual basis. (Ex.45)."

during the deliberations by the government entity”). While the Movant did suggest that the Board defer its decision on the matter, he never requested a continuance to respond to the ANC report. (Tr., p. 34.) Moreover, the ANC report merely reported the vote of the ANC and the fact that the ANC supported the application. (Ex.49.) There was nothing of substance which the Movant could have rebutted which was crucial to the Board’s decision. Therefore, the Movant was not prejudiced by the fact that the ANC report – which was barely more than a paragraph – was received into the record during the public hearing.

Fifth, the Movant asserts that it was error to give “great weight” to the recommendations of the Office of Planning. (Motion, p. 6.) However, the Board was required under D.C. Official Code §6-623.04(2012 Repl.) to give “great weight” to OP’s recommendations. *See, Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 253 (2002). In this case, OP recommended approval of the requested special exception because the proposed addition would comply with the requirements for special exception relief, would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and would not tend to affect the use of neighboring property adversely. It should be noted that the Movant attempted to challenge OP’s findings and opinions throughout the public hearing. However, OP continued to believe that the addition would not unduly affect the light or air available to the abutting property or compromise the privacy of use and enjoyment of neighboring properties.

Finally, the Movant makes two opposite claims regarding the addition of a trellis wall that was imposed as a condition of approval by the Board.⁵ First, the Movant claims that the Applicant did not consult with him regarding the screening, despite the fact that the Board’s approval required such consultation. Second, the Movant requests a remedy that would have the Board change the condition. The Movant states: “We much appreciate the suggestion of a trellis with a planting. We would prefer, however, to attend to this ourselves if it seems appropriate over the course of time. (Motion, p. 7.)

Neither of the Movant’s claims relate to any alleged error by the Board. Regarding the consultation issue, the Applicant clarifies that the revised plans submitted to the Board provided for a wall trellis. (Applicant’s Response, citing Finding of Fact 10 of Order.) Thus, the Movant had ample opportunity to review the proposed trellis design, but chose not to weigh in. Further, even if the Applicant were in noncompliance with the Board condition, that fact would not represent an error by the Board, but a violation for which the Movant may request the Department of Consumer and Regulatory Affairs to address.

Regarding the second point raised by the Movant, the Board’s condition provides for the Applicant to construct the trellis wall. It does not provide for the Movant to choose whether and when to construct a trellis wall on someone else’s property. The trellis condition was based upon OP’s suggestion during the hearing that the Applicant might install a “green screen wall” on the north side of the addition, so as to mitigate the impact of the addition on their neighbor.

⁵ Condition No.1 actually states: “The Applicant, in consultation with the party in opposition, shall provide suitable screening on the first floor that is acceptable to the Office of Planning.”

(Decision and Order, p. 2.) As noted above, the Board is required to give great weight to OP's recommendations, and in this instance the Board agreed that a trellis wall would soften the appearance of the addition wall. (Finding of Fact 10.) Thus, there is no reason to find that the Board erred when it imposed this condition.

In conclusion, the Motion does not state any specific respects in which Board's final decision was erroneous, but merely restates the Movant's (then Party in Opposition's) grounds for opposing the application. The Party in Opposition participated fully in the public hearing in this matter, and the Board carefully considered his testimony and evidence as part of the record on which its decision was based. While the Party in Opposition remains opposed to the requested special exception, he has not presented grounds which require reconsideration of the Board's decision.

For the reasons stated above, it is **ORDERED** that the Motion for Reconsideration is **DENIED**.

VOTE: 4-0-1 (Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill, and Marcie I. Cohen to DENY the Motion for Reconsideration; 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: June 14, 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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19018 of Colleen Slattery, pursuant to 11 DCMR § 3103.2, for a variance from the requirements for enlargement of a nonconforming structure under § 2001.3 to allow the enlargement of a second-story deck and construction of a third-story deck in the R-4 District at premises 2026 North Capitol Street, N.W. (Square 3117, Lot 834).¹

HEARING DATES: June 23, July 28, and December 22, 2015

DECISION DATE: April 5, 2016

DECISION AND ORDER

This self-certified application was submitted on April 6, 2015 by North Capitol #2 Land Trust, which then owned the property that is the subject of the application before selling one condominium unit to Colleen Slattery, who was substituted as the applicant for the requested zoning relief (the “Applicant”). The application requested an area variance from requirements for the enlargement of a nonconforming structure under § 2001.3 to allow the enlargement of a second-story rear deck addition and the construction of a third-story rear deck addition to an existing two-family dwelling, in excess of the maximum lot occupancy permitted as a matter of right in the R-4 District at 2026 North Capitol Street, N.W. (Square 3117, Lot 834). Following a public hearing, the Board of Zoning Adjustment (“Board”) voted to grant the application in part and deny it in part.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 14, 2015, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 5; Advisory Neighborhood Commission (“ANC”) 5E, the ANC in which the subject property is located; and Single Member District/ANC 5E08. Pursuant to 11 DCMR § 3112.14, on April 15, 2015 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 5E, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on April 24, 2015. (62 DCR 5171).

Party Status. The Applicant and ANC 5E were automatically parties in this proceeding. There were no requests for party status.

¹ This order refers to provisions and zone districts in effect under the Zoning Regulations of 1958 when the decision was made. The 1958 Regulations were repealed as of September 6, 2016 and replaced by the 2016 Regulations; however, the repeal and adoption of the replacement text has no effect on the validity of the Board’s decision in this case or of this order.

Applicant's Case. The Applicant provided testimony and evidence describing how a second-floor rear deck was enlarged and a new third-floor deck was built at the subject property after issuance of a building permit, although the Zoning Administrator ("ZA") later gave notice of an intent to revoke the permit since the property exceeded maximum permitted lot occupancy and the construction of both decks erroneously resulted in decks larger than those approved by the permit. The Applicant requested an area variance from the requirements relating to the enlargement of a nonconforming structure so as to allow (1) the additional area of the decks beyond that shown in the permit plans, to allow the area constructed in error, or alternatively (2) the area of the decks as represented in building permit plans.

OP Report. By memorandum dated June 16, 2015, the Office of Planning declined to recommend approval of the zoning relief requested by the Applicant. (Exhibit 25.)

DDOT. By memorandum dated June 16, 2015, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 26.)

ANC Report. By report dated June 19, 2015, ANC 5E indicated that, at a properly noticed public meeting on June 16, 2015 with a quorum present, the ANC voted 8-0 recommending denial of the application. ANC 5E challenged several contentions made by the Applicant, and asserted instead that the decks at the subject property would infringe upon the privacy of nearby residences, that the Applicant would not encounter practical difficulties or undue hardship as a result of the strict application of zoning requirements, and that approval of the requested variance relief would cause substantial detriment to the public good and impair the intent, purpose, and integrity of the zone plan by allowing the sale of condominium units by a developer who knew that the property required zoning relief.

Person in opposition. The Board heard testimony in opposition to the application from Austin Pearl, the owner and resident of the residence abutting the subject property to the south. Mr. Pearl initially expressed concern about adverse impacts on privacy, especially considering the number of decks at the subject property and the fact that the subject property was larger than the next four properties to the south, thereby providing a view from the decks into the rear yards and decks of those properties. After reaching agreement with the Applicant about the installation of screening materials that would mitigate his concerns about privacy, Mr. Pearl indicated that he was no longer in opposition to the application, provided that the requested zoning relief was approved subject to a condition requiring the Applicant to maintain the screening materials.

FINDINGS OF FACT

1. The subject property is located on the west side of North Capitol Street near its intersection with V Street, N.W. (Square 3117, Lot 834).
2. The subject property is a rectangular parcel 20 feet wide and 100.5 feet deep, with a lot area of 2,001 square feet. The rear lot line abuts a public alley 15 feet wide.

3. The subject property is improved with a row building, now three floors with a cellar, that was constructed before the effective date of the Zoning Regulations of 1958. The building is configured as a two-family flat. The Applicant occupies Unit 2, located on the second and third floors of the building.
4. The subject property is nonconforming with respect to lot occupancy. The existing lot occupancy is approximately 78 percent, reflecting the principal structure with the deck addition and an accessory garage. The principal structure, excluding the deck addition, occupies approximately 57.5 percent of the lot; the deck addition results in lot occupancy of approximately 65.5 percent. A maximum of 60 percent is permitted as a matter of right. (11 DCMR § 403.2.)
5. At the time of its acquisition by North Capitol #2 Land Trust, the building had two floors and rear decks on both the first and second floors. The first-floor deck was approximately eight feet deep and 20 feet wide (across the width of the building), and provided stairway access to the rear yard. The second-floor deck, at eight feet by eight feet, extended less than halfway across the rear of the building, and also provided a staircase to the rear yard.
6. Building Permit No. 1408394 was issued August 8, 2014 for “Addition for the Attic and renovation of rear deck stairways” at the subject property. As part of the project, North Capitol #2 Land Trust rebuilt the first-floor deck, expanded the second-floor deck, and built a new third-floor deck at the rear of a new third-floor addition. Sliding glass doors were installed on each floor to provide access to the rear decks. The enlarged property also has a roof deck.
7. In February 2015, after work on the decks was completed, the ZA notified North Capitol #2 Land Trust of an intention to revoke the building permit and to require removal of the new third-floor deck and a reduction in size of the second-floor deck, because those decks were considered additions to a structure that was nonconforming with respect to lot occupancy. According to the ZA, although the permit had been issued, the applicable permit plans showed the two decks had not been stamped by the Zoning Division.
8. Due to what North Capitol #2 Land Trust described as a “contractor error,” both the enlarged second-floor deck and the new third-floor deck were built larger than the decks shown on plans submitted with the building permit application. The plans showed decks extending approximately three-quarters of the width of the building.
9. As now constructed, the three decks are all approximately the same size, extending eight feet into the rear yard and almost 20 feet across the full width of the rear of the building. The renovated first-floor deck continues to provide stairway access to the rear yard. The

second-floor deck also provides access to the rear yard by means of a spiral staircase installed at the northern edge of the building.

10. Construction on the decks by the North Capitol #2 Land Trust did not increase lot occupancy at the subject property, because the construction of the new third-floor deck and the expansion of the second-floor deck both occurred within the building footprint of the existing first-floor deck.
11. The Applicant reached an agreement with the owner and resident of the abutting property to the south (2024 North Capitol Street, N.W.), which was recorded in a covenant regarding screening for the decks and lighting. The covenant acknowledged that the existence of the decks might negatively impact the privacy of the adjoining property, and reflected the Applicant's intent to mitigate any negative impacts. The Applicant agreed to install and maintain permanent screening on the south end of both balconies (on the second and third floors of the building); the screening would be made of "wood or like materials," at a height of six feet above the floor of each deck, for the entire width of the deck, and with openings no greater than one-half inch between the boards. The Applicant also agreed that all exterior lighting, including on the two decks and on the roof deck, would be "moderately-illuminated down-lighting" that would face away from the adjoining property.
12. The building at the subject property abuts similar row dwellings. The adjoining property to the north extends further into its rear yard than does the Applicant's property, at a distance of approximately eight feet (*i.e.* equal to the outer edge of the Applicant's decks). The side wall of the property to the north does not contain any windows facing the decks, although that property also has a rear deck addition with stairs to the rear yard. The neighboring properties immediately to the south are smaller than the Applicant's building, such that the building at the subject property is both taller and extends further into the rear yard than the nearby properties to the south. Other properties in the vicinity of the subject property are also improved with similar row buildings, many of which have rear deck additions.
13. The subject property is located in the R-4 District, which 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.) The "primary purpose" of the R-4 zone is "the stabilization of remaining one-family dwellings." (11 DCMR § 330.2.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks an area variance from the requirements relating to the enlargement of a nonconforming structure under § 2001.3 to allow the enlargement of a second-story rear deck addition and the construction of a third-story rear deck addition at a three-story row building

configured as a two-family flat, in excess of the maximum lot occupancy permitted as a matter of right in the R-4 District at 2026 North Capitol Street, N.W. (Square 3117, Lot 834). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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. (*See* 11 DCMR § 3103.2.)

Based on the findings of fact, the Board concludes that the application satisfies the requirements for variance relief in accordance with § 3103.2 in part, and fails to warrant variance relief in part. This request for variance relief arose from a renovation project undertaken at the subject property by a developer who believed that a building permit had authorized the construction of a second-floor deck larger than the previously existing deck as well as the construction of a new third-floor deck, as shown on plans submitted with the permit application. The degree of variance relief requested in this case was increased by what the developer described as a “contractor error” that resulted in decks larger than those shown on the plans.

With respect to the decks as shown in the plans, the Board concurs with the Applicant that the subject property faces an exceptional situation. Although the property is nonconforming with respect to lot occupancy, the developer applied for and apparently received approval from DCRA for new construction, including the second- and third-floor deck additions shown in the plans submitted with the developer’s application for a building permit. The developer relied on that approval in undertaking the renovation and enlargement of the residence at the subject property – including construction of the two new decks – before DCRA notified the developer of its intent to revoke the building permit. *See De Azcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233 (D.C. 1978) (Board is empowered to provide variance relief, in appropriate cases, to extraordinary or exceptional conditions brought about after the original adoption of the zoning regulations; court upheld BZA’s grant of area variance due to extraordinary situation that arose from actions by zoning officials later found to be in error.)

Under the circumstances, strict compliance with the Zoning Regulations would cause a practical difficulty for the Applicant as the owner of the upper dwelling unit, where the decks are located. The Applicant learned shortly before purchasing the unit that the decks did not comply with zoning requirements, but opted to proceed with the purchase under the circumstances, including that she had already sold her prior residence and moved into her unit at the subject property. (*See* Transcript of July 28, 2015 at 46-47.) The decks provide outdoor living and recreation space for the dwelling unit, which is located on the second and third floors of the building. Removal of the third-floor deck and a reduction in size of the second-floor deck, reverting to the small area that previously existed, would eliminate that usable outdoor space.

Approval of this aspect of the requested relief would not result in substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan. The subject property is located in a relatively dense area where many nearby properties have rear decks. The decks at issue in this proceeding are relatively small – protruding approximately eight feet from the rear of the building – and are unenclosed, thereby not likely to create any adverse impacts on light or air available to any neighboring property. The two decks will not affect privacy for the adjoining property to the north, which extends further into its rear yard than does the building at the subject property, such that the adjoining building borders the two decks with a solid wall.

To the south, however, the neighboring properties are smaller and do not extend as far back as the Applicant's property, such that the decks could potentially afford views into the backs of those residences and into their rear yards. The Board finds that the planned privacy screening measures, which the Applicant committed to install and maintain on both decks, will ensure that use of the decks at the subject property will not impinge on the privacy available to the adjoining properties to the south. The owner and resident of the neighboring property to the south, Mr. Pearl, initially opposed the application due to concerns about potential adverse impacts on privacy. Mr. Pearl withdrew his opposition after reaching agreement with the Applicant about the installation of screening materials, and requested a condition of approval of the application requiring the Applicant to maintain the screening materials. The Board concludes that such a condition is not necessary in light of the recordation of the covenant between the Applicant and Mr. Pearl, which requires the installation of specific screening measures and binds both the current parties and their successors.

Approval of a variance to allow the rear deck additions, as shown in the plans, is consistent with the residential use of the property by creating usable outdoor space at the Applicant's residence. Variance relief would be needed for any rear addition to the property, given its existing nonconforming lot occupancy. The enlarged decks would not increase the existing lot occupancy and therefore also will not increase the nonconforming aspect of the subject property. Although existing lot occupancy is 78 percent, where a maximum of 60 percent is permitted as a matter of right, the property retains a conforming rear yard and otherwise complies with zoning requirements.

While the developer's plans submitted with the building permit application depicted second- and third-floor decks extending approximately three-quarters of the width of the building, the decks were actually constructed across the full width of the building. The Board was not persuaded by the Applicant that variance relief should be granted in essence to ratify an alleged error by a contractor. As the Applicant acknowledged, the developer did not rely in good faith on DCRA's approval of the extended length, because construction over the entire width of the building was not shown on the submitted plans. The Board does not find any exceptional situation with respect to the extended length of the decks.

Nor does the Board find any practical difficulties arising from the strict application of the Zoning Regulations with respect to the extended length. The decks were not constructed as proposed. The developer has acknowledged the error and has indicated an intent to the Applicant to correct the violation by paying for the removal of a portion of the decks. The extended length is not required to provide usable outdoor space on the decks for the Applicant.

Similarly, variance relief to condone the extended length of the two decks cannot be granted without causing substantial detriment to the public good or without substantially impairing the intent, purpose, and integrity of the zone plan. The Board does not find any basis in this record to validate construction that was not undertaken in accordance with the permit plans. The Board was not persuaded by the Applicant's contention that an area variance to allow the extended length would constitute *de minimus* relief in light of the apparent approval of smaller decks on both the second and third floors. Although DCRA belatedly recognized that a mistake had occurred in the issuance of the building permit, the developer also had an obligation to ensure that construction was carried out strictly according to the plans.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, OP could not recommend approval, citing the lack of any exceptional condition giving rise to practical difficulty. For the reasons discussed above, the Board partially agrees with OP's recommendation but concludes that approval of a portion of the requested variance relief is warranted under the circumstances.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. Section 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) (2001)). In this case ANC 5E expressed concern that the decks would infringe upon the light, air, or privacy of surrounding homes, and that strict application of the zoning regulations would not cause practical difficulty to the owner of the property. For the reasons discussed above, the Board disagrees with the ANC in finding that a portion of the requested relief should be approved.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has partially satisfied the burden of proof with respect to the request for an area variance from requirements for the enlargement of a nonconforming structure under § 2001.3 to allow the enlargement of a second-story rear deck addition and the construction of a third-story rear deck addition at an existing two-family dwelling, in excess of the maximum lot occupancy permitted as a matter of right in the R-4 District at 2026 North Capitol Street, N.W. (Square 3117, Lot 834). Specifically, the Board grants the requested relief to allow the area of the decks as represented in the building permit plans (Exhibit 33 of the record) but denies a variance to allow any additional area of the decks, beyond that shown in the permit plans. Accordingly, it is **ORDERED** that the application is **GRANTED IN PART** and **DENIED IN PART AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 33 – PERMIT PLAN SET (FILE COPY).**

VOTE: 3-2-0 (Marcie I. Cohen, Frederick L. Hill, and Jeffrey L. Hinkle to GRANT IN PART, DENY IN PART; Marnique Y. Heath and Anita Butani D'Souza opposed).

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: June 13, 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

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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. 19313-A of Emmanuel Baptist Church, pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the plans approved in BZA Order No. 19313 to reduce the off-street parking provided for a new 74-unit apartment building in the R-5-A Zone at premises 2409-2412 Ainger Place S.E. (Square 5740, Lots 8, 190, and 851).

The original application (No. 19313) was pursuant to 11 DCMR §§ 3103.2 and 3104.1¹, for a variance from the off-street parking requirements under § 2101.1, and a special exception from the residential development requirements under § 353, to construct a new 74-unit apartment building in the R-5-A District at premises 2409-2412 Ainger Place S.E. (Square 5740, Lots 8, 190, and 851).

HEARING DATES (Case No. 19313):	July 12, 2016
DECISION DATE (Case No. 19313):	July 12, 2016
ORDER ISSUANCE DATE (Case No. 19313):	July 19, 2015
MODIFICATION DECISION DATE:	June 7, 2017

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF CONSEQUENCE

BACKGROUND

On July 12, 2016, in Application No. 19313, the Board of Zoning Adjustment (“Board” or “BZA”), based on a self-certification, approved the request by Emmanuel Baptist Church (the “Applicant”) for a variance from the off-street parking requirements under § 2101.1, and a special exception from the residential development requirements under § 353, to construct a new 74-unit apartment building in the R-5-A District at premises 2409-2412 Ainger Place S.E. (Square 5740, Lots 8, 190, and 851). In that approval, the Board approved variance relief for off-street parking under § 2101 (65 spaces, where 74 are required) and special exception relief under § 353 for the R-5-A residential development requirements.

The Board issued Order No. 19313 on July 19, 2016. (Exhibit 2A.) The approval in Case No. 19313 was subject to the approved plans at Exhibits 40A and 40B, as further revised by Exhibit 41.

MOTION FOR MODIFICATION OF CONSEQUENCE

On May 3, 2017, the Applicant submitted a request for a modification of consequence to the modify the plans and variance relief approved by the Board in Order No. 19313 (the “Order”).

¹ This 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 (“the 2016 Regulations”).

(Exhibits 1-5.) Pursuant to 11 DCMR Subtitle Y § 703, the Applicant requested to change the approved plans which also necessitated an increase in the parking variance being requested.

In the Order, the Board approved relief for a planned new affordable housing project which has been selected by the Department of Housing and Community Development (“DHCD”) for city subsidies. (Exhibit 2B.) The approved plans in the Order incorporated 65 off-street parking spaces, which included 44 surface parking spaces and 21 spaces in a semi-basement “tuck-under” garage. A variance of nine spaces (or 13%) from the 1:1 parking requirement of 11 DCMR § 2101.1 was proposed and approved by the Board, with the support of both the Office of Planning (“OP”) and the affected Advisory Neighborhood Commission (“ANC”), ANC 8B.

Since the Board’s approval, the Applicant learned that the cost of the project would be significantly more than had been anticipated and thus is now seeking to make changes that would reduce the project’s cost but remain generally consistent with the project the BZA approved. The Applicant indicated that due to substantial budget cuts from increased construction costs and equity market LIHTC pricing following the Presidential election and high expectation of changes for corporate tax rates, the developer and project architect had to reevaluate the project design to cut costs while maintaining the project’s affordability. They determined that sufficient construction savings could be achieved by eliminating the partially below grade parking level and shifting the building 15 feet towards Ainger Place. The Applicant stated that this change will make the Project feasible without impacting the “integrity of the initial design.” (Exhibits 2, 2C.)

According to the Office of Planning (“OP”), the principal changes: (1) would eliminate the underground parking level, which would also eliminate 29 of the earlier design’s parking spaces; (2) shift the proposed building approximately 15 feet closer to Ainger Place in order to obviate the need for a retaining wall at the rear of the property; and (3) substitute Hardi-Plank for masonry on portions of the façade that do not face the street. OP noted that the change in the building’s placement would also result in the building having a defined height 2.3 feet taller than what was approved. (Exhibit 6.)

The proposed change necessitates a larger parking variance than previously approved. However, although the elimination of the partially below grade parking requires a greater parking variance than previously approved under the 1958 Zoning Regulations, the reduced amount of parking is consistent with matter-of-right requirements under the 2016 Zoning Regulations.² The Applicant also asserted that the proposed adjustment to the placement of the building on the site would offer a collateral benefit by allowing for the elimination of a retaining wall structure up to 13 feet high along half of the site perimeter. (Exhibit 2.)

² The requirement under the 1958 Zoning Regulations was one space per unit, but the 2016 Zoning Regulations reduced the requirement to one space per two units. With the requested reduction in required parking spaces, the proposed 36 spaces would comply with the requirements of Subtitle C, Chapter 7 of the 2016 Zoning Regulations of one space for every two units. (Exhibit 6.)

Due to the extenuating circumstances of substantial budget gaps making the project infeasible as previously designed, the Applicant is seeking a modification of consequence to include additional parking relief from 11 DCMR § 2101.1 and permission to update the site plan by eliminating the below grade parking level and shifting the proposed building toward Ainger Street. According to the Applicant, this request would not otherwise impact the approved special exception relief under § 353. (Exhibits 2 and 2D.)

According to the OP report, the number of affordable units would remain the same and the layout of the building and the landscaping would remain substantially unchanged or improved from what the Board previously approved. (Exhibit 6.)

The Merits of the Request for Modification of Consequence

The Applicant's request complies with 11 DCMR Subtitle Y § 703.4, which defines a modification of consequence as a "proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board."

In the application herein, the Applicant is requesting a modification of consequence to the Order due to the need to cut construction costs so as to complete the affordable housing project that the Board approved in Case No. 19313. With this modification, the Applicant now seeks additional variance relief from 11 DCMR § 2101.1 and permission to update the site plan by eliminating the below grade parking level and shifting the proposed building toward Ainger Street. This request does not otherwise impact the approved special exception relief under § 353. (Exhibits 2, 2D, and 6.)

Pursuant to Subtitle Y §§ 703.8-703.9, the request for a modification of consequence shall be served on all other parties to the original application and those parties are allowed to submit comments within 10 days after the request has been filed with the Office of Zoning and served on all parties. The Applicant provided proper and timely notice of the request for modification of consequence to Advisory Neighborhood Commission ("ANC") 8B, the only other party to Application No. 19313. (Exhibit 1.) ANC 8B did not submit a report to the record. However, the Single Member District ("SMD") Commissioner, ANC 8B01, who is also the Chair of the ANC, did submit a letter of support for the modification request. In that letter, the SMD indicated that the Applicant made a presentation of the modification proposal to the ANC on April 18, 2017, at its regularly scheduled monthly meeting. (Exhibit 9.)

The Applicant also served its request on the Office of Planning ("OP"). OP submitted a report dated May 26, 2017 recommending approval of the requested modification, i.e. 74 spaces required; 65 spaces previously approved; and 36 spaces proposed.³ (Exhibit 6.)

³ Further, OP noted that the original BZA case was reviewed under the 1958 Zoning Regulations, but the modification request was processed pursuant to the 2016 Zoning Regulations.

As directed by 11 DCMR Subtitle Y § 703.4, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a modification of consequence. Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a modification of consequence to the variance relief and plans approved in Case No. 19313, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 703, that the proposed modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant 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.). Therefore, 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 consequence of the Board's approval in Application No. 19313 is hereby **GRANTED, SUBJECT TO THE MODIFIED PLANS AT EXHIBIT 8A1-8A13.**

In all other respects, Order No. 19313 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON JULY 12, 2016: 4-0-1

(Marnique Y. Heath, Anita Butani D'Souza, Jeffrey L. Hinkle, and Peter G. May; one Board seat vacant.)

VOTE ON MODIFICATION OF CONSEQUENCE ON JUNE 7, 2017: 4-0-1

(Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter A. Shapiro, 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: June 12, 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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19466 of Beresford Davis, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the parking requirements of Subtitle C § 703.2 and the RF-use requirements of Subtitle U § 320.2, to convert a two-story flat into a three-unit apartment house in the RF-1 Zone at premises 1215 Holbrook Terrace, N.E. (Square 4057, Lot 195).

HEARING DATES: April 26, 2017, May 10, 2017²

DECISION DATE: May 31, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 3 (original), Exhibit 45 (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") 5D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5D, which is automatically a party to this application. The ANC report was submitted on the day of the hearing and indicated that at a regularly scheduled, properly noticed public meeting on May 9, 2017, at which a quorum was present, the ANC voted 3-1-1 to support the land area relief, but not the parking relief³. (Exhibit 39.) The Board gives great weight to the ANC's written concerns regarding parking and residential density in the area. In addressing these concerns, the Board notes that in reducing the number of units from four to three, the Applicant is also reducing density as well as the parking demand. The Board also notes that it afforded the ANC an opportunity to review and respond to the

¹ The Applicant amended the application by removing from the original request a variance from Subtitle U § 320.2(d) – the 900-foot minimum land area per dwelling unit requirement, and by reducing the number of units proposed from four to three. The relief requested under Subtitle U § 320.2 is now a special exception. (See Exhibit 45 – Revised Self-certification form.) The amended relief is reflected in the caption above.

² The hearing was administratively rescheduled from April 26, 2017 to May 10, 2017.

³ In its report, the ANC erroneously referenced the parking relief provision as "320.2" (Exhibit 39) which actually refers to the 900 square-foot minimum land area requirement which the ANC supports, not the parking relief. (See Subtitle U § 320.2.) In light of this, the order references the substance of the concerns raised by the ANC, rather than the provisions cited.

Applicant's amended application prior to public meeting on May 31, 2017. After the Applicant provided his revised application, the ANC did not submit any additional materials into the record.

The Office of Planning ("OP") submitted a timely report dated April 28, 2017, recommending denial of the special exception relief under Subtitle U § 320.2(d) – the 900 sq. feet per dwelling unit requirement for four units, but OP noted that it would support the conversion to three units and parking relief for three units under Subtitle C § 703.2(a). (Exhibit 37.) At the hearing of May 10, 2017, in light of OP's position, the Board requested that the Applicant submit revised plans, which the Applicant submitted on May 25, 2017 (Exhibit 43), along with a revised application (Exhibit 41) and a statement addressing the burden of proof (Exhibit 42), noting a revision of the application to three units and the elimination of the request for relief from the 900 sq. foot per dwelling unit requirement. The Board afforded OP an opportunity to file a supplemental report to address the revised application. OP filed a supplemental report expressing support of the amended application and plans. (Exhibit 44.)

The District Department of Transportation ("DDOT") submitted a timely report dated April 26, 2017 indicating that it had no objection to the grant of the application. (Exhibit 36.)

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 exceptions under the parking requirements of Subtitle C § 703.2 and the RF-use requirements of Subtitle U § 320.2. 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 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, Subtitle C § 703.2 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 PLANS AT EXHIBIT 43 – EXISTING & PROPOSED 3 UNIT LAYOUT.**

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

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 12, 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

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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. 19498 of Eric Petersen, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception from the accessory building use requirements of Subtitle U § 301.1(e), to construct a two-story accessory dwelling to be used as a garage with a second-story dwelling unit in the RF-1 Zone at premises 1109 D Street, S.E. (Square 992, Lot 65).

HEARING DATE: June 7, 2017

DECISION DATE: June 7, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) 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") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, 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 May 9, 2017, at which a quorum was present, the ANC voted 10-0-0 to support the application. (Exhibit 29.)

The Office of Planning ("OP") submitted a timely report, dated May 26, 2017, in support of the application. (Exhibit 32.) The District Department of Transportation ("DDOT") submitted a timely report, dated May 25, 2017, expressing no objection to the approval of the application. (Exhibit 31.)

An adjacent neighbor submitted a letter in support of the application. (Exhibit 13.)

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 from the accessory building use requirements of Subtitle U § 301.1(e), to construct a two-story accessory dwelling to be used as a garage with a second-story dwelling unit 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 § 301.1(e), 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 7 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **4-0-1** (Frederick L. Hill, Peter A. Shapiro, Lesylleé M. White, and Carlton E. Hart 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: June 9, 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

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THERE TO) 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. 19499 of Brad and Rebecca Kenemuth, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, and a special exception from the accessory structure use requirements of Subtitle U § 301.1(e), to construct a two-story accessory structure (garage and second-floor dwelling unit) in the RF-1 Zone at premises 120 6th Street, S.E. (Square 870, Lot 813).

HEARING DATE: May 31, 2017

DECISION DATE: May 31, 2017

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated September 8, 2016, from the Zoning Administrator (“ZA”), certifying the required relief. (Exhibit 8 (original).) A revised memorandum, dated May 25, 2017, was filed amending the relief needed by the Applicant. (Exhibit 42 (revised).)

The Board of Zoning Adjustment (“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”) 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted two reports, both of which recommended approval of the application. The ANC’s reports indicated that at a regularly scheduled, properly noticed public meeting on May 9, 2017, at which a quorum was present, the ANC voted 10-0-0 to support the application. (Exhibits 38 (original) and 41 (revised).)

The Office of Planning (“OP”) submitted a timely report dated May 19, 2017, recommending approval of the application with the amended relief. (Exhibit 40.)

¹ The Applicant amended the application (Exhibit 42) by removing from the original request a special exception pursuant to Subtitle E § 5007.1 from the maximum permitted height provision of Subtitle E § 5002.1, and adding special exception relief for an accessory structure pursuant to Subtitle U § 301.1(e), based on the Applicant’s consultation with the ZA and the Office of Planning (“OP”) (See Exhibit 33, OP Report – Exhibit 40) and the revised plans filed by the Applicant (Exhibit 36). This amended relief is reflected in the caption above.

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 39.)

Thirty-five letters of support for the application from neighbors were submitted to the record. (Exhibits 11, 26, 28, and 37).

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 special exceptions pursuant to Subtitle E § 5201 not meeting the lot occupancy requirements of Subtitle E § 304.1, and under Subtitle U § 301.1(e) to allow an accessory building constructed by right after January 1, 2013 to be used as a dwelling unit before the expiration of five years from approval of the building permit. 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 E §§ 5201 and 304.1, and Subtitle U § 301.1(e), 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 36 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: 4-0-1 (Carlton E. Hart, Lesylleé M. White, Frederick L. Hill, 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: June 9, 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.

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ZONING COMMISSION OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION CORRECTED¹ ORDER NO. 08-15A1(a)
Z.C. Case No. 08-15A
Cathedral Commons Partners, LLC
(Modification of Consolidated PUD @ Squares 1920 and Square 1920-N)
September 26, 2016

Pursuant to proper notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on July 28, 2016 to consider an application by Cathedral Commons Partners, LLC (“Applicant”) for review and approval of a modification to an approved planned unit development (“PUD”) (“Modification”) for property located in Squares 1920, Lots 833-835, 841, 844-852 and 7006-7012 and Square 1920-N, Lots 800-804 and 7000-7004 (“Property”). The Commission considered the Modification pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. The Commission approves the Modification, subject to the conditions below.

FINDINGS OF FACT

1. By Z.C. Order No. 08-15, dated July 13, 2009, as modified by Z.C. Order No. 08-15A, dated October 19, 2009 (together, “Order”), the Commission approved a consolidated PUD and related amendment to the Zoning Map to permit the construction of a mixed-use project containing a grocery store, retail, residential, and parking uses on the Property (“Project”). Said Order contained the following:
 - a. Condition 5(b) of the Order limits restaurants, prepared food shops, and fast food establishments to no more than 20% of the commercial linear frontage within the PUD site. As of the date of the request for the Modification, the Project had a total of 260’4” of commercial frontage devoted to such uses (out of a total of 1,507’9”, with approximately 41’2” of remaining frontage;
 - b. Condition 8(b) of the Order requires that the Applicant provide certain parking spaces within the Project for patrons of neighborhood restaurants and other retail uses that are not part of the PUD (“Neighborhood Retail Patrons”); and
 - c. As a part of the PUD, the Applicant also agreed to abide by certain storefront and signage guidelines that, among other provisions, limit signage height to 18” and require that blade signs be located at least 10’ above the sidewalk.
2. The Project is located on the 3300 and 3400 blocks of Wisconsin Avenue, N.W. (generally referred to as the “North Parcel” and the “South” Parcel, divided by Newark Street, N.W.). The project has been constructed and occupied. (Exhibit [“Ex.”] 1.)

¹ On November 14, 2016, the Commission approved corrections to Decision paragraphs 8.b.i.(A), 8.b.i.(B), and 8.c. to reflect the correct parking validation periods as reflected in the record. No other changes were made.

3. On March 29, 2016, the Applicant submitted an application for minor modification of the approved PUD to accommodate a new restaurant tenant on the ground floor of the North Parcel. The application included (a) a request to modify Condition 5(b) to permit an increase in the permitted frontage by 51'7" and (b) a request to deviate from the storefront and signage guidelines, in order to accommodate a new restaurant tenant. (Ex. 1.) Specifically, the Applicant:
 - a. Provided a list of existing retail tenants in the Project, which include many neighborhood-serving ground floor uses including a grocery store, pharmacy, dry cleaners, pet store, salon, home goods store, and clothing store. The Applicant also noted that the second-floor space on the South Parcel includes exercise studios and expansion studios for the Washington Ballet;
 - b. Explained the existing PUD can accommodate another restaurant establishment, but the PUD modification will permit the Applicant to accommodate a restaurant that is more desirable for the Project as well as the surrounding neighborhood. The Applicant explained that the proposed new tenant would respond to community desires for a restaurant with a meaningful breakfast offering;
 - c. Explained that the tenant's location on the North Parcel, combined with a high-quality storefront buildout funded in significant part by the Applicant, would create an engaging street-level experience and sense of place along Wisconsin Avenue, where none currently exists. This would fulfill goals and public benefits of the PUD related to creating pedestrian-oriented, street-activating ground floor retail space; and
 - d. Explained the Modification would not affect the overall height, mass, bulk, or design approved by the Commission in the original PUD.
4. The Wisconsin Newark Neighborhood Coalition, a party to the original application ("WNNC"), the Office of Planning ("OP"), and Advisory Neighborhood Commission ("ANC") 3C all requested that the application be removed from the consent calendar and scheduled for a public hearing. (Ex. 4, 5, 7.) OP recommended that the application be set down for a public hearing. (Ex. 5.) On April 20, 2016, the Applicant submitted a letter consenting to the removal of the Modification from the consent calendar. (Ex. 8.)
5. During its public meeting on April 25, 2016, the Commission removed the matter from the consent calendar and voted to set down Z.C. Case No. 08-15A for a public hearing. Notice of the public hearing was published in the *D.C. Register* and was mailed to owners of all property within 200 feet of the subject property, ANC 3C, and the parties to the original application.
6. The Modification was further updated by pre-hearing submissions filed on April 26, 2016 and July 7, 2016, as well as by a post-hearing submission dated September 19, 2016. (Ex. 10, 23, 32.) In its supplemental prehearing submission, the Applicant agreed to

additional commitments regarding the expanded restaurant use, the tenant signage, and extension of the parking benefit provided for off-site Neighborhood Retail Patrons, in response to concerns articulated by ANC 3C, including:

- a. Ensure that the tenant in the expanded restaurant space provides breakfast service, seven days a week;
- b. Reduce the height of the proposed signage to 30”;
- c. Increase in the validation period for both retail parking within the Project and for Neighborhood Retail Patrons to two hours;
- d. Adjust the start time for Neighborhood Retail Patrons parking to 6:00 p.m.;
- e. Create an additional tranche of 60 hours of free parking for Neighborhood Retail Patrons that begins at 8:00 p.m.; and
- f. Provide free parking for 20 teachers and staff at John Eaton Elementary School from 7:00 a.m. to 4:00 p.m., Monday through Friday, during the 2016-2017 and 2017-2018 academic years.

In its post-hearing submission, the Applicant agreed to modify the parking for John Eaton to allow parking from 7:00 a.m. to 5:00 p.m. The Applicant also responded to issues raised by WNNC.

7. On April 18, 2016, the District Department of Transportation (“DDOT”) submitted a report indicating that the Modification was minor and would not cause adverse or significant transportation impacts. Accordingly, DDOT did not object to the proposed Modification. (Ex. 6.)
8. On July 18, 2016, OP submitted a report in support of the application. OP evaluated the Modification, together with the proposed conditions agreed to by ANC 3C and the Applicant, and concluded that the Modification would not impose significant adverse impacts on parking, loading, and noise. OP also supported the requested modifications to the storefront and signage guidelines. OP supported the additional changes to the Neighborhood Retail Patrons parking benefit. Finally, OP concluded that the Modification would remain not inconsistent with the Comprehensive Plan. (Ex. 25.)
9. Pursuant to a resolution adopted at a duly noticed public meeting on July 20, 2016, with a quorum present, ANC 3C voted 6-0-2 to withdraw its objections to the Modification provided that the Applicant:
 - a. Ensure that the tenant in the expanded restaurant space provides breakfast service, seven days a week, starting at 7:00 a.m.;
 - b. Reduce the height of the proposed signage to 30”;

- c. Increase in the validation period for both retail parking within the Project and for Neighborhood Retail Patrons to two hours;
- d. Adjust the start time for Neighborhood Retail Patrons parking to 6:00 p.m.;
- e. Create an additional tranche of 60 hours of free parking for Neighborhood Retail Patrons that begins at 8:00 p.m.; and
- f. Provide free parking for 20 teachers and staff at John Eaton Elementary School from 7:00 a.m. to 4:00 p.m., Monday through Friday, during the 2016-2017 and 2017-2018 academic years.

As discussed above, the Applicant agreed to address these concerns in its supplemental pre-hearing submission. At the hearing, the chairperson of the ANC testified in support of the application and agreed that the conditions of approval proffered by the Applicant in its supplemental pre-hearing submission adequately addressed the concerns reflected in the ANC resolution.² The ANC chairperson testified that the conditions were arrived at after substantial negotiation with the Applicant, and he stated that the proposed conditions would be of substantial benefit to the community and address outstanding issues with the PUD. The ANC chairperson indicated that there was strong support within the neighborhood for the proposed use, and noted that the Applicant had worked well with the ANC and community to address concerns during the construction of the PUD.³

10. On July 28, 2016, the Commission held a public hearing on the application. Representatives of the Applicant, OP, DDOT, ANC 3C, and WNNC all appeared at the public hearing. In addition to the Applicant, ANC 3C was automatically a party in the proceeding. WNNC participated but did not request party status and therefore participated as an organization rather than as a party.
11. At the hearing, a teacher from John Eaton Elementary School testified in support of the application, but requested that the parking within the Project be extended until 6:00 p.m., and be extended for at least four additional academic years. In its post-hearing submission, the Applicant agreed to extend the time for parking until 5:00 p.m. and explained that a later time could not be accommodated because it would overlap with peak demand for the grocery store and other retail uses within the Project.
12. At the hearing, a representative of WNNC appeared and provided testimony in opposition of the Application based on alleged traffic and parking impacts. For the reasons discussed below, the Commission finds that the concerns raised by WNNC are either not germane to the modification or have been satisfactorily addressed by the Applicant:

² The ANC resolution also conditioned approval on the continued provision of a 30-minute “grace” period for parking in the garage. The Applicant did not proffer this additional condition, and at the hearing, the representative for the ANC testified that the conditions as proposed by the Applicant were acceptable.

³ The WNNC representative also acknowledged the Applicant’s “good dialogue” with the community during construction.

- a. WNNC recounted the history of the restriction on restaurants within the PUD and objected to the increase, claiming that the Applicant failed to make a showing of “hardship.” The Commission finds that the limitation on restaurants was a condition of approval of the PUD, and accordingly no “hardship” needs to be demonstrated to modify the PUD condition. Rather, the standards for reviewing and approving modifications to a PUD are discussed below. Furthermore, the Commission notes that under the original overlay that gave rise to the restriction, relief from the limitation on restaurants would not require demonstration of “hardship” since such relief is a special exception, not a variance; (See 11 DCMR § 1304.1.)
- b. WNNC claimed that the Modification would result in a “destination” retail use that is discouraged by the Comprehensive Plan. As discussed below, however, Policy RCW-1.1.5 calls for local-serving retail uses rather than “big-box” retail uses, and the proposed Modification does not constitute a big-box use. Furthermore, the Commission credits the testimony of the ANC and finds that the proposed tenant is a retail use desired by the local neighborhood;
- c. WNNC requested additional funding for the escrow account for unanticipated traffic calming needs beyond the amount required in the initial PUD. The Commission credits the testimony of DDOT that the Modification will have negligible traffic impacts and finds that any additional funding for traffic calming is unnecessary at this time – particularly since WNNC failed to provide any testimony that the existing escrowed funds had been used or were even needed to accommodate the base impacts of the Project;
- d. WNNC requested that the tenant and any successor tenant agree to state in its printed materials that validated free parking is available in the Project. In its post-hearing submission, the Applicant agreed to use good faith efforts to advertise the validated parking;
- e. WNNC requested that the validation period for the tenant’s establishment and other establishments within the Project be available for the operating hours of the establishment. In its post-hearing submission, the Applicant stated that this is already its practice and agreed to modify the proposed conditions to reflect this practice for the proposed tenant that is the subject of the Modification.;
- f. WNNC requested that the intersection of Newark Street be marked with signage stating “Local Traffic Only.” In its post-hearing submission, the Applicant provided a copy of a letter submitted to DDOT requesting the same; and
- g. WNNC requested that the Applicant prohibit residential tenants from participating in the Residential Permit Parking system. As WNNC itself notes, the Commission already rejected this request in the original Order and finds that the

Modification does not affect the residential component of the Project or otherwise warrant reconsideration of this measure.

13. Following the close of the public hearing, the Commission took proposed action to approve the Modification. The Commission requested that the Applicant further consider the requests of John Eaton and WNNC. The Commission waived the requirements of §§ 2403.15-2403.20 (regarding a list of final proffers and draft conditions) because the proffers of the PUD were largely unchanged from what the Commission already approved.
14. The application was referred to the National Capital Planning Commission (“NCPC”) for review of any impacts on the federal interests under the Comprehensive plan. By delegated action dated September 8, 2016, the Executive Director of NCPC found that the application was not inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.
15. At a public meeting on September 26, 2016, the Commission took final action to approve the Modification.

CONCLUSIONS OF LAW

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

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. As was the case for the originally-approved PUD, the Commission concludes that the Modification continues to promote the purposes of the PUD process.

The Modification, as approved by the Commission, does not affect the overall height, mass, bulk, or design approved by the Commission in the original PUD. The designs and uses for this Project, as amended by the Modification, are appropriate for the Property. The impact of the Project on the surrounding area and the operation of city services continue to be acceptable given the quality of the public benefits in the Project.

The Commission credits the reports and testimony of OP and DDOT. The Commission also credits the report of ANC 3C and gives great weight to the issues and conditions expressed in the

report of the affected ANC. In this case, the Commission concludes that the Applicant and ANC 3C have agreed on conditions of approval that have been incorporated as a part of this decision.

Based on the character of the proposed changes, the Commission finds that the modified PUD is consistent with the intent of and achieves the same goals as the previously approved PUD. The Commission concludes that its decision to approve the modified PUD is in the best interests of the District of Columbia and is consistent with the intent, purpose, and integrity of the Zoning Regulations and Zoning Map.

As was the case for the previously approved PUD, the Commission concludes that the approval of the PUD modification is not inconsistent with the Comprehensive Plan. In particular, the Commission concludes that the Modification is not inconsistent with provisions of the Rock Creek West Area Element regarding retail use. The RCW element specifically calls for “goods and services necessary to meet the needs of local residents,” contrasted with “big-box” retail uses. The Modification will deliver a neighborhood-serving and street-activating restaurant use that is, in fact, desired by many of the surrounding residents. (10A DCMR § 2307.3(d), 2307.3(e); Policy RCW-1.1.5.)

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this application for modification of a PUD approved pursuant to Z.C. Order Nos. 08-15 and 08-15A. The conditions in Z.C. Order Nos. 08-15 and 08-15A remain unchanged except as follows:

5. The Property shall be used for residential, commercial, and commercial parking uses, as shown on the plans marked as Exhibits 20 and 156 of the record, provided:

...

b. Restaurants, prepared food shops, and fast food establishments are permitted, but shall occupy no more than ~~20%~~ 23.42% of the commercial linear street frontage within the PUD Site, provided:

i. Any additional linear frontage above 20% of the commercial linear street frontage within the PUD Site shall only be used to increase the street frontage for a single restaurant tenant along Wisconsin Avenue, as identified on Exhibit 2C of the record in Z.C. Case No. 08-15A;

ii. The restaurant tenant shall provide breakfast service, seven days a week, starting not later than 7:00 a.m.;

iii. The Applicant shall provide a minimum of two-hour parking validation within the Project’s South Parcel garage for patrons of the restaurant tenant, with such validation made available during the tenant’s operating

hours. The Applicant shall use good faith efforts to direct the tenant to advertise the validated parking in appropriate printed materials; and

iv. The restaurant tenant shall be permitted to incorporate signage and storefront design elements as shown on Exhibit 2D of the record in Z.C. Case No. 08-15A, provided that it may have a single sign the height of which, including all elements, shall be limited to 30” in height.

(A) Any subsequent tenants of the space shall be required to comply with the original 18” restriction; and

(B) No other PUD-tenant’s signage shall be permitted to exceed the 18” restriction.

8. The Project shall include commercial parking facilities as shown on the plans referenced above; provided:

...

b. The Project shall make available, at no charge, parking spaces in the South Parcel garage as follows:

i. Parking spaces shall be made available for patrons of neighborhood restaurants and other retail uses that are not part of this PUD (“Neighborhood Retail Patrons”) on a first-come, first-served basis as set forth below:

(A) At least 180 hours of parking validation (which is the equivalent of 120 ninety-minute parking spaces) shall be made available to Neighborhood Retail Patrons on a first-come, first-serve basis beginning at 6:00 p.m.; and

(B) An additional 60 hours of parking validation (which is the equivalent of 40 ninety-minute parking spaces) shall be made available to Neighborhood Retail Patrons on a first-come, first-serve basis beginning at 8:00 p.m.;

ii. For the 2016-2017 and the 2017-2018 academic years, at least 20 spaces shall be made available for teachers and staff at John Eaton Elementary School on weekdays from 7:00 a.m. to 5:00 p.m., with the location of such spaces in the garage to be designated by the Applicant; and

iii. At least 30 spaces shall be made available for overnight parking for the surrounding community not part of this PUD from 9:00 p.m. to 8:00 a.m.; and

...

- c. Any validation period for parking in the commercial parking garage, whether for patrons of the Project or for Neighborhood Retail Patrons pursuant to condition 8(b)(i) above shall be for a minimum period of ninety minutes. The validation for on-site parking shall remain valid even if a patron stays longer than the validation period (i.e. the patron will only have to pay for the amount above the validation period); and
- d. The Applicant shall work with representatives of ANC 3C to reach out to neighborhood restaurants and other retail establishments to explain the parking validation system and encourage its use by neighborhood restaurants and other retail establishments.
- e. The Applicant shall provide an annual written report to ANC 3C detailing the actual usage of the South Parcel garage by Neighborhood Retail Patrons, community residents, and schoolteachers under Condition 8(b). The report shall also detail outreach to and participation by neighborhood restaurants and other retail establishments.

On July 28, 2016, upon the motion of Chairman Hood as seconded by Commissioner Miller, the Zoning Commission took proposed action to **APPROVE** the application at the conclusion of the public hearing by a vote of 3-0-2 (Anthony J. Hood, Robert E. Miller, Michael G. Turnbull to approve; Marcie I. Cohen and Peter G. May, not present, not voting).

On September 26, 2016, upon the motion of Vice Chairman Miller as seconded by Commissioner Turnbull the, Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Robert E. Miller, Michael G. Turnbull, and Peter G. May to adopt; Third Mayoral Appointee, vacant, not voting).

For the purposes of 11 DCMR § 3028, this Corrected Order shall be deemed to have become final and effective upon the publication of the original version of Z.C. Order No. 08-15A1 in the *D.C. Register* on October 21, 2016.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**ZONING COMMISSION ORDER NO. 15-24/15-24A****Z.C. Case Nos. 15-24 and 15-24A****Gallaudet University and The JBG Companies****(First-Stage PUD @ Square 3591, Lot 4 and Parcels 129/70, 129/103, 129/106, and 129/112)****May 8, 2017**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on June 23, 2016 to consider an application from Gallaudet University and The JBG Companies (together, the “Applicant”) for review and approval of a first-stage planned unit development (“PUD”) for Square 3591, Lot 4 and Parcels 129/70, 129/103, 129/106, and 129/112 (“Property”). The application proposes a mixed-use development consisting of retail, office, and residential uses (“Project”). The Commission considered the application pursuant to Chapter 24 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”)¹. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

FINDINGS OF FACT**Application, Parties, Hearing, and Post-Hearing Submissions**

1. The Property consists of four parcels of land in the Union Market/Gallaudet University neighborhood and is comprised of 273,514 square feet of land area (Square 3591, Lot 4 and Parcels 129/70, 129/103, 129/106, and 129/112). The parcels are located in the Northeast quadrant of the District of Columbia and are bounded by Penn Street to the north, Florida Avenue to the south, 5th Street to the west, and the Gallaudet University campus to the east (“Property”). (Exhibit [“Ex.”] 2.)
2. On October 15, 2015, the Applicant submitted an application to the Commission for the review and approval of a first-stage planned unit development (“PUD”) for the Property and a PUD-related map amendment to rezone the Property from the C-M-1 Zone District to the C-3-A Zone District for Parcels 1 and 2 and to the C-3-C Zone District for Parcels 3 and 4, as the Parcels are defined herein. (Ex. 2-2H.)
3. On November 24, 2016, the Applicant filed a separate application for Parcel 4 (Parcel 129/112) since the parcel was not contiguous with the other three parcels, as required pursuant to § 2401.1. The application was designated as Z.C. Case No. 15-24A. The

¹ Chapter 24 and § 102 and all other provisions of Title 11 DCMR were repealed on September 6, 2016, and replaced with a Chapter 3 of Subtitle 11-X of the 2016 Zoning Regulations. However, because this application was set down for a hearing prior to that date, the Commission’s approval was based upon the standards set forth in Chapter 24 and § 102 of the 1958 Zoning Regulations. (11-A DCMR § 102.3(c).)

Applicant submitted a request that Z.C. Case Nos. 15-24 and 15-24A be reviewed and considered together for ease of review and evaluated simultaneously. (Ex. 11.)

4. On January 14, 2016, the Office of Planning (“OP”) submitted a setdown report recommending that a public hearing be held on the application. OP noted its opposition to the use of Neal Place for vehicular traffic and encouraged the Applicant to reconsider its proposal. OP also requested that additional information be submitted into the record prior to the public hearing: (Ex. 12.)

- More detailed renderings of the proposed Stage 1 massing;
- Clarification of the relief and flexibility requested;
- A design for Neal Place consistent with both the Small Area Plan and the plans approved for the PUD located to the north;
- Coordination of with adjacent property owner for design of private alley for Parcel 3;
- Continued coordination with DC Water to upgrade utilities as necessary;
- Coordination with DOEE regarding stormwater management and LEED certification;
- Coordination with Historic Preservation Office to confirm development does not adversely affect Gallaudet’s campus;
- Demonstrate how development furthers goals and objectives of the Ward 5 Industrial Land Transformation Study;
- A signed First Source and CBE Agreement;
- Contracting goals for small and local business; and
- Updated and improved benefits and amenities package.

OP referred the application to the Department of Transportation (“DDOT”); Department of Energy and Environment (“DDOE”); Fire and Emergency Medical Services Department (“FEMS”); DC Water; DC Public Schools (“DCPS”); Department of Housing and Community Development (“DHCD”); Department of Public Works (“DPW”); Department of Employment Services (“DOES”); and Department of Health (“DOH”) for review and consideration. (Ex. 12.)

5. On February 8, 2016, the Commission set the application down for a public hearing, supporting OP’s request for additional information prior to the public hearing. The

Commission requested additional information regarding the use of Neal Place for the public hearing. The Commission approved the Applicant's request that Z.C. Case Nos. 15-24 and 15-24A be heard simultaneously and noted that the records for both cases would be consolidated into Z.C. Case No. 15-24. (February 8, 2016 Transcript ["Tr."], p. 54.)

6. On March 9, 2016, OP held an interagency meeting and invited DDOT, DOEE, DHCD, Department of Parks and Recreation, FEMS, Metropolitan Police Department, and DC Water to attend to review the application. (Ex. 28.)
7. The Applicant filed its pre-hearing statement on April 11, 2016, including responses to OP's and the Commission's comments above. (Ex. 15-15B10.)
8. Notice of the public hearing was published in the *D.C. Register* on April 21, 2016, and was mailed to Advisory Neighborhood Commissions ("ANC") 5D and 6C as well as to owners within 200 feet of the Property on April 21, 2016. (Ex. 18-20.)
9. Union Market Neighbors ("UMN") in Opposition filed for party status in opposition to the application on June 8, 2016. The UMN cited concerns regarding the destabilization of land values; impacts from construction; and impacts on light, air, public services and utilities, traffic, and parking supply. The organization purported to be made up of residents and commercial interests in the area; however, the organization did not attend the hearing or make itself available for cross-examination. Because the organization did not attend the hearing, the Commission denied its request for party status. (Ex. 27.)
10. A public hearing was held on June 23, 2016, during which the Applicant gave its presentation and responded to cross-examination. Both OP and DDOT gave presentations at the hearing. The ANC submitted a letter in support of the application but did not participate in the hearing. (Ex. 30.)
11. UMN, which was not present at the hearing, electronically submitted questions and comments to the Commission on the day of the hearing. UMN's questions and comments concerned the following matters: (Ex. 27C, 34.)
 - The application's consistency with the Comprehensive Plan Future Land Use Map;
 - What analysis was undertaken to review the Project's impacts on utilities, emissions, noise, and air quality;
 - How many jobs the Project would provide;
 - Whether a gentrification analysis was undertaken; and

- Whether the transportation infrastructure can accommodate the impacts of the Project.
12. The parties to the application, not having been served, did not have an opportunity to review and respond to UMN prior to the closing of the record. (Ex. 27.)
 13. The Applicant proffered, and the Commission accepted, Erwin Andres as an expert in transportation engineering and Morris Adjmi, as an expert in architecture. (June 23, 2016 Tr., p. 16.)
 14. At the public hearing, the Commission heard testimony and received evidence in support of the Project from OP and DDOT, although both agencies also cited outstanding items that still needed to be addressed. (*Id.*, pp. 68-73, 74-82.)
 15. At the conclusion of the public hearing, the Commission closed the record except for the Applicant's post-hearing submission and proposed order, as well as responses to the Applicant's post-hearing submissions from OP, DDOT, ANC 5D, and ANC 6C. The Commission requested additional information regarding the benefits and amenities package, specifically details regarding the administration of the affordable housing units being proffered at the 60% area median income ("AMI") level, more details regarding the proffered employment program and rationale for not participating in the First Source program, and an explanation for why the project will not be certified at the LEED-Gold level. The Commission also requested an annotated chart responding to each of the items listed in DDOT's report. (*Id.*)
 16. The Applicant filed its post-hearing submission and draft order on August 22, 2016. Its submission provided responses to each item requested by the Commission. (Ex. 36-36E7, 37.)
 17. At its public meeting on September 12, 2016, the Commission evaluated the Applicant's proposed benefits and amenities package and determined it was not commensurate with the level of flexibility afforded by the PUD process. Accordingly, it deferred action on the application to its public meeting on October 17, 2016. It asked the Applicant and OP to continue to work to resolve outstanding concerns with respect to the benefits and amenities package, specifically with respect to the affordable housing component. (September 12, 2016 Tr., pp. 71-74.)
 18. The Applicant filed a second post-hearing submission on September 30 outlining an updated benefits and amenities proposal. (Ex. 40.)
 19. OP testified at the public meeting on October 17, 2016 that it did not believe the proposed benefits and amenities were commensurate with the level of zoning flexibility requested. OP clarified to say that it believed that the proposed benefits and amenities were appropriate, with the exception of the amount of affordable housing and the

- inclusion of the design competition as a proffer. It specifically requested that the Applicant consider improving its affordable housing proffer. (Ex. 41; October 17, 2016 Tr., pp. 49-50.)
20. The Commission once again found that the proposed benefits and amenities were not commensurate with the flexibility afforded by the PUD process and deferred action on the application to its November public meeting. It asked the Applicant to reevaluate its affordable housing proffer. (October 17, 2016 Tr., pp. 50-52.)
 21. The Applicant filed requests to defer consideration of the application in November, December, January, and February to afford it additional time to discuss its proposed benefits and amenities with OP. (Ex. 42-45.)
 22. The Applicant filed an updated benefits and amenities package on March 13, 2017, which included an enhanced affordable housing proffer. (Ex. 46-46B.)
 23. The Commission ultimately took proposed action to approve the application at its March 27, 2017 public meeting.
 24. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) as required by the District of Columbia Home Rule Act on March 27, 2017. NCPC, by delegated action dated April 27, 2017, found that the proposed PUD-related map amendment would not adversely affect the federal establishment or other identified federal interests in the National Capital and would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 52.)
 25. On April 11, 2017², OP submitted a supplemental report. (Ex. 50.)
 26. On April 17, 2017, the Applicant submitted its list of final proffered public benefits of the PUD and draft conditions, pursuant to 11 DCMR §§ 2403.16-2403.18. (Ex. 51.)
 27. On May 8, 2017, the Commission voted to take final action to approve the application subject to the conditions enumerated in this Order.

THE MERITS OF THE APPLICATION

Description of Property and Surrounding Areas

28. The Property consists of four parcels of land in the Union Market/Gallaudet University neighborhood and is comprised of 273,514 square feet of land area. The parcels are located in the Northeast quadrant of the District of Columbia and are bounded by Penn

² The document was incorrectly dated March 13, 2017.

- Street to the north, Florida Avenue to the south, 5th Street to the west, and the Gallaudet University campus to the east. (Ex. 2.)
29. The Property is located in the C-M-1 Zone District. The C-M-1 Zone District does not allow residential uses; no residential uses are currently located on the Property. As such, no residents are displaced by the Project. (Ex. 2.)
 30. Parcel 1 is located in the northeast corner of the intersection of 6th Street and Florida Avenue and at the western edge of the Gallaudet campus. Florida Avenue is located to its south, 6th Street to its west, Parcel 2 to its north, and the Gallaudet University campus to its east. It consists of 61,500 square feet of land and is located in the C-M-1 Zone District. Parcel 1 is improved with the Appleby Building, which houses the transportation facilities for the University. The Applicant requested a map amendment to the C-3-A Zone District, which will enable the construction of residential, office, retail, and university-support uses. (Ex. 2.)
 31. Parcel 2 is bounded by 6th Street to the west, Parcel 1 to the south, and the Gallaudet University campus to the east and north. It consists of 45,440 square feet of land and is located in the C-M-1 Zone District. It is improved with an approximately 290-space, above-grade parking garage used by the University. The Applicant requested a PUD-related map amendment to the C-3-A Zone District to facilitate the construction of residential, retail, and university-related uses. The land areas of both Parcels 1 and 2 were referenced in the University's Campus Plan in Z.C. Case No. 12-15 but they were not included within the boundaries of the Campus Plan. (Ex. 2.)
 32. Parcel 3 is bounded by 5th Street to the west, Morse Street to the south, 6th Street to the east, and Neal Place to the north. It consists of 87,638 square feet of area and is located in the C-M-1 Zone District. The property is used as a surface-parking lot that supports retail uses in the Market. The Applicant requested a PUD-related map amendment to the C-3-C Zone District to allow the construction of residential, office, and retail uses. (Ex. 2.)
 33. Parcel 4 is bounded by 5th Street to the west, a private alley to the south, 6th Street to the east, and Penn Street to the north. It consists of 78,936 square feet of land area and is located in the C-M-1 Zone District. The Property is primarily vacant with a portion being improved with a series of low-scale industrial warehouses and various temporary uses. The Applicant requested a PUD-related map amendment to the C-3-C Zone District in order to allow a mixed-use residential, office, and retail building. (Ex. 2.)
 34. The west portion of the Property is located in a neighborhood historically known as the Capital City Market or Florida Avenue Market and is better known today as the Union Market area ("Market"). The east portion of the Property, located on the opposite side of 6th Street, N.E. is within the boundaries of Gallaudet's campus. Though the eastern parcels are located within the boundaries of Gallaudet's campus, they are not located

within the Gallaudet Campus Plan as they are located in the C-M-1 Zone District; the Campus Plan applies to only those parcels located in the R-4 Zone District. (Ex. 2.)

35. The Project is approximately 1,500 feet away from the New York Avenue Metrorail Station on the Red line and is located along the 90/92 Metrobus lines. It is located within the boundaries of ANC 5D01 in Ward 5 but is located just north of Ward 6, as Florida Avenue marks the boundary between Ward 5 and Ward 6. (Ex. 2.)

The Project

36. The Project consists of four phases of development. The massing of each phase varies as each has been thoughtfully developed in relation to its context, recognizing that each parcel has different needs and serves a distinct purpose. The Applicant seeks first-stage approval for each parcel; it only seeks approval for the proposed site plan and massing. The Applicant will return to the Commission in the future for approval of the design of each phase. (Ex. 2.)
37. Parcels 1 and 2 include lower-scale buildings with heights that are as low as 45 feet but step up to a maximum height of 70 feet as the buildings move north. The massing proposed for these phases respects the lower scale of the existing residential community to the south of Florida and the lower-scale structures on Gallaudet's campus while also taking advantage of its location along a major transit corridor that includes both a Metrorail Station and several Metrobus lines. (Ex. 2.)
38. The mix of uses for these parcels is intended to serve the University, its students, faculty, and staff as well as future market residents and visitors. Retail uses frame 6th Street at the ground floor while university-support uses face the University. A mix of residential, office, and university uses are located above the ground floor. (Ex. 2.)
39. Parcel 1 will establish a presence along 6th Street with a mix of university-support, retail, and office uses. The southern portion of the parcel serves as a gateway to Gallaudet's campus and a primary connection between the University's campus and the community. This Gateway Plaza serves as a new iconic point of arrival to the campus, expressive of the unique deaf ways of being as well as Gallaudet's heritage and spirit of innovation. This area establishes an iconic gateway to the University through architectural and landscape elements and will create an urban space that is inviting and activated. It is flexible space that can be used to accommodate temporary programs such as markets, festival, exhibitions, and performances. The programming will lend itself to welcome visitors and guests to the University; however, the precise location and parameters of this building will be informed by the demands and needs of Gallaudet University. (Ex. 2)
40. Parcels 1 and 2 include a series of "green fingers" that will provide passive recreation areas between the buildings abutting 6th Street. The southern finger, located on Parcel 1,

- focuses on providing social gathering spaces and as such, will include a greater proportion of hardscape features. (Ex. 2.)
41. Parcel 1 frontage on 6th Street is lined with retail uses on the ground-floor plane. Above the retail are residential and office uses with leasing focus on local boutique office users, including makerspace, co-working, and business incubator space. The eastern-facing portion of the building is dedicated to university-support and retail uses. (Ex. 2.)
 42. The buildings on Parcel 1 have a maximum height of 70 feet along 6th Street and step down to 45 feet along the campus edge on Florida Avenue. In all, the buildings consist of approximately 163,450 square feet of gross floor area: approximately 67,400 square feet of residential use, 11,490 square feet of retail use, 61,440 square feet of office use, and 23,120 square feet of university-related uses. (Ex. 2, 46.)
 43. Parcel 1 includes approximately 140 parking spaces and two loading berths at 30 feet deep. Access to the garage will be via a private drive aligned with Morse Street. The garage will be located entirely below grade and parking will be compartmentalized according to the use that it is serving. (Ex. 2, 46.)
 44. Parcel 2 is located to the north of Parcel 1. Like Parcel 1, one of the defining features of Parcel 2 is its landscaped public spaces. Parcel 2 includes the northern finger of the series of “green fingers” that will provide passive recreation areas. The northern finger will provide more opportunities for quiet gathering spaces and will provide more true green spaces to create an intimacy for pedestrians traversing between the buildings. (Ex. 2, 46.)
 45. The campus promenade is incorporated into Parcel 2, which utilizes a mix of hardscape features and plantings to establish a communication between the retail strip along 6th Street and the Gallaudet campus. The promenade is an active through connection for pedestrian traffic but it also encourages passive recreation and communal gathering. The eastern end of the promenade opens onto a larger plaza that will be hardscaped with functional features that double as gathering spaces for students on their way to and from class. (Ex. 2, 46.)
 46. Two separate buildings are proposed for this parcel, both of which will include residential units. The southern building will be approximately 45 feet in height and will include retail uses facing 6th Street and university-support uses facing the campus. In total, it includes approximately 48,920 square feet of residential uses, 6,830 square feet of university support uses and 8,300 square feet of retail uses. The northern building has a maximum height of 70 feet and will include approximately 54,000 square feet of residential uses, 2,440 square feet of university-support uses, and 3,900 square feet of retail uses. Again, the retail uses focus on 6th Street while the university-support uses face the Gallaudet Campus. The narrow gap between the two buildings in Parcel 2 is

- filled with a small retail kiosk so that there is no interruption in the retail uses along 6th Street. (Ex. 2, 46.)
47. Parcel 2 will include approximately 105 parking spaces and one loading berth. Parcel 2 will share a garage with Parcel 2 and access will be provided via a private drive aligned with Morse Street. (Ex. 2, 46.)
 48. The Applicant is studying the feasibility of modifying the location of Tapscott Drive, which currently intersects with 6th Street just to the north of Parcel 2. The site plan for Parcels 1 and 2 may be modified in the Stage 2 application to reflect the realignment of Tapscott Drive with the alley in Parcel 3 ("Parcel 3 Alley"). In the event this realignment is feasible, the Applicant may study the feasibility of providing access to parking for Parcels 1 and 2 from Tapscott Drive in connection with its Stage 2 application for Parcels 1 or 2. (Ex. 2, 46.)
 49. Parcels 3 and 4 provide greater mass on the west side of 6th Street. These buildings acknowledge the scale, proportions, and material character of the 1920s market buildings and create a sense of continuity and rhythm between the buildings, as opposed to establishing stand-alone structures. (Ex. 2, 46.)
 50. Parcel 3 will include approximately 50,620 square feet of retail space on the ground floor that will have frontage on 6th Street, Neal Place, and 5th Street. The retail will not only focus outwardly to each of these streets, but it will line the east-west alley running through Parcel 3. Vehicular traffic will be permitted through this market area, although it may be closed periodically for special events. This alley will provide much needed east-west access through the Market. (Ex. 2, 46.)
 51. Neal Place, to the north of Parcel 3, will be utilized as a pedestrian thoroughfare. It will be an outdoor and vehicle-free counterpart to the retail alley through Parcel 2. The design of Neal Place will be finalized during the Stage 2 application for Parcel 3 and in coordination with the adjacent property owner to the north. (Ex. 2, 46.)
 52. Parcel 3 will include approximately 600,660 square feet of residential use, or approximately 850-900 residential units. The building will be approximately 120 feet tall with a density of 7.43 floor area ratio ("FAR"). In order to realize this massing, the Applicant is proposing a simultaneous PUD-related map amendment to the C-3-C Zone District. Ten percent of the residential gross floor area will be dedicated to affordable housing. The parcel will include 403 parking spaces and two loading berths. (Ex. 2, 46.)
 53. Parcel 4 is the northernmost parcel with frontage on 5th and 6th Streets as well as Penn Street. This parcel will have a maximum height of 120 feet and a density of 7.92 FAR. Approximately 563,900 square feet of area will be dedicated to residential uses and 61,080 square feet of area will be dedicated to retail uses. The proposed building will include approximately 725-775 residential units. Ten percent of the residential gross

floor area will be dedicated to affordable housing. The building will include approximately 395 below-grade parking spaces, two 55-foot loading berths, and one 30-foot loading berth. (Ex. 2, 46.)

54. The Applicant seeks flexibility to reduce the level of residential uses approved for Parcels 1, 3, and 4 in the event there is demand for additional office uses. This flexibility allows the Applicant to eliminate residential uses on Parcel 1 and increase office use to total 113,730 square feet. The level of retail and university uses would remain unchanged on Parcel 1. On Parcel 3, residential uses would be reduced to 401,055 square feet, retail uses would be reduced to 48,550 square feet, and office uses would be increased to 186,160 square feet. On Parcel 4, residential uses would be reduced to 350,710 square feet, retail uses would be reduced to 58,200 square feet, and office use would be increased to 192,200 square feet. (Ex. 2, 46.)
55. Extensive landscaping is incorporated throughout the Project. Each of the public spaces introduce varying wayfinding strategies that are consistent with DeafSpace guidelines and Human Centered Design concepts. DeafSpace principles encourage multiple means for communicating wayfinding and cautionary signals to the pedestrian that appeal to senses other than hearing. Other notification devices include the use of texture, lights, landscaping, or colors to signal a pedestrian path. Reliance on alternative signals is important given the high number of deaf students, faculty, and visitors in the vicinity. (Ex. 2, 46.)
56. Parcels 1 and 2 will include a series of open spaces. The primary landscaping features included in Parcels 1 and 2 are the public plaza located at the 6th Street and Florida Avenue, the finger parks, and the Campus Promenade. (Ex. 2, 46.)

PUD Flexibility Requested

57. *Section 2516:* Parcels 1 and 2 will provide more than one structure on a single lot and require relief from § 2516. (Exhibits 2, 15, 26, 36, 46.)
58. *Parking:* Additional parking is required for Parcels 1 and 2 than is being provided. Flexibility was granted to provide an additional level of parking for each phase of the development. (Ex. 2, 15, 26, 36, 46.)
59. *Loading:* Loading relief is required for Phases 1, 2, 3, and 4 for the requisite number of berths and the depth of the berths. (Ex. 2, 15, 26, 36, 46.)
60. *Side Yard:* Side yard relief is required for Parcels 1, 2, 3, and 4. Side yards are not required; however, if one is provided, a minimum depth is required and the minimum depth is not provided on these parcels. (Ex. 2, 15, 26, 36, 46.)

61. *Inclusionary Zoning:* The Applicant initially sought relief from the requirements of § 2603; however, it subsequently modified its proffer and no longer requires relief from the inclusionary zoning requirements. (Ex. 2, 15, 26, 36, 46.)
62. *Use:* Flexibility was granted to convert a portion of the space reserved for residential and retail uses to office use if an office market is established at this location. The Applicant would like to retain the flexibility to convert a portion of the structures on Parcels 1, 3, and 4 to office use if market demand can be established, as noted in paragraph 41. (Ex. 2, 15, 26, 36, 46.)
63. *Streetscape and Landscape:* Flexibility was granted to allow the Applicant to coordinate with other stakeholders and relevant District agencies in finalizing the details of the streetscape and the park area on the private section of Neal Place. The landscaping plan will be finalized during the Stage 2 applications. (Ex. 2, 15, 26, 36, 46.)
64. *Private Alleys:* The Applicant is working with adjacent property owners to Parcels 3 and 4 to establish private alley systems for each parcel; the final site plan for these parcels may be modified in order to accommodate such private alleys. The final configuration of the alley systems in Parcels 3 and 4 will be finalized during the Stage 2 PUD application process. (Ex. 2, 15, 26, 36, 46.)
65. *Site Plan:* Parcels 1 and 2 are included in the Design Competition and the site plan for these parcels may be modified in the Stage 2 application based on the results of the competition. The site plan for Parcels 1 and 2 may be modified in the Stage 2 application to accommodate a realignment of Tapscott Drive with the proposed private alley in Parcel 3. The Applicant will continue to work with DDOT regarding the final configuration for Tapscott Drive.

The site plan for Parcel 3 may be modified in the Stage 2 application to accommodate the site plan ultimately approved in Z.C. Case No. 16-05, which is currently pending before the Commission. Z.C. Case No. 16-05 proposes a private alley in Parcel 3 and it reflects the transfer of the southeastern corner of Parcel 3 into the PUD that is the subject of Z.C. Case No. 16-05. The Applicant will modify the site plan for Parcel 3 in its Stage 2 application to reflect approvals granted by the Commission in Z.C. Case No. 16-05.

Finally, the site plan for Parcel 4 may be modified in the Stage 2 application to accommodate a private alley that serves both Parcel 4 and the property to its south. (Ex. 2, 15, 26, 36, 46.)

66. *Interim Uses:* Flexibility was granted to allow interim “pop-up” uses on Parcels 3 and 4. These parcels will be used for neighborhood serving retail and entertainment that will utilize temporary structures and may provide parking on either parcel. The interim uses are only permitted for the life of the first-stage PUD. (Ex. 2, 15, 26, 36, 46.)

Project Amenities and Public Benefits

67. As detailed in the Applicant's testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits: (Ex. 2, 36, 46,)

- a. Exemplary Urban Design, Architecture, and Open Spaces. The design of the Project fulfills multiple Urban Design Elements of the Comprehensive Plan. The Project features a Gateway Plaza which will help to "create more distinctive and memorable gateways at points of entry to the city, and points of entry to individual neighborhoods and neighborhood centers," in compliance with the Comprehensive Plan. Additionally, the Gateway Plaza's architectural and landscape elements are integrated with its surroundings to complement the historic architecture of the Gallaudet University Faculty Row. The Gateway Plaza design incorporates DeafSpace architectural principles, which focus on open sightlines, texture and light. The integration of DeafSpace architectural principles will "reinforce community identity," as contemplated by the Urban Design Elements.

A Campus Promenade and Green Fingers extending into the campus area also safeguard open and green space, in compliance with the Urban Design Elements. The Gateway Plaza will "provide [. . .] public plazas, and similar areas that stimulate vibrant pedestrian street life and provide a focus for community activities," by including flexible space that can be used for community activities, such as markets and festivals. Parcels 3 and 4 of the Project strengthen "neighborhood character and identity" by utilizing building materials that are consistent with those of the historic Florida Avenue Market. The massing of the improvements on Parcels 3 and 4 integrate effectively with the historic market buildings.

The Project's Streetscape design also satisfies the Urban Design Elements. The Streetscape includes wide pedestrian paths and sidewalks, flexible spaces, which may include a variety of landscaping or seating areas, bioswale, and bike lanes. The "characteristically wide sidewalks of Washington's commercial districts" are preserved, and the variety of landscaped areas, pedestrian paths, and bike lanes improve both the appearance and utility of the Streetscape. Furthermore, the Project will include "ground level retail" as contemplated by the Urban Design Elements;

- b. Site Planning and Efficient Land Utilization. This development reflects this benefit by replacing an underutilized site with a mixed-use development. The Project provides vehicular, pedestrian, and bicycle connections that do not currently exist. These connections integrate the site with the existing community in a way that the existing parcels do not;

- c. Housing and Affordable Housing. The Project will provide a substantial amount of multi-family housing, totaling approximately 1,334,880 square feet and substantially “expanding the housing supply” in the neighborhood. The Project will serve the Housing Element policies by directly creating “mixed use development, including housing, [. . .] particularly in neighborhood commercial centers, [. . .] and around appropriate Metrorail stations.” The project will also create approximately 133,488 square feet of affordable housing, 70% of which will be reserved for low-income households with an annual income no greater than 50% AMI and 30% will be reserved for moderate-income households with an annual income no greater than 80% AMI. The housing component of the Project will be located along 5th and 6th Streets, which are becoming commercial centers spurred by the development of the Market. The Project’s proximity to the Metrorail Station also promotes the objective of locating housing nearby to Metrorail stations;
- d. Land Use Element. The Project will meet a number of the Land Use Element objectives. The Project is located less than one-half mile from the NoMa-Gallaudet U Metrorail Station (“Metrorail Station”) and will contain a mix of residential, retail, office, and university uses. The Project’s location and mix of residential, retail, office, university, and outdoor components will “reduce automobile congestion, [. . .] provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide,” as contemplated by the Comprehensive Plan. The Project will be constructed on parcels that are currently underutilized or unimproved, and fills the “gaps in the urban fabric,” while maintaining continuity with the design aesthetic of the area.

Additionally, the Project contains extensive landscape, open space, and pedestrian improvements (discussed in further detail below), which will beautify and enhance the surrounding neighborhood. Furthermore, by including Gallaudet University uses in the Parcel 1 and Parcel 2 developments, creating a Gateway Plaza, and developing multiple public plazas, paths, and green spaces within Gallaudet University, the Project contributes to the integration of the University with the surrounding neighborhood, and ensures that “objectionable impacts” on the surrounding community are minimized;

- e. Transportation Element. The Project fulfills a number of the Transportation Element objectives. The Streetscape component of the Project will include wide pedestrian paths, a dedicated bicycle lane on 6th Street, and automobile lanes, and will clearly delineate these various uses to promote efficient movement. The site plan also incorporates a private alley to break up what would otherwise be a superblock on 6th Street. Additionally, pedestrian areas will be designed to

promote safety, with shortened road crossings, clear signage, and appropriate lighting. Bicycle safety will also be bolstered, through the provision of a dedicated bicycle lane on 6th Street, as well as bicycle racks. The Streetscape component will provide a safe, well-organized, and convenient means for pedestrians, bicyclists, and motorists to move through the Project area and navigate the surrounding neighborhood;

- f. Environmental Protection Element. The Project supports several of the Environmental Element policies. The Project's Streetscape component promotes pedestrian and bicycle travel by establishing bicycle lanes alongside wide sidewalks. The Project's proximity to the Metrorail Station further reduces the need for automobile travel to and from the Project area for residents, shoppers, tourists, and students.

Additionally, the Project will advance the creation and maintenance of a "healthy urban forest" through the installation of runoff mitigation devices, such as stormwater infrastructure and bioswales, as well as the planting of resilient vegetation and trees. The Green Fingers, which will extend throughout the campus open space will prove an immersive natural experience, shielded from noise and sun glare. These elements enhance the aesthetic appeal of the Project and create a comfortable atmosphere for pedestrians and others to enjoy. The Project will also be certified at the LEED-Gold (v.2009) level;

- g. Economic Development Element. The Project fulfills the Economic Development Elements above by introducing approximately 140,000 square feet of ground floor retail space along 5th and 6th Streets. Underutilized buildings and unimproved sites along these streets will be repurposed for retail uses that serve the surrounding community, directly furthering the objectives of the above Economic Development Elements. The proposed retail space continues the economic revitalization of the neighborhood energized by the redevelopment of the Market and adds variety to the goods and services available to residents. The Project's retail additions to the neighborhood contribute to the vitality of the neighborhood and help to attract further beneficial development of the neighborhood by elevating its profile as a robust retail center;
- h. Educational Development Element. The Project advances the Educational Element of the Comprehensive Plan by integrating Gallaudet University with the surrounding neighborhood. The development of the Streetscape, Gateway Plaza, Green Fingers extensions, and Campus Promenade better integrates the University with the community and fosters the flow of pedestrians between the surrounding neighborhood and the open spaces of the University. The Applicant will also provide training sessions for vendors in the market and members of the

community with respect to interacting with the deaf and hard of hearing community;

- i. Uses of Special Value. The Applicant is offering the following benefits and amenities as uses of special value, in addition to those items referenced above:
 - (A) Affordable Residential Units: The Applicant initially proposed setting aside eight percent of the residential gross floor area for households with an annual income no greater than 60% AMI; however, OP noted concerns that the units would be administered outside of the inclusionary zoning program. Accordingly, the Applicant modified its proffer to be consistent with the AMI levels included in the inclusionary zoning program: 10% of the residential gross floor area will be reserved as affordable housing, of which 70% of the 10% set aside will be available to households with an annual income no greater than 50% AMI and the remaining 30% of the 10% set aside will be available to households with an annual income no greater than 80% AMI;
 - (B) LEED. All four parcels will be certified at the LEED-Gold (v.2009) level;
 - (C) Public Open Space. The improvements outlined below will not utilize any funds that may be awarded to Union Market developments through the tax increment financing (“TIF”) program. The Applicant commits that none of the benefits and amenities proposed herein will be financed with TIF funds:
 - Creation of over one acre of open space and park space for public use;
 - Incorporation of DeafSpace principles in design of streetscape. Including but not limited to:
 - Pedestrian circulation zone - Wider sidewalks that provide an uninterrupted circulation zone which allows simultaneous signing and walking without interrupting the flow of traffic;
 - Improved lighting that supports clear visual communication by adequately illuminating signers and interpreters and reduces eye strain;

- Material differentiation to signal to the deaf/blind when zones change uses and that enable vibration as a means for occupants to sense movement of others;
- Public areas with gathering areas designed for dynamic interaction and placement of personal belongings within eyesight;
- Wayfinding elements that utilize the latest technological advancements and can be navigated by people of all abilities; and
- Comprehensive and coordinate wayfinding package to guide pedestrians, bicycles, and vehicles through the project; and
- Improved streetscape, sidewalks, and landscaping, adjacent to the baseball field owned by the National Park Service and located immediately north of Parcel 2;

(D) Retail.

- Ground-floor retail in all phases of the project featuring retailers, including soft goods, similar to the retailers historically located in the Market;
- The Applicant will set aside a minimum of 10,000 square feet of retail space, to be reduced upon execution of each lease, for maker shops within the Project. The Applicant will make this space available to qualified retail tenants at a rate that is 10% below then market-rate rents, for the life of the Project;
- The Applicant will set aside at least 5,000 square feet of retail space, to be reduced upon execution of each lease, to a vendor from the deaf and hard-of-hearing community. This proffer promotes the goal of better integrating Gallaudet University with the Market. The spaces are not reserved specifically for Gallaudet students or alumni but are available to any deaf or hard of hearing entrepreneur and are a means to promoting interaction between cultures as well as support the deaf and hard of hearing community, a mainstay of the Market community and the District of Columbia; and

- Train interested commercial tenants (retail and office) on deaf space culture and becoming responsible members of the deaf community;
- (E) Employment. The Applicant has executed a First Source agreement with the Department of Employment Services.

The Applicant seeks to create a deaf-friendly environment and promote education of the real estate development process during the redevelopment of the 6th Street project. This will be done in part by hiring Gallaudet students as interns and employees throughout the project to work with the Applicant from entitlement through completion; and

- (F) Florida Avenue Market.
- Contribute \$50,000 towards the study and implementation of an additional entrance for the NoMa-Gallaudet U station; and
 - Sponsorship of at least two community events per year for at least five years, up to a total cost of \$20,000.

Compliance with the Comprehensive Plan

68. The Project furthers the following Guiding Principles of the Comprehensive Plan, as outlined and detailed in Chapter 2, the Framework Element: (Ex. 12.)
- a. Change in the District of Columbia is both inevitable and desirable. The key is to manage change in ways that protect the positive aspects of life in the city and reduce negatives such as poverty, crime, and homelessness; (217.1)
 - b. Redevelopment and infill opportunities along corridors and near transit stations will be an important component of reinvigorating and enhancing our neighborhoods. Development on such sites must not compromise the integrity of stable neighborhoods and must be designed to respect the broader community context. Adequate infrastructure capacity should be ensured as growth occurs; (217.6)
 - c. Enhanced public safety is one of the District's highest priorities and is vital to the health of our neighborhoods....; and (218.6)
 - d. Residents are connected by places of "common ground," such as Union Station and Eastern Market. Such public gathering places should be protected, and should be created in all parts of the city as development and change occurs. (220.6)
69. The PUD process is an avenue to transform the Property to a higher and better use that contributes to the surrounding community. Whereas the Property is either vacant or underutilized, the Project will integrate the Property with the neighborhood and will facilitate connections with the broader community that do not currently exist. The PUD is aligned with many goals and objectives of the District of Columbia Comprehensive

- Plan, namely providing affordable, transit-oriented housing, and transit-oriented employment opportunities. (Ex. 2.)
70. Parcels 1 and 2 are shown as suitable for Institutional uses on the Future Land Use Map of the Comprehensive Plan. Institutional uses include land and facilities occupied and used by colleges and universities, large private schools, hospitals, religious organizations, and similar institutions. The zoning designations of these properties depends on the zoning of surrounding parcels. Given that Parcels 1 and 2 will provide university support services, including offices, residential, and a visitor's center, the proposed project is not inconsistent with this designation. Furthermore, the proposed C-3-A Zone District is consistent with surrounding zoning designations. (Ex. 12, Comprehensive Plan Framework Element 225.16.)
71. Parcels 3 and 4 are shown as suitable for a mix of Production, Distribution, and Repair ("PDR"), High-Density Commercial, and Medium-Density Residential uses on the Future Land Use Map. This striping indicates that a mix of two or more land uses is encouraged. PDR areas are those characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services and food services, among other uses. High-Density Commercial areas are characterized by office and mixed office/retail buildings greater than eight stories in height though the commercial designation may include other uses, including housing. The mix of uses, including office, maker, and residential is not inconsistent with this designation. (Ex. 12, Framework Elements 225.18 and 225.19.)
72. The Project will reserve at least 10,000 square feet of area for makerspace, which is consistent with the PDR designation of the site. (Ex. 46.)
73. The Generalized Policy Map ("GPM") describes the subject site as Institutional. Institutional Uses include colleges and universities, large private schools, hospitals, religious organizations, and similar institution, which is appropriate given that Gallaudet University owns the Property. Nevertheless, Parcels 1 and 2 will serve as a gateway to Gallaudet University, and portions will be used to provide a Visitor's Center and university support services. Gallaudet University, as the current owner of Parcels 3 and 4, will continue to have a stake in their development, and will use these properties to improve visual and physical connections between DC and the University's campus. The proposal is not inconsistent with these designations. (Ex. 12.)
74. The Commission credits the testimony of the Applicant and OP regarding the compliance of the PUD with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide, and area elements of the plan as follows: (Ex. 2, 12, 28, 46.)
- a. This project is not inconsistent with the Housing element of the Comprehensive Plan. This PUD does not displace any residents but in fact, provides the mechanism by which to allow residential use on the Property. The existing zoning of the Property prohibits residential use; no housing, including affordable housing, would be permitted on the Property without first rezoning it. Given that

the Property is adjacent to a Metrorail Station, it is a prime location for housing. The PUD will not only expand the housing supply, but more specifically, it will expand the affordable housing supply within the District.

The Project is providing more affordable housing on-site than is required and it is providing it at deeper affordability levels than is required. This PUD will reserve 10% of the residential gross floor area for affordable housing, which currently equates to 133,488 square feet of affordable housing, which would exceed the inclusionary zoning requirements by 26,700 square feet. The Applicant will reserve 70% of the total set aside (approximately 93,442 square feet based on the current residential proposal) for households with an annual income no greater than 50% AMI, and it will reserve the remaining 30% of the set aside (approximately 40,046 square feet based on current density) for households with an annual income no greater than 80% AMI. Under the inclusionary zoning requirements, the entirety of the affordable set aside can be reserved for households with an annual income no greater than 80%; accordingly, the PUD is providing a significant benefit by reserving more affordable housing and making the units accessible for low-income households. By making units available at the 50% and 80% AMI levels, the Applicant is making housing available on-site to a diverse number of income levels. These low- and moderate-income households will have access to the same neighborhood recreational amenities, resources, and conveniences as the market-rate units. Moreover, the units themselves will be constructed at the same high quality as the market-rate units and will be indistinguishable from the market-rate units on their exterior. These units will be protected at the proffered affordable levels for the life of the Project through the recordation of an inclusionary zoning covenant in the land records.

As noted in Policy H-1.2.7, this PUD is granted additional height and density in exchange, in part, for providing more affordable housing than is required. Providing additional height and density on the Property is appropriate given its transit-oriented character. The height and density proposed for Parcels 3 and 4 is consistent with the C-3-C Zone District, a high-density zone district; whereas, the height and density proposed for Parcels 1 and 2 is consistent with the C-3-A Zone District, a medium-density designation. These designations are appropriate given the Property's context next to Gallaudet University, along major transportation corridors serving major bus routes, near a Metrorail Station, and the other uses in the Market. This also makes it an appropriate location from a noise and land use compatibility perspective as its isolation mitigates any adverse noise effects on an existing community; (Ex. 46-46B.)

- b. The PUD is not inconsistent with the Economic Development element of the Comprehensive Plan in numerous regards. One of the proffered benefits of this PUD is the Applicant's commitment to the First Source program. The First Source program is the District's preferred mechanism for ensuring that District

residents are given priority in job placement. This program also outlines requirements for apprenticeship programs and coordinates with job training programs. This is a critical tool in ensuring that development projects benefit District residents and that residents are trained for available job openings. This program provides an opportunity for District residents to make a living wage through the construction of this development.

The PUD also reserves 10,000 square feet of space for maker uses. These spaces will be made available at below-market rents in an effort to keep retail spaces affordable. Maker spaces are designed for goods to be made on-site, ensuring that they are made locally, thus increasing the District's opportunity for creative production. It also recalls the Market's industrial heritage by continuing the dedication to onsite production. The definition of maker spaces was crafted with an eye toward encouraging incubator space. These spaces will attract local retailers given the focus on production and the below-market rents will help ensure that the retailers can remain on-site into the future. The commitment to keep maker space rents at below-market rates will remain in place for the life of the project to help ensure these retailers will not be displaced. They also provide an opportunity for these retailers to make a living wage through the production of local goods.

The PUD also reserves 5,000 square feet to deaf or hard of hearing entrepreneurs. Again, this space will encourage small and local entrepreneurs to locate onsite and operate out of the market. This further encourages local retail and it serves to support a marginalized community within the District.

The Applicant also proffers to train members of the community and vendors within the market on how to interact with the deaf community. This training will provide life skills to those living in and around Gallaudet University and will help businesses more effectively and appropriately interact with the deaf community. This training will help market vendors create a more comfortable space for the deaf and hard of hearing community and will likewise, expand their marketability to the community.

The Applicant commits to instituting an internship program, which helps to partner education with employment opportunities. It is providing students with the training they require to seek employment upon graduation. This proffer specifically targets students in the District of Columbia to position them for success in the business world upon graduating from college.

Finally, one of the benefits of the PUD is that it will include the construction of the 6th Street cycle track. By improving the bike network, the Applicant helps facilitate access to other areas of the District where nearby residents may be employed. This proffer provides a convenience for residents in getting to their

job and it encourages residents to use alternative modes of transportation; (Ex. 46-46B.)

- c. The Project is not inconsistent with the Environmental element of the Comprehensive Plan. It furthers many environmental protection objectives through its environmentally sensitive design and operation. Each of the buildings is designed to be certifiable at the LEED-Gold level. LEED is “Leadership in Energy and Environmental Design” and the program encourages “best in class” building practices. To meet the LEED-Gold requirements, the buildings’ designs must be resource efficient, meaning they use less water and energy and reduce greenhouse gas emissions. In addition to pursuing a building design that will improve air quality, the Applicant has proffered more street trees along 6th Street than required. These trees will not only beautify the street but will simultaneously provide environmental benefits. Finally, the Applicant is developing sites near a Metrorail Station, constructing a cycle track, and providing a significant amount of bicycle parking and notably more street trees than the remainder of Union Market and typical streetscape standards, all of which provide environmental benefits by encouraging alternative modes of transportation that are more environmentally friendly than driving and serve to improve air quality; (Ex. 46-46B.)
- d. The Project is not inconsistent with the Transportation element of the Comprehensive Plan. Several aspects of the benefits and amenities package promote transportation related components of the Comprehensive Plan. The Applicant is making a monetary contribution to the NOMA BID to study providing an entrance to the Metrorail Station east of the railroad tracks. Providing such a connection to Metro, helps to create transit-accessible employment, it reduces vehicular trips, and helps to connect District neighborhoods. Similarly, constructing the cycle track on 6th Street achieves the same objectives as well as improving the bicycle network within the District;

The Applicant will incorporate DeafSpace guidelines into the design of the streetscape, which is consistent with many of these policies. These guidelines will address the needs of the deaf and hard of hearing community as well as benefit those without hearing challenges. These guidelines better integrate bicycle and pedestrian circulation within the site plan and improve the safety of both the bicycle and pedestrian networks; (Ex. 46-46B.)

- e. The Project is not inconsistent with the Parks and Recreation element of the Comprehensive Plan. The Project reserves over one acre of open space for public enjoyment. The open space is not centralized on one single parcel but is split among the parcels, diversifying the character, purpose and use of the spaces. These open spaces provide an opportunity for active and passive recreation but they also provide aesthetic balance amid the new development in the market. The

open spaces break down the scale of the buildings and provide light and air to the units. They also help activate the streetscape and create a more human scale for the development. In addition to the open spaces provided by the development, the improvements to pedestrian and bicycle circulation also ease residents' ability to access the open spaces; and (Ex. 46-46B.)

- f. The project is located in the "Northeast Gateway" section of the Upper Northeast Area Element of the Comprehensive Plan and advances several policies of this Element. Establishing ground-floor retail spaces along 5th and 6th Streets will enhance shopping options for neighborhood residents, contribute to the development of the Market, and encourage economic activity in the area. Additionally, the development of the Gateway Plaza, Green Fingers, pedestrian amenities, and public spaces will directly advance the Upper Northeast Elements by improving "the image and appearance of the Northeast Gateway area by creating landscaped gateways into the community, creating new parks and open spaces, and improving conditions for pedestrians along Florida Avenue." The Project will promote economic and residential development in the area, while preserving the historic University and Market and enhancing outdoor spaces for the enjoyment of residents and visitors to the neighborhood. (Ex. 2, 12.)
75. The proposed project is not inconsistent with the goals and objectives of the Small Area Plan ("SAP"). As detailed in the SAP, the vision for the Market focuses on (1) creating a mix of uses, (2) providing a mix of densities, (3) establishing a sense of place, (4) retaining unique attributes of the area, (5) creating a vibrant public realm, (6) improving connectivity via improved streetscapes, and (7) establishing sustainable practices as follows: (Ex. 2.)
- a. **Mix of Uses:** As detailed above, the Project will incorporate a wide array of uses such as office space, retail space, university-support space, and residential space. Apart from the variety among the proposed uses, there will be variation within each use type. The proposed office use will range from incubator space for entrepreneurial Gallaudet students to boutique office users looking for Class A space in a less traditional commercial office location; the retail space will vary from local D.C. vendors to creative makerspace that will pay homage to the roots of the Market; the university support space will vary from classes that are open to the greater community to communal spaces for the Gallaudet community; and the residential uses will include both market-rate and affordable housing; (Ex. 2.)
 - b. **Mix of Densities:** The SAP notes that Parcels 3 and 4 are appropriate for Medium-High Density. Accordingly, these parcels include maximum heights of 120 feet and densities ranging between 6.5 and 8 FAR for these parcels. Though not included within the boundaries of the SAP, Parcels 1 and 2 step down in both height and density as they abut the University and are located just north of an established rowhouse community located south of Florida Avenue. Parcels 1 and

2 will include heights ranging between 45 and 70 feet and densities ranging between 2.5 and 3.0 FAR. All four parcels will integrate seamlessly with the existing and approved densities in this community;

- c. Establishing a Sense of Place: The Applicant is establishing a sense of place at the Market. The variation in uses, the focus on public spaces, and the integration of varying massings all support the mutual goal of establishing a sense of place at the market. The Market has a unique history that the Applicant intends to respect and incorporate into each phase of the development; (Ex. 2.)
- d. Retaining Unique Attributes of the Area: Since this is a first-stage application, which does not address the design of the buildings, the Applicant addresses this objective through the mix of uses. Though not a traditional office location, office uses will be incorporated into the project. The office space will be dedicated to boutique office users and will include incubator space to promote creative thinking and the entrepreneurial spirit. Similarly, the retail relates to the history of the Market when local vendors sold produce and meats from the very same location and the inclusion of makerspace will ensure that the proposed retail is unique and unlike any other retail found elsewhere in the District; (Ex. 2.)
- e. Creating a Vibrant Public Realm: The outdoor spaces are critically important as a framework for the structures on the proposed site plan. The site plan is ordered upon establishing an organic flow among the green areas: effective use of these spaces will in turn, mean maximizing visibility of the structures and their uses. Establishing a series of passive recreation spaces throughout the site will create a cohesiveness through the Market that ties the interior and exterior spaces in such a way that encourages full exploration and participation in the established community; (Ex. 2.)
- f. Improving Connectivity through Improved Streetscape: The Project will improve connectivity between the Market and the University through the use of pedestrian spaces. The proposed green space will tie the eastern and western edges of the Market together by creating areas that attract pedestrians and encourage them to meander through the site.

While pedestrian circulation is prioritized, vehicular circulation will also be improved. The existing street grid is in poor repair and does not take advantage of any wayfinding tools to promote circulation through the Market. The proposed modifications will establish a visually intuitive circulation pattern that is cognizant of its surroundings, particularly pedestrians. The primary focus of the proposed wayfinding tools will be incorporation of DeafSpace principles to alert drivers and pedestrians alike of potential conflicts while traversing the market's public spaces; and (Ex. 2.)

- g. Establishing Sustainable Practices: The Applicant will investigate ways to incorporate sustainable practices that promote water efficiency, reclamation and reuse in agreement with the District's stormwater requirements during the Stage 2 application and it commits to designing each building to be certified at the LEED-Gold v. 2009 level. (Ex. 2, 46-46B.)
76. In addition to the Comprehensive Plan, this site is identified in the Ward 5 Industrial Land Transformation Study as an area for retention of the existing industrial fabric. This study encourages: the preservation of production uses; environmental stewardship and performance; workforce development; nuisance uses and buffering; long-term affordability of industrial space; development of new multi-tenant space; providing space for arts uses and makers; and the development of additional community amenities. "Maker" spaces are defined as small scale, local businesses devoted to the creation and production of goods and services. The Study is not a Council-adopted policy document, but provides guidance regarding the opportunities that can be found in industrial development. The Vision of this study is to adapt industrial land to develop a cutting-edge and sustainable production, distribution, and repair industry that diversifies the District's economy, serves as a hub for low-barrier employment, complements and enhances the integrity of neighborhoods, and provides opportunities for arts, recreation and other community amenities. In an effort to ensure that industrial lands are used as anticipated, the Applicant is reserving at least 10,000 square feet for maker spaces and will subsidize those uses in an effort to keep them affordable in the long term. (Exhibits 12, 46-46B.)

Agency Reports

77. OP referred the application to DDOT, DOEE, FEMS, DC Water, DC Public Schools (DCPS), (DHCD), (DPW), and DOH for review and consideration. OP also held an interagency meeting and invited DDOT, DOEE, DHCD, Department of Parks and Recreation, FEMS, Metropolitan Police Department, and DC Water to attend to review the application. (Ex. 12.)
78. By report dated June 13, 2016 and by testimony provided at the public hearing on June 23, 2016, OP recommended approval of the application conditioned on an improved benefits and amenities package. OP confirmed that the Project supports the written elements of the Comprehensive Plan and is not inconsistent with the Future Land Use and Generalized Policy maps of the Comprehensive Plan. (Ex. 28.)
79. OP noted in its report and during its testimony at the public hearing that the proffered benefits and amenities were not commensurate with the level of flexibility provided in the PUD. It requested that the Applicant commit to participating in the First Source program, certify the project at the LEED-Gold level, and provide affordable housing consistent with the inclusionary zoning requirements.

80. The Applicant modified each of the items that OP requested in its benefits and amenities package: it committed to LEED-Gold and entered into a First Source agreement with DOES. It also modified its affordable set aside so that it was consistent with the affordability levels designated in the inclusionary zoning program. It first proposed to set aside eight percent of the residential gross floor for affordable housing, with 100% of the set aside reserved for households with an annual income no greater than 60% AMI. The Commission and OP noted concerns with providing affordable units that were not consistent with the affordability levels designated in the IZ program. Accordingly, in its posthearing submission, the Applicant modified its proffer to dedicate 70% of the set aside reserved for households with an annual income no greater than 50% AMI and 30% of the set aside reserved for households with an annual income no greater than 80% AMI. Both the Commission and OP did not find this level of affordability commensurate with the additional height and density afforded by the PUD process and asked the Applicant to increase the affordability proffer. In response, the Applicant submitted a revised benefits and amenities package and increased its affordability proffer to set aside 10% of the residential gross floor area for affordable housing, with half of it being reserved for households with an annual income no greater than 50% AMI and the other half reserved for households with an annual income no greater than 80% AMI. OP submitted a second post-hearing report to the Commission stating it still did not find the Applicant's affordable housing proffer commensurate with the flexibility afforded by the PUD process and the Commission agreed. The Applicant ultimately revised its affordable housing proffer to set aside 10% of the residential gross floor area for affordable housing, with 70% of the set aside reserved for households with an annual income no greater than 50% AMI and 30% of the set aside reserved for households with an annual income no greater than 80% AMI. (Ex. 36, 39-41, 46-46B; September 12, 2016 and October 17, 2016 Tr.)
81. OP strongly supported the Applicant's modification of its site plan to shift east-west vehicular access from Neal Place to an alley located in Parcel 3. OP noted that it preferred reserving Neal Place for pedestrian traffic but supported vehicular traffic on the Parcel 3 alley. It found the proposal to be consistent with the SAP. (Ex. 28.)
82. OP supported the Applicant's requests for flexibility and for relief from the Zoning Regulations, particularly with regard to those areas where coordination with neighboring property owners was required. It agreed that the final site plans for Parcels 2, 3, and 4 would be provided during the Stage 2 applications. (Ex. 28.)
83. OP concluded that the development furthered the goals and objectives of the Florida Avenue Market Small Area Plan, through the provision of a variety of complimentary uses, improved public realm, and enhanced open space that connects the Market to the University. (Ex. 12.)
84. By its testimony at the public meeting on March 27, 2017, OP noted that it supported the updated benefits and amenities package, including the affordable housing proffer, and

found it to be commensurate with the level of height and density afforded by the PUD process. (March 27, 2017 Tr., pp. 28-29.)

85. By report dated June 13, 2016 and by testimony at the public hearing on June 23, 2016, DDOT noted that it did not have any objections to the project based on the following conditions: (Ex. 29.)
- a. The Applicant pursue shared site access with neighboring property owners for Parcels 3 and 4;
 - b. Align Tapscott Drive with the Parcel 3 alley;
 - c. Relocate the access to parking for Parcels 1 and 2 to a private drive aligned with Morse Street and provide a light at the intersection of Morse Street and 6th Street;
 - d. Installation of traffic signals at 4th and Penn Streets and 6th and Morse Streets;
 - e. Implement 6th Street right of way improvements; and
 - f. Install traffic cameras at five intersections.
86. The Applicant agreed to analyze the feasibility of providing shared access with neighboring property owners for Parcels 3 and 4, as well as the feasibility of aligning Tapscott Drive with the Parcel 3 alley. It relocated access to the parking for Parcels 1 and 2 prior to the public hearing and committed to providing a light at the intersection of 6th and Morse Streets. The Applicant agreed to construct a light at the intersection of 4th and Penn Streets with funds pooled from other development projects and to provide traffic cameras at three of the five requested intersections. Finally, it committed to work with DDOT on the 6th Street right-of-way improvements in connection with its Stage 2 PUD application. (Ex. 36, 38.)
87. DDOT stated in its report that it did not support turn lanes at the intersection of 5th and Penn Streets as they limit the opportunities to treat 5th Street as a street capable of being closed to vehicular traffic for special events. The Applicant withdrew its proposal for turn lanes at 5th and Penn Streets as a result of DDOT's comments. (Ex. 29, 36, 38.)
88. At the public hearing, DDOT testified that it wanted a commitment from the Applicant to contribute to the cost of a light at 4th and Penn Streets. The Applicant agreed to contribute \$150,000 to the construction of the light in its post-hearing submission upon the development of Parcel 4. (Ex. 36, 38.)
89. DDOT submitted a posthearing report into the record confirming that the Applicant had addressed its concerns and it did not object to the PUD. (Ex. 38.)

90. OP submitted a posthearing report on April 11, 2017. The report confirmed in writing that OP believes the proposed benefits and amenities of the project, as revised, are sufficient to justify approval. (Ex. 50.)

Advisory Neighborhood Commission 5D Report

91. ANC 5D submitted a resolution dated June 13, 2016, in support of the project by a vote of 5-0-1. The ANC specifically stated its support for the affordable housing being provided as a part of the application, as well as the inclusion of neighborhood-serving retail. (Ex. 30.)

Parties in Support and Parties in Opposition

92. There were no parties in support or in opposition to the application.
93. A request for party status was submitted by Union Market Neighbors in Opposition on June 8, 2016. The Commission denied the request as they neither provided evidence of how they were uniquely affected nor were present at the public hearing. (Ex. 27; June 23, 2016 Tr., pp. 6-9.)

Persons and Organizations in Support or Opposition

94. UMN submitted a letter in opposition to the application. It noted that the development would destabilize land values and utilize on-street parking currently serving the community. It further stated that construction would be disruptive to the community. The issues raised by UMN are detailed in the “Contested Issues” section below. UMN did not submit any support for its allegations into the record. (Ex. 27.)³

Contested Issues

95. Outlined below are the contested items raised by UMN in its submissions to the Commission. The Commission notes, however, that UMN was not granted party status, it did not attend the hearing and did not make itself available for cross-examination. It also notes that many of UMN’s submissions were submitted on the evening of the hearing and were not served on the Applicant. Finally, the Commission notes that the submissions appear to refer to a different project inasmuch as they refer to proposed hotel use, which is not a part of the instant project.
96. Comprehensive Plan Maps. The UMN questioned the lack of PDR uses on-site and the appropriateness of rezoning the Property to the C-3-C Zone District. (Ex. 27, 34.) Parcels 3 and 4 are designated as appropriate for high-density commercial,

³ Though each of UMN’s submissions are consolidated as Exhibit 27, they were not filed simultaneously; 27A, B, and C were all filed on the day of the hearing and were not served upon the Applicant.

medium-density residential, and PDR uses under the Future Land Use Map. UMN argued that given the triple striping of the parcels, it stood to reason that one-third of the development on Parcels 3 and 4 should be dedicated to each use. This, however, misinterprets the Future Land Use Map. The “Mixed Use” designation is designated by a striped pattern and is intended primarily for larger areas where no single use predominates today, or areas where multiple uses are specifically encouraged in the future. This striping does not prescribe a requirement for how much of a certain use should be provided but only that a mix of the specified uses should be incorporated on-site. 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. (Framework Element, 225.20.)

Nevertheless, the 10,000-square-foot set aside is consistent with the PDR designation for the site. The PDR designation is appropriate for manufacturing uses; maker uses, as defined herein, focus on on-site production, similar to manufacturing but are compatible with residential uses, unlike true industrial uses. The provision of makerspace is consistent with the PDR designation on the FLUM. Similarly, the high-density mix of office and residential uses is consistent with the high-density commercial and medium-density residential designation. The commercial designation on the FLUM is not restricted solely to commercial uses. In fact, the framework element specifically states, “it should also be acknowledged that because of the scale of the Future Land Use Map and the fine-grained pattern of land use in older parts of the city, many of the areas shown purely as “Commercial” may also contain other uses, including housing.” (225.20.) Accordingly, the emphasis on residential uses in Scheme A is appropriate and not inconsistent with the FLUM designation.

97. Proposed Use. UMN argues that the Applicant’s first stage submission does not clearly designate what is designated as “office” use and does not provide the required square footage of the proposed use. The Commission finds this to be without basis as Sheets 12-21 include clear massing diagrams designating the uses on each parcel and include clear tabulations of each use. (Ex. 36-36E.)

UMN also argues that the impact of the high-density office use on nearby low-density residential districts has not been analyzed. Again, the Commission finds this to be without basis as it was thoroughly analyzed during the development of the Florida Avenue Small Area Plan as well as in the instant project. The SAP concluded that the market’s proximity to the Metro station made it a desirable location for residential and office uses because it exemplified true transit-oriented development. It also noted that adjacent neighborhoods were dealing with the challenge of rising housing costs so the District was undertaking a program to ensure that some residential uses would be retained that were affordable for households earning no more than 30% of the Area Median Income. (SAP, p. 29.) Similarly, OP and the Commission deferred action on the instant

application to encourage the Applicant to incorporate additional affordable housing, which it ultimately did. (Ex. 46-46B)

98. Affordable Housing. UMN took issue with the level of affordable housing being provided in the Project, stating that the Applicant was essentially meeting the minimum requirement. The Commission notes that while it appreciates that the Applicant initially proposed a set aside at deeper affordability levels than is otherwise required, it agrees that the initial affordable housing proposal was not commensurate with the height and density afforded by the PUD process. As such, it did not accept the Applicant's initial affordable housing proposal, nor did it accept two subsequent revisions of the affordable housing proffer. The Applicant submitted an updated proposal eight months after the hearing that the Commission found to be commensurate with the height and density sought in the PUD process. The final affordable proposal set aside 10% of the residential gross floor area for affordable housing. Seventy percent of the set aside would be reserved for households with an annual income no greater than 50% AMI, while the remaining 30% would be reserved for households with an annual income no greater than 80% AMI. The Commission notes that this exceeds both the required set aside amount and the required level of affordability and marks a significant contribution to affordable housing. Prior to the hearing on this application, only two other PUDs in the market (Z.C. Case Nos. 14-07 and 14-12) agreed to include residential units affordable to households with an annual income no greater than 50% AMI. Those cases committed to setting aside 1.6% of the residential gross floor area for 50% AMI units; whereas, the instant project is reserving seven percent of the residential gross floor area for 50% AMI units. Accordingly, the Commission finds that the Project's commitment to affordable housing is significant and strong and well exceeds the base requirements of the inclusionary zoning program. (Ex. 40, 46-46B.)

The Commission also notes that OP considered the impact that higher density developments would have on the surrounding communities when it developed its recommendations in the Small Area Plan. It specifically noted that the District would contribute a development subsidy in order to retain housing in the community that would be available to households with an annual income no greater than 30% AMI. (SAP, p. 29.)

99. Quality of Life. UMN questioned whether OP considered the impact a hotel would have on air quality, waste, and emissions, which is irrelevant given that this project does not propose a hotel. Nevertheless, the Applicant's civil drawings indicate that the Project will generate a water and sewer demand of 529,536 gallons per day. (Ex. 36E, Sheet 78.) Moreover, OP solicited comments from the various public services, including MPD, FEMS, DC Water, DOEE, and DPW and invited these agencies to an interagency meeting to discuss the Project and evaluate its impacts. OP noted in its set down report that the Property is otherwise zoned for industrial use and the Commission notes that those uses that are permitted as a matter of right in the C-M-1 Zone District could have a greater impact on the community and quality of life than the proposed mix of uses. (Ex. 12.) The Project will meet all DOEE requirements, including stormwater management requirements, and will be certified as a LEED-Gold project, which is a vast improvement

from existing conditions. To meet the LEED-Gold requirements, the buildings' designs must be resource efficient, meaning they use less water and energy and reduce greenhouse gas emissions. In addition to pursuing a building design that will improve air quality, the Applicant has proffered more street trees along 6th Street than required. These trees will not only beautify the street but will simultaneously provide environmental benefits. Finally, the Applicant is developing sites near a Metrorail Station, constructing a cycle track, and providing a significant amount of bicycle parking, all of which provide environmental benefits by encouraging alternative modes of transportation that are more environmentally friendly than driving and serve to improve air quality. (Ex. 36-36E.)

UMN argued that no analysis was undertaken to consider the impacts on existing services such as access for emergency vehicles. The Applicant, however, undertook a comprehensive transportation analysis of the impact of the site, which concluded that the Project would not have a detrimental impact on the community, and that impacts could and would be mitigated by incorporating specific measures recommended by DDOT in its hearing report and updated in its posthearing report. (Ex. 29, 38.) Given that the Project will not have a detrimental impact on the transportation network, it will not affect the ability of emergency vehicles to access the Property or adjacent communities.

UMN also notes that the Applicant has not committed to upgrading the municipal water, electric, and gas systems that will serve the Project. As OP noted at the public meeting on March 27, 2017, the Project currently has access to utilities along 6th Street and it will have to make any required upgrades to the utilities in order to secure its building permits. (March 27, 2017 Tr., pp. 28-29.)

UMN stated that its members will be adversely affected by the noise and dust created during the construction of the Project. The Applicant, however, set forth a dust control plan to minimize the creation and dispersion of dust and it set forth its phasing and construction sequence to address these concerns. UMN did not provide comments on either plan and the Commission finds that they adequately addressed UMN's concerns. (Ex. 36.)

UMN claimed that the light and air of its residents would be affected by the construction of this Project; however, the Commission notes that the closest resident lives on the south side of Florida Avenue and is sufficiently removed from the location of the Project that its light and air will not be adversely affected. (Ex. 27.)

UMN also claimed that the Project would destabilize land values in the community. The Commission notes that such an effect was considered by both OP and the District Council during the development and adoption of the Small Area Plan, as noted above. The Small Area Plan sets forth the appropriate levels of height and density in the Market and it is appropriate that this analysis was undertaken at the time it set forth the parameters for future development. The Commission also notes that it deferred action on the application and instructed the Applicant on four separate occasions to increase its affordable housing proffer, which the Applicant ultimately did. The affordable housing proffer is significant

and will create a significant amount of affordable housing where none exists today. (Ex. 46-46E.)

100. Jobs and Existing Small Businesses. UMN argued that no analysis was performed to determine how many jobs would be created by the Project. The Applicant, however, entered into a First Source Agreement with DOES. The DOES created the First Source program as a means for addressing unemployment in the District and the purpose of the program is to give preference to District residents for new positions in a project. DOES and the District have prioritized this program as an effective means for creating jobs for District residents. By entering into this agreement, the Applicant has agreed to abide by the terms of the agreement when hiring new hires. (Ex. 46.)

In addition to entering into a First Source Agreement, the PUD also reserves 10,000 square feet of space for maker uses. These spaces will be made available at below-market rents in an effort to keep retail spaces affordable. Maker spaces are designed for goods to be made on-site, ensuring that they are made locally, thus increasing the District's opportunity for creative production. It also recalls the Market's industrial heritage by continuing the dedication to onsite production. The definition of maker spaces was crafted with an eye toward encouraging incubator space. These spaces will attract local retailers given the focus on production and the below-market rents will help ensure that the retailers can remain on-site into the future. The commitment to keep maker space rents at below-market rates will remain in place for the life of the project to help ensure these retailers will not be displaced. They also provide an opportunity for these retailers to make a living wage through the production of local goods. (Exhibit 46)

The PUD reserves 5,000 square feet to deaf or hard of hearing entrepreneurs. Again, this space will encourage small and local entrepreneurs to locate onsite and operate out of the market. This further encourages local retail and it serves to support a marginalized community within the District. (Ex. 46.)

The Applicant will also train members of the community and vendors within the market on how to interact with the deaf community. This training will provide life skills to those living in and around Gallaudet University and will help businesses more effectively and appropriately interact with the deaf community. This training will help market vendors create a more comfortable space for the deaf and hard of hearing community and will likewise, expand their marketability to the community. (Ex. 46.)

The Applicant commits to instituting an internship program, which helps to partner education with employment opportunities. It is providing students with the training they require to seek employment upon graduation. This proffer specifically targets students in the District of Columbia to position them for success in the business world upon graduating from college. (Ex. 46.)

101. Transportation. UMN argues that the transportation analysis for this project was considered in isolation and did not take into consideration the other PUDs in the area.

This is plainly contradicted by the record, as the Applicant's CTR included nine other PUDs in its future impact analysis and still concluded the Project will not have a detrimental impact on the transportation network. (Ex. 26, 26B.)

UMN also argues that the new transit trips predicted for this project have not yet been projected and no analysis has been undertaken to determine if Metro can accommodate the additional capacity. Again, this is directly contradicted by the record. The Applicant's CTR specifies that the Project is projected to generate 518 trips during the peak morning hour and 735 trips during the peak evening hour. Sixty-nine percent of these trips will be on Metro. WMATA studied the capacity of its metrorail stations in the Station Access and Capacity Study (2008). The study analyzed existing station capacity for vertical transportation and its capacity to process riders at the farecard gate and its projected capacity in 2030. The report concluded that the NoMA-Gallaudet U Station could accommodate future growth at all access points. Accordingly, Metro can absorb the additional ridership. (Ex. 26B.)

UMN claims that the development will usurp parking that is currently used by residents. DDOT, however, found that the parking proposal for the project was appropriate. The Project is providing over 1,000 parking spaces and DDOT found its parking plan consistent with recent trends in the District given the Property's proximity to Metro and multimodal networks. DDOT found the parking provisions for the retail, residential, and office components of the Project to be "appropriate." (Ex. 29.)

Compliance with PUD Standards

102. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects." The Commission finds that the development incentives for the height and flexibility are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines set forth in the Applicant's statement and the OP report.
103. The Commission credits the testimony of the Applicant and its experts as well as OP and DDOT, and finds that the superior site planning, streetscape and open space improvements, housing and affordable housing, uses of special value, LEED-Gold, and First Source commitments all constitute acceptable project amenities and public benefits.
104. The Commission finds that the PUD as a whole is acceptable in all proffered categories of public benefits and project amenities. The proposed benefits and amenities are superior as they relate to urban design, landscaping, and open space, housing and affordable housing, effective and safe transportation access, and uses of special value to

the neighborhood and the District as a whole. These benefits and amenities, including the affordable housing proffer, shall serve as the benefits and amenities for the second-stage applications for each phase. No additional benefits and amenities shall be expected when the second-stage applications are processed.

105. The Commission believes the final benefits and amenities package addresses the comments and concerns noted by OP at the public hearing.
106. The Commission finds that the character, scale, massing, and mix of uses of the PUD are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant's architectural and transportation planning witnesses that the PUD represents an efficient and economical redevelopment of a strategic and transit-oriented parcel located near a Metrorail Station.
107. The Commission credits the testimony of OP and DDOT, and accepts the ANC's resolution in support, noting that the PUD will provide benefits and amenities of substantial value to the community and the District commensurate with the flexibility sought through the PUD process. The Commission agrees with the Applicant that given the Property's location in the Market and its proximity to the Metrorail Station, a maximum height of 120 feet for Parcels 3 and 4 is appropriate and consistent with the Florida Avenue Small Area Plan.
108. The Commission credits the testimony of the Applicant's traffic consultant, who submitted a comprehensive transportation review that concluded that the PUD would not have adverse effects due to traffic or parking impacts. The Applicant is providing transportation mitigations, including traffic signals and cameras. The Applicant is also providing improvements to pedestrian, cycling and vehicular circulation through the Market.
109. The Commission acknowledges that the affordable housing proffer approved in this PUD supersedes any future amendment to the inclusionary zoning program.⁴
110. The Commission credits the testimony of OP that the Project will provide benefits and amenities of value to the community and the District commensurate with the flexibility and additional height and density sought through the PUD.
111. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant's traffic consultant and DDOT and finds that the traffic, parking, and other

⁴ Because this project is considered a "vested project" under 11-A DCMR § 102.3(c), it is subject only to the provisions of the 1958 Regulations, unless the Applicant subsequently seeks a modification by the regulating authority. (11-A DCMR § 102.6.)

transportation impacts of the Project on the surrounding area will not be unacceptable and are capable of being mitigated through the measures proposed by the Applicant and DDOT and are acceptable given the quality of the public benefits of the PUD. For these reasons, it also finds that the Project will not have adverse effects on emergency vehicle access to the community. For the reasons detailed in this Order, the Commission also agrees with the Applicant's consultants that Metro has the capacity to accommodate the projected additional ridership.

112. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant's consultants and finds that the environmental impacts of the Project, including noise, dust and air quality, on the surrounding area will not be unacceptable and are acceptable given the quality of the public benefits of the PUD.
113. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant's consultants in confirming that the Project has access to existing utilities in the 6th Street right-of-way.
114. For the reasons detailed in this Order, the Commission credits OP for determining that the affordable housing proffer is appropriate for this community and is a significant value for the existing community and District residents. It also acknowledges that the proffer well exceeds what is otherwise required by the inclusionary zoning program.
115. For the reasons detailed in this Order, the Commission credits the Applicant's efforts to participate in an established job program promoted by the District in an effort to improve the rate of employment in the District and finds that this is a valuable proffer.
116. For the reasons detailed in this Order, the Commission credits OP's and the Applicant's submissions and agree that the proposed rezoning of the Property is not inconsistent with its designation on the Future Land Use Map and is not inconsistent with the Comprehensive Plan generally.
117. For the reasons detailed in this Order, the Commission finds that the materials submitted by the Applicant satisfied the requirements of a first-stage PUD.

CONCLUSIONS OF LAW

1. Pursuant to 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, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the application as a first-stage PUD for all four parcels. The Commission may

impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.

3. The Property meets the minimum area requirements of §§ 1326.2 and 2401.1 of the Zoning Regulations. Three of the four parcels are separated by a street; however, Parcel 4 is farther removed. A separate application was filed for Parcel 4, which is consistent with the requirements of the Zoning Regulations.
4. Proper notice of the proposed PUD was provided in accordance with the requirements of the Zoning Regulations and as approved by the Commission.
5. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, massing, mix of uses, and design of the proposed PUD are appropriate. The proposed redevelopment of the Property, with a mix of residential and commercial uses, capitalizes on the Property's transit-oriented location and is compatible with citywide and area plans of the District of Columbia, including strategic development plans such as Florida Avenue Market Small Area Plan.
6. The Commission finds that the Project advances the goals and policies in the citywide and area elements of the Comprehensive Plan, including:
 - a. Land Use Element policies promoting redevelopment around Metrorail stations, design to encourage transit use, transit-oriented employment and housing, infill development, neighborhood revitalization, and redevelopment of obsolete industrial land;
 - b. Transportation Element policies promoting transit-oriented development and employment, discouraging automobile-oriented uses, and improving the bicycle and pedestrian networks;
 - c. Economic Development Element policies to increase the retail base, link residents with jobs, promote small and local businesses, hire District residents, provide job training and job creation;
 - d. Housing Element policies to provide housing in mixed-use developments, expanding the housing supply, and providing quality affordable housing;
 - e. Parks, Recreation, and Open Space and Arts and Culture Elements related to creation of plazas in higher-density developments, improving access to open space, providing a diversity of open space; and

- f. Environmental Element policies encouraging street tree planting, designing for energy efficiency, improving air quality through transportation efficiency.
7. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.
8. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential, retail, university, and office uses for this PUD are appropriate for the Property's location. The PUD's height, bulk, and uses are consistent with the District's planning goals for the surrounding neighborhood.
9. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than the matter-of-right development on the Property provides. The Commission finds that the urban design, site planning, creation of the bicycling and pedestrian networks, efficient and safe transportation features and measures, housing and affordable housing, ground-floor retail uses, and uses of special value are all significant public benefits. The impact of the PUD is acceptable given the quality of the public benefits of the PUD.
10. Based on the Applicant's expert testimony, proposed mitigation measures, DDOT's reports and testimony, and the Findings of Fact described above, the Commission finds that the Project will not cause unacceptable impacts on vehicular, bicycle, or pedestrian traffic; roadways and sidewalks; public transit infrastructure; neighborhood parking; or other transportation-related facilities and conditions. The Commission finds that the Applicant will sufficiently mitigate potentially adverse traffic and transportation impacts resulting from the Project so that traffic and other transportation-related conditions resulting from the Project will not be unacceptable.
11. The Commission finds that the Project will not have adverse impacts on quality of life for nearby or District residents. The Commission acknowledges the letter submitted by UMN arguing that nearby residents will be threatened by the Project and have been overlooked in its planning, but the Commission disagrees. The public benefits of the Project as well as its many transportation impact mitigation strategies and construction dust mitigation strategies will ensure the quality of life does not decline for nearby residents. Furthermore, the planning for the Project involved extensive public outreach and involvement, and the ANC was in support of the Project.
12. The impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, or pedestrian impacts on the surrounding community. The application will be approved

with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

13. The Commission finds that the Project will create a significant amount of affordable housing, where none currently exists. By increasing the affordable housing stock in the District, the Project is helping to address the need for housing available to a mix of income levels. The Commission also finds that the Applicant's efforts to increase employment of District residents is commendable and it finds that both of these efforts help to stabilize the community.
14. Approval of the PUD is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed PUD is consistent with Parcel 3 and 4's High-Density Commercial and Medium-Density Residential and Production, Distribution, and Repair designation on the Future Land Use Map and Parcels 1 and 2's Institutional designation on the Future Land Use Map. The Commission agrees that the PUD furthers numerous goals and policies of the written elements of the Comprehensive Plan as well as other District planning goals for the immediate area.
15. The Commission concludes that the proposed PUD is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
16. The PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
17. The Applicant proposed improvements for the public space immediately abutting its property and while the Commission does not have jurisdiction over the development of public space, it supports the proposed improvements. It understands the Applicant will work with DDOT regarding the specific improvements to the public space.
18. 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) to give great weight to the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.
19. 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. ANC 5D's report expressed no issues or concerns. Because the ANC expressed no issues or concerns, there is nothing for the Commission to give great weight to. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141

A.3d 1079, 1087 (D.C. 2016).) The Commission carefully considered the ANC 5D position supporting approval of the application and concurred in its recommendation of approval.

20. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for the review and approval of a first-stage planned unit development and PUD-related Map Amendment for the Property from the C-M-1 Zone District to the C-3-A Zone District for Parcels 1 and 2 and to the C-3-C Zone District for Parcels 3 and 4 for the mixed-use development described herein, subject to the following conditions:

A. Project Development

1. The second-stage design of the PUD shall be based on further development and refinement of the plans marked as Exhibits 36E1-36E7 of the record, as modified by the guidelines, conditions, and standards of this Order.
2. The Applicant shall submit, as part of the Stage 2 applications, landscape plans, detailed architectural plans, and elevations indicating the design treatment of each building.
3. The Project will have flexibility in the Stage 2 application from the parking, loading, lot requirements, and side yard requirements as noted herein.
4. The Applicant will have flexibility with the design of the Stage 2 application in the following areas:
 - a. To vary the number of parking levels in the garages for Parcels 1, 2, 3, and 4 so long as the final number of parking spaces is within the range reflected in Exhibit 36E;
 - b. To modify the site plan on Parcel 3 to accommodate the private alley approved by the Z.C. Order No. 16-05;
 - c. To modify the site plan on Parcel 4 to accommodate a private alley developed in coordination with the property owner to the south and DDOT;
 - d. To modify the site plan on Parcels 1 and 2 to accommodate the realignment of Tapscott Drive with the Parcel 3 alley;
 - e. To modify the site plan on Parcels 1 and 2 to reflect the outcome of the Design Competition; and

- f. To vary the size and location of the retail spaces to accommodate the needs of specific retail tenants.
5. The Applicant will have flexibility with the programming of the PUD in the following areas:
 - a. To modify the mix of uses on Parcels 1, 3, and 4 to accommodate additional office use, as depicted in the “Scheme B” plans submitted into the record as Exhibit 36, should market conditions allow;
 - b. To allow the Applicant to coordinate with other stakeholders and relevant District agencies in finalizing the details of the streetscape and the park area on the private section of Neal Place. The landscaping plan will be finalized during the Stage 2 applications; and
 - c. To provide interim uses on Parcels 3 and 4 that are consistent with the underlying zoning of C-M-1 and will be permitted for the life of the first-stage PUD approval, including use of Parcel 4 to locate Gallaudet’s bus and automobile fleet.

B. Transportation Mitigation

1. The Applicant shall make a good faith effort to align Tapscott Drive with the Parcel 3 Alley. In the event the alignment is deemed infeasible, the Applicant will coordinate with DDOT during the Stage 2 application for the earlier of Parcels 1, 2, or 3 to determine the appropriate design and controls for the intersection of Tapscott Drive and 6th Street, including signalization and pedestrian circulation. The Applicant commits to provide the required signalization, either full signal or pedestrian-oriented signal, at the intersection of Tapscott Drive and 6th Street. The site plan for the Stage 2 application of Parcels 1 and 2 may include a modified site plan to reflect this alignment.

The Applicant commits to best faith efforts to implement site design improvements for Parcels 3 and 4 by reaching out to neighboring landowners in an effort to create a shared private alley network to minimize curb cuts and better distribute site traffic. The site plans for the Stage 2 applications for Parcels 3 and 4 may be modified to reflect shared access with neighboring properties for these parcels.

2. The Applicant will perform an updated traffic study as part of the Stage 2 PUD application for the earlier of Parcels 3 or 4 to determine if a new traffic signal at 4th Street and Penn Street is warranted. In the event a signal is warranted, the Applicant shall contribute \$150,000 to the construction of the signal, to be pooled with contributions provided by future developments in the Market. The Applicant shall construct the signal at the earlier date of: a) all required funds having been pooled from other developments, together with the \$150,000 contribution from

the Applicant to fund construction of the signal; or b) prior to issuance of a certificate of occupancy for Parcel 4, regardless of whether additional funds have been pooled from other developments. If the signal is installed by others prior to the Stage 2 PUD application for the earlier of Parcels 3 or 4, the \$150,000 should go toward other improvements to be determined during the Stage 2 review.

3. The Applicant shall provide a light at the intersection of Morse and 6th Streets. The timing of this signal will be determined during the Stage 2 application for the earlier of Parcels 1, 2, or 3.
4. The Applicant shall coordinate with DDOT during the Stage 2 application process regarding all streetscape improvements for areas abutting the Property. The Applicant shall upgrade the streetscape, sidewalks, and landscaping, not to include underground utilities, on the east side of 6th Street, between Neal Place and Penn Street, N.E., which is approximately 580 feet long and does not abut the Property, which will be included in the Stage 2 application for Parcel 2.
5. The Applicant shall install traffic management cameras for integration into the DDOT traffic management program to provide real-time traffic signal updates in coordination with other signals in the District at the following intersections:
 - a. Penn Street and 6th Street, N.E.;
 - b. Florida Avenue and 6th Street, N.E.; and
 - c. Mt. Olivet Road and New York Avenue Ramp, N.E.

The timing of installing these cameras will be determined during the Stage 2 application for Parcel 4.

6. Each subsequent Stage 2 application shall include the following quantities of 240-volt electric car charging stations:
 - a. Parcel 1: one station;
 - b. Parcel 2: one station;
 - c. Parcel 3: four stations (two for residential uses, one for retail uses, and one for office use); and
 - d. Parcel 4: four stations (two for residential uses, one for retail uses, and one for office use).
7. The Applicant shall reexamine the proposed parking supply for each subsequent Stage 2 PUD application to take into account parking supplies associated with

other planned developments within vicinity and potential shared parking arrangements.

8. The Stage 2 PUD application for Parcel 3 shall include an analysis on the need for an all-way stop at Morse Street and 5th Street.
9. The Applicant shall provide with each second-stage PUD application:
 - a. An analysis to determine impacts by each respective development phase and to assess phasing of identified mitigation measures, where not otherwise specified above;
 - b. A loading management plan; and
 - c. A report regarding the satisfaction of all relevant transportation mitigations listed in Exhibit 36C.

C. Benefits and Amenities

1. **Affordable Residential Units: Each second-stage PUD application shall include plans demonstrating that the Applicant reserves no less than 10% of the residential gross floor area (“GFA”) for affordable housing,** with seven percent of the residential GFA reserved for households earning no more than 50% of the Area Median Income for the Washington DC metropolitan statistical area (“AMI”) and three percent of residential GFA reserved for households earning no more than 80% AMI. More specifically, as reflected in the approved plans, the Applicant shall:
 - a. Parcel 1
 - i. **For the life of the project on Parcel 1,** the Applicant shall set aside no less than 10% of the residential GFA as affordable housing. The Applicant shall:
 - (A) Devote approximately 67,400 square feet of residential GFA to housing;
 - (B) Set aside of no less than 10% of the residential GFA, currently equaling approximately 6,740 square feet, as inclusionary units pursuant to 11 DCMR, Chapter 26;
 - (C) Set aside no less than seven percent of the residential GFA, currently equaling approximately 4,718 square feet as inclusionary units for households earning no more than 50% of the AMI; and

- (D) Set aside of no less than three percent of the residential GFA, currently equaling approximately 2,022 square feet as inclusionary units for households earning no more than 80% of the AMI;
- b. Parcel 2
- i. **For the life of the project on Parcel 2**, the Applicant shall set aside no less than 10% of the residential GFA as affordable housing. The Applicant shall:
 - (A) Devote approximately 102,920 square feet of residential GFA to housing;
 - (B) Set aside no less than 10% of the residential GFA, currently equaling approximately 10,292 square feet, as inclusionary units pursuant to 11 DCMR, Chapter 26;
 - (C) Set aside no less than seven percent of the residential GFA, currently equaling approximately 7,204 square feet as inclusionary units for households earning no more than 50% AMI; and
 - (D) Set aside no less than three percent of the residential GFA, currently equaling approximately 3,088 square feet as inclusionary units for households earning no more than 80% AMI;
- c. Parcel 3
- i. **For the life of the project on Parcel 3**, the Applicant shall set aside no less than 10% of the residential GFA as affordable housing. The Applicant shall:
 - (A) Devote approximately 600,660 square feet of residential GFA to housing;
 - (B) Set aside no less than 10% of the residential GFA, currently equaling approximately 60,066 square feet, as inclusionary units pursuant to 11 DCMR, Chapter 26;
 - (C) Set aside no less than seven percent of the residential GFA, currently equaling approximately 42,046 square feet as inclusionary units for households earning no more than 50% AMI; and

- (D) Set aside no less than three percent of the residential GFA, currently equaling approximately 18,020 square feet as inclusionary units for households earning no more than 80% AMI;

d. Parcel 4

i. **For the life of the project on Parcel 4**, the Applicant shall set aside no less than 10% of the residential GFA as affordable housing. The Applicant shall:

- (A) Devote approximately 563,900 square feet of residential GFA to housing;
- (B) Set aside of no less than 10% of the residential GFA, currently equaling approximately 56,390 square feet, as inclusionary units pursuant to 11 DCMR, Chapter 26; and
- (C) Devote no less than seven percent of the residential GFA, currently equaling approximately 39,473sq. ft. as inclusionary units for households earning no more than 50% AMI.
- (D) Devote no less than three percent of the residential GFA, currently equaling approximately 16,917 square feet as inclusionary units for households earning no more than 80% AMI;

e. The set-aside requirements are set forth in the following charts:

Block 1 (Scheme A)					
Residential Unit Type	Residential GFA / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type*	Notes
Total	67,400 sf/100%		Life of project	TBD	NA
Market Rate	60,660 sf/90%	Market	Life of project	TBD	NA
IZ	2,022 sf/3%	80% AMI	Life of project	TBD	NA
IZ	4,718 sf/7%	50% AMI	Life of project	TBD	NA

Block 2 (Scheme A)					
Residential Unit Type	Residential GFA / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type*	Notes
Total	102,920 sf/100%		Life of project	TBD	NA
Market Rate	92,628 sf/90%	Market	Life of project	TBD	NA
IZ	3,088 sf/3%	80% AMI	Life of project	TBD	NA
IZ	7,204 sf/7%	50% AMI	Life of project	TBD	NA

Block 3 (Scheme A)					
Residential Unit Type	Residential GFA / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type*	Notes
Total	600,660 sf/100%		Life of project	TBD	NA
Market Rate	540,594 sf/90%	Market	Life of project	TBD	NA
IZ	18,020 sf/3%	80% AMI	Life of project	TBD	NA
IZ	42,046 sf/7%	50% AMI	Life of project	TBD	NA

Block 4 (Scheme A)					
Residential Unit Type	Residential GFA / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type*	Notes
Total	563,900 sf/100%		Life of project	TBD	NA
Market Rate	507,510 sf/90%	Market	Life of project	TBD	NA
IZ	16,917 sf/3%	80% AMI	Life of project	TBD	NA
IZ	39,473 sf/7%	50% AMI	Life of project	TBD	NA

- f. The plans for each second-stage application shall reflect the distribution of the respective inclusionary housing units in accordance with the requirements of § 2605.6;
- g. The allocations reflected herein shall be modified in the event the Applicant pursues “Scheme B” as defined in the Plans. If the Applicant

pursues Scheme B, the Applicant shall set aside no less than 10% of the residential gross floor area as affordable housing: seven percent of residential gross floor area shall be set aside for inclusionary units for households earning no more than 50% AMI; three percent of the residential gross floor area shall be set aside as inclusionary units for households earning no more than 80% AMI; and

- h. The Inclusionary Zoning Covenant required by D.C. Official Code § 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with all the terms of this Condition.
2. LEED: The second-stage PUD application for each parcel shall include a LEED (v. 2009) scorecard, demonstrating that the respective parcel will achieve a minimum rating of LEED-Gold. Prior to the issuance of a building permit, the Applicant shall register each Building with the USGBC to commence the LEED certification process under the USGBC's LEED for New Construction v. 2009 rating standards.
 3. Public Open Space.
 - a. Applicant shall provide approximately 55,000 square feet of open space in the PUD;
 - b. The second-stage PUD application(s) for Parcel 1 shall include the Gateway Plaza consistent with the architectural guidelines shown on Sheets 26 and 30 of Exhibit 36E. The Gateway Plaza shall contain approximately 23,200 square feet of publicly accessible open space. The Gateway Plaza shall integrate the DeafSpace guidelines shown on Sheets 47-49 of Exhibit 36E. The Applicant shall not include permanent gates or barriers to preclude entrance to the Plaza, but may include signage indicating that the space is closed from dusk until dawn. **For the life of the project**, the Applicant shall be responsible for the maintenance of the space, including but not limited to, landscaping, trash collection, and snow removal;
 - c. The second-stage PUD application(s) for Parcel 2 shall include the Campus Promenade and Green Finger Parks consistent with the Landscape & Open Spaces plan, Public Realm, – Green Finer Concept, and Public Realm Guidelines shown on Sheets, 30, 33, 34, and 40 of Exhibit 36E. The Campus Promenade and Finger Parks shall contain approximately 13,700 square feet of publicly accessible open space. The Green Finger parks shall integrate the DeafSpace guidelines shown on Sheets 47-49 of Exhibit 36E. The Applicant shall not include permanent gates or barriers to preclude entrance to the Green Finger Parks, but may include signage indicating that the space is closed from dusk until dawn.

For the life of the project, the Applicant shall be responsible for the maintenance of the space, including but not limited to, landscaping, trash collection, and snow removal; and

- d. The second-stage PUD application(s) for Parcel 3 shall include the Neal Place and Parcel 3 Alley features consistent with Landscape & Open Spaces plan, Public Realm Street Section and Public Realm Guidelines – Parcel 3 Alley and Deafspace Guidelines shown on Sheets 30, 36, 44, and 47-49 of Exhibit 36E. The Neal Place and Parcel 3 Alley features shall contain approximately 18,600 square feet of publicly accessible open space. The Applicant shall not include permanent gates or barriers to preclude entrance to the Neal Place and Parcel 3 Alley features, but may include signage indicating that the space is closed from dusk until dawn. **For the life of the project**, the Applicant shall be responsible for the maintenance of the space, including but not limited to, landscaping, trash collection, and snow removal.
4. Each second-stage application shall include the Public Realm: Streetscape and DeafSpace features described in Sheets 35-49 of Exhibit 36E. The Applicant shall work with DDOT during the public space process to finalize the details of the public space features. The second-stage application for each parcel shall specify the streetscape elements associated with each respective parcel, to include:
 - a. The minimum dimension of sidewalk widths;
 - b. The minimum dimension of treebox depth;
 - c. A lighting plan that includes architectural lighting, indirect lighting, and reflected lighting;
 - d. Proposed materials used to signal to the deaf/blind when zones change uses;
 - e. Proposed landscaping, including a higher concentration of street trees on 6th Street than typical DC standards;
 - f. A bike lane along the east side of 6th Street; and
 - g. Bike racks.
 5. The second-stage application(s) for Parcel 2 shall include the public space improvements adjacent to the ballpark to the north of Parcel 2, as depicted in Exhibit 40, p. 7. These improvements shall include the Streetscape and

Deafspace features described in Sheets 35-49 of Exhibit 36E. The Applicant shall work with DDOT during the public space permitting process to finalize the details of the public space features. These public space improvements shall comply with DDOT standards.

6. Retail. The Applicant shall reserve approximately 40,000 square feet of ground-floor retail space along 5th and 6th Streets. The Applicant shall provide an update on how much ground-floor retail space is included in each second-stage application.
7. The Applicant shall reserve a total of 10,000 square feet of retail space for maker uses. The second-stage applications for the four parcels shall reflect a total of 10,000 square feet of retail space reserved for maker uses, to be reduced upon execution of each lease. If the commitment has not yet been fulfilled at the time a second-stage application is filed, the Applicant shall demonstrate where the balance of the commitment may be accommodated within the Project. Maker Uses are defined as follows:
 - a. Production, distribution, or repair of goods, including accessory sale of related product;
 - b. Uses encompassed within the Arts, Design, and Creation Use Category as currently defined in 11-B DCMR § 200.2, including an Art Incubator, as currently defined in 11-B DCMR § 100.2, but not including a museum, theatre, or gallery as a principal use;
 - c. Production and/or distribution of food or beverages and the accessory sale or on-site consumption of the related food and beverage; and
 - d. Design-related uses, including Media/Communications, Computer system and software design; Fashion design; Graphic design; or Product and industrial design.
8. The Applicant shall make the space reserved for Maker Uses available to qualified retail tenants at a rate that is 10% below then market-rate rents, **for the life of the Project**.
9. The Applicant shall reserve a total of 5,000 square feet of retail space for deaf or hard of hearing entrepreneurs. The second-stage applications for the four parcels shall reflect a total of 5,000 square feet of retail area for deaf or hard of hearing entrepreneurs. If the commitment has not yet been fulfilled at the time a Second Stage application is filed, the Applicant shall demonstrate where the balance of the commitment may be accommodated within the remainder of the Project.

10. Employment: The Applicant shall:
- a. Execute a First Source agreement with the Department of Employment Services **prior to issuance of a building permit for the first phase of development**; and
 - b. Hire at least two Gallaudet students per year as interns or employees **throughout active construction of the project until completion of all four parcels**. Evidence confirming fulfillment of this commitment shall be provided to the Zoning Administrator prior to issuance of a certificate of occupancy for Parcel 4.
11. Florida Avenue Market: The Applicant shall:
- a. **Prior to the issuance of a building permit for the first building on Parcel 1**, the Applicant shall contribute \$50,000 to the NOMA BID for the study and implementation of an additional entrance for the Noma/Gallaudet metro station. **Prior to the issuance of a Certificate of Occupancy for the last residential component on Parcel 4**, the Applicant shall provide evidence to the Zoning Administrator that the contribution has been initiated, deemed no longer necessary, or that implementation of an additional entrance for the NoMa /Gallaudet U. Metro Station has been or is being provided;
 - b. **Fund and host at least one training session per year, for five years**, for the benefit of market vendors and members of the community regarding how to interact effectively with the deaf and hard-of-hearing community. These training sessions shall be free of charge for attendees and shall be made available on a first-come, first-served basis. Evidence of having provided the required training sessions must be provided to the Zoning Administrator **prior to issuance of a certificate of occupancy for the building on Parcel 4**; and
 - c. **Sponsor two community events per year for at least five years after the issuance of the Stage 2 order for Parcel 1**, up to a total cost of \$20,000. The events will be open to the public and free of charge on a first-come, first-served basis. Evidence of having fulfilled this commitment must be provided to the Zoning Administrator **prior to issuance of a certificate of occupancy for the last building on Parcel 4**.
12. A description of the benefits and amenities and the timeframe for their delivery shall be a part of the Applicant's submission for each second-stage application, and shall be part of the Commission's review of each second-stage application.

D. Miscellaneous

1. The Applicant shall file a Stage 2 application for the first phase of development within two years of the effective date of this Order. The Applicant shall file its second-stage application within four years of the effective date of this Order. The Applicant shall file the Stage 2 application for the final phase of development within eight years of the effective date of this Order.
2. In accordance with the DC Human Rights Act of 1977, as amended, DC Official Code § 2-1401 01 et al (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, familial 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.

For the reasons stated above, the Commission concludes that the Applicant has met its burden, and it is **HEREBY ORDERED** that the first-stage PUD and PUD-related map amendment be **GRANTED**.

On March 27, 2017, upon the motion of Vice Chairman Miller, as seconded by Chairman Hood, the Zoning Commission took proposed action to **APPROVE** the application at the conclusion of its public hearing by a vote of **4-0-1** (Anthony J. Hood, Michael G. Turnbull, Robert E. Miller, and Peter G. May to approve; Peter A. Shapiro, not having participated, not voting).

On May 8, 2017, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission took final action to **APPROVE** the application at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Michael G. Turnbull, and Peter G. May to approve; Peter A. Shapiro, not having participated, not voting; Robert E. Miller, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on June 23, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA**Z.C. ORDER NO. 16-16****Z.C. Case No. 16-16****Forest City SEFC, LLC on behalf of the United States General Services Administration
(Southeast Federal Center Zone Design Review @ Square 771)****December 12, 2016**

Pursuant to notice, the Zoning Commission of the District of Columbia (“Commission”) held a public hearing on October 13, 2016 to consider an application by Forest City SEFC, LLC (“Applicant”) regarding property owned by the United States General Services Administration (“GSA”) for design review approval to construct a new mixed-use residential apartment building with ground-floor retail uses and two levels of below-grade parking (“Project”) in the Southeast Federal Center 2 (“SEFC-2”) zone on the southern two-thirds of the property known as Parcel L in The Yards (Square 771, Lot 800, or “Property”). Because the Project fronts on the SEFC-4 open space area, design review for the Project is required pursuant to Subtitle K §§ 238.3(a), 241, and 242 of the SEFC zone provisions of the District of Columbia Zoning Regulations (“Zoning Regulations”), Title 11 of the District of Columbia Municipal Regulations (“DCMR”). In addition, as permitted under Subtitle X § 603.1, the Applicant also requested a variance from the side yard requirements of Subtitle K § 218.

The Commission considered the application for the Project pursuant to Subtitles X and Z of the Administrative Regulations.¹ The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 4. For the reasons below, the Commission hereby approves the application.

FINDINGS OF FACT**Application, Parties, and Hearing**

1. The Property consists of approximately 69,385 square feet of land and is located in the SEFC-2 zone.
2. The Property is located in the neighborhood commonly known as “The Yards” and on land that is currently owned by the federal government but authorized for private development by an act of the U.S. Congress in 2000. (*See* Southeast Federal Center Public-Private Development Act of 2000, Pub. Law. 106-407 (2000) (“Act”).) The Applicant prepared a master plan (“Master Plan”) for The Yards, and, under the authority of the Act, GSA selected the Applicant as the master developer to implement the Master Plan. The Master Plan was presented by GSA and the Applicant to the Commission for review and approval, and the Commission approved special zoning (now known as the SEFC zones) in order to ensure that future development of The Yards would proceed according to the Master Plan.
3. The instant application follows the coordinated development of The Yards pursuant to the Master Plan. On May 24, 2016, the Applicant delivered a Notice of Intent to file a design

¹ The Administrative Regulations consist of Title A, X, Y, and Z. *See* 11-A DCMR § 200.3.

review application to all property owners within 200 feet of the Property and to Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the Property is located. The Applicant presented the Project at a duly noticed public meeting of ANC 6D in June 2016.

4. On July 12, 2016, the Applicant filed an application on behalf of GSA, for design review and approval of the Project pursuant to Subtitle K §§ 238.3(a), 241, and 242 of the Zoning Regulations. In addition, pursuant to Subtitle X § 603.1, the Applicant also requested a variance from the side yard requirements of Subtitle K § 218. (Exhibit [“Ex.”] 2.)
5. On August 30, 2016, the Applicant filed a Comprehensive Transportation Review for the Project. (Ex. 9-9A.)
6. At its regularly scheduled and duly noticed public meeting on September 12, 2016, ANC 6D voted 6-0-0 to support the application for design review, variance relief, and flexibility. In its September 12, 2016 report filed with the Commission, ANC 6D noted that it was “enthusiastic about the design innovation shown in the eastern wing of the building”...[and found]...the “building very pleasing from the south, from Yards Park and the Anacostia Riverfront...[but it was]...“less enthusiastic, however, about the design of the western façade.” The ANC report mentioned several options to modify the design of the western façade. The ANC also encouraged the Applicant to confirm that the Project’s glass windows are “bird safe” pursuant to guidelines established by the Audubon Society. (Ex. 12.)
7. On September 23, 2016, the Applicant filed a pre-hearing statement with revised plans reflecting feedback from and discussions with the ANC, OP, and DDOT. (Ex. 13-13F.)
8. The Property abuts 2nd Street, a 43-foot-wide right-of-way dedicated as a public street by the Council for the District of Columbia. Second Street has not yet been built, and portions of the right-of-way are currently occupied by DC Water. The pre-hearing statement also included additional information and history regarding 2nd Street, the relationship of 2nd Street to the Project and the neighboring DC Water Main Pumping Station, and two proposed options for the 2nd Street design. (Ex. 13.)
9. Prior to the hearing, the Applicant also filed signage plans for the Project. (Ex. 18.)
10. The Office of Planning (“OP”) filed a report dated October 3, 2016 recommending approval of the Project and testified accordingly at the public hearing. (Ex. 14.) OP’s report found that the Project is not inconsistent with the designation on the Future Land Use Map of the Comprehensive Plan. OP also found that the Project was not inconsistent with the Comprehensive Plan and that it furthered policies of the Land Use, Park, Recreation and Open Space, Historic Preservation, Urban Design and Housing Elements. OP further found that the Project generally conforms to the SEFC Master Plan and would further policies of the Anacostia Waterfront/Near Southwest Area Element of the Comprehensive Plan. OP also examined the Project against the general design review

criteria as well as the SEFC-2 zone design review criteria zone and found that the Project satisfied each relevant condition, concluding that the Project advances the goals and objectives of the SEFC zones as set forth in Subtitle K. OP also did not oppose the request for the variance for side yard relief.

11. The OP report included requests for additional information as well as confirmation that the Parcel L1 portion of the Property be the subject of a separate Design Review, in which it will be reviewed for compatibility with Parcel L2 and consistency with the SEFC-2 standards and other applicable Zoning Regulations.
12. The District Department of Transportation (“DDOT”) also filed a report dated October 3, 2016 stating that it had no objection to the Project. (Ex. 15.) DDOT made a number of findings in its report including that the existing street network around the Property is in good condition, that the trip generation assumptions proposed by the Applicant are reasonable, that the Applicant’s analysis used sound methodology, and that the Project would only slightly increase travel delay with no adverse impacts. DDOT found the Applicant’s Transportation Demand Management (“TDM”) plan sufficient for the Project subject to certain modifications the Applicant agreed to accept at the public hearing.
13. The National Capital Planning Commission (“NCPC”) filed a memorandum dated October 6, 2016 finding that the Project is not inconsistent with the Comprehensive Plan for the National Capital. (Ex. 16.)
14. After proper notice, the Commission held a hearing on the application on October 13, 2016. Parties to the case were the Applicant and the ANC. Expert witnesses appearing on behalf of the Applicant included Brian Pilot, AIA, of STUDIOS Architecture and Erwin Andres of Gorove/Slade Associates. Jason Bonnet of Forest City Washington appeared on behalf of the Applicant.
15. At the hearing, the Applicant introduced evidence that it had received conceptual design approval for the Project from GSA prior to the public hearing. (Ex. 22.) GSA’s approval included responses to advisory comments from NCPC and the Commission of Fine Arts (“CFA”) as well as the State Historic Preservation Officer (“SHPO”) and other stakeholders on the 35% progress design of the Project. (Ex. 13B, 13C.)
16. At the public hearing, the Applicant’s experts presented testimony that the Project’s western façade, which was the subject of comments from CFA and the ANC, has been carefully studied in light of the historic and design guidelines imposed by GSA for The Yards and in the context of the existing surrounding buildings and The Yards Park. The Applicant’s architectural expert highlighted the texture, depth, and materiality of the two “skins” for the western façade. The Applicant and its experts also satisfactorily addressed at the hearing questions and requests for information raised by OP and DDOT in their respective reports. The Applicant confirmed that the future development of the Parcel L1 portion of the Property would be the subject of a future application for design review.

17. At the hearing, the Applicant provided additional information regarding the development of the design of 2nd Street and consultation with DC Water regarding the Project. The Applicant explained that DC Water participated actively in the original proceedings before the D.C. Council that led to the creation of 2nd Street. The Applicant also explained that it had met five times with DC Water over a two-year period to discuss the Project. The Applicant explained that although 2nd Street was originally conceived as a vehicular thoroughfare, the Applicant, OP, and DDOT had all agreed to restrict public vehicular use of the street based on DC Water's request. (Ex. 21.)
18. At the hearing, DC Water raised concerns regarding the 43-foot right-of-way width of 2nd Street and a proposed design for 2nd Street that utilized its full width. (Ex. 20.) DC Water alleged that any design utilizing the full approved width of 2nd Street would adversely impact DC Water's ability to conduct operations at its adjacent Main Pumping Station immediately to the west of 2nd Street. DC Water expressed conditional support for an alternative design option for 2nd Street that would reduce the width of the improvements to a narrower right of way that was less than half of the approved 43-foot right-of-way.
19. On November 14, 2016, the Applicant filed a post-hearing submission with responses to the issues raised by the Commission and OP at the October 13 hearing. In the submission, the Applicant confirmed that the Project would achieve a minimum of LEED-Gold, confirmed that the Project satisfied the Audubon Society's Bird Safe Building Guidelines, and provided additional information articulating the basis for the side yard variance. (Ex. 24.)
20. In the November 14, 2016 posthearing submission, the Applicant also addressed DC Water's concerns. The Applicant submitted a revised design for 2nd Street that reflected extensive discussions with DC Water and DDOT regarding the design of the future right-of-way. The Applicant explained that DDOT had revisited its needs and agreed to a narrower dimension to accommodate its planned transportation infrastructure. Furthermore, the Applicant agreed to allow for four feet of its side yard on Parcel L to be used as part of DDOT's planned sidewalk. As a result, DC Water and DDOT were only three feet apart on the width of the future infrastructure. (Ex. 24.) DC Water acknowledged the same progress in its post-hearing submission. (Ex. 25.)
21. On November 21, 2016, DDOT submitted a supplemental report, responding to the Applicant and DC Water's posthearing submissions regarding the layout of 2nd Street adjacent to the Parcel L2 building and the location of the entrance pavilion. The report concluded that DDOT was "confident that the [right of way] discussion over the remaining 3 [feet] can be resolved in a manner that all parties can be satisfied. It is anticipated that the design and layout for the DC Water fence will be finalized as part of public space permitting, since this fence will be located within the 2nd Street [right of way]. DDOT has no objection to the requested Parcel L2 project provided that the entrance pavilion not extend into the sidewalk area." (Ex. 27.)

22. On November 21, 2016, OP submitted a supplemental report. The report continued to recommend approval of the requested design review. With respect to the 2nd Street design issue, OP stated that it, "...defers to DDOT and the Public Space Committee to ensure that the public realm is appropriately designed and would continue to do so in this case." Finally, with respect to the Applicant's requested side yard variance, OP explained that it believed the Applicant had demonstrated that there is an exceptional situation resulting in a practical difficulty. (Ex. 28.)
23. On December 9, 2016, the Applicant submitted a supplemental post hearing submission that provided a revised proposed design of 2nd Street. The revised design located the pedestrian pathway further west, and the Applicant claimed that this avoided potential conflict with the residential entry pavilion and resolved DDOT and OP's concerns expressed in their November 21, 2016 submissions. The Applicant further stated that the Commission's approval of the building design was not contingent on the streetscape design and, therefore, requested that the Commission approve the building design, and grant flexibility to modify the landscaping within the side yard on Parcel L adjacent to the 2nd Street as needed to accommodate the final design solution for 2nd Street. (Ex. 30.)
24. On December 12, 2016, DC Water submitted a letter through legal counsel stating that DC Water believes that the Applicant should maintain a 75-foot distance from the ground level foundation stone at the northeast corner of DC Water's pumping station. (Ex. 31A.)
25. On December 12, 2016, the Applicant submitted another supplemental post-hearing submission stating that the Applicant is not requesting that the Commission approve the design of 2nd Street, and requested that the Commission approve the design for the building on Parcel L2, notwithstanding the unresolved issues related to the design of the 2nd Street right-of-way. (Ex. 32.)
26. The Commission took action at the December 12, 2016 public meeting to approve the plans submitted into the record and the relief requested. With respect to the unresolved issues related to the design of the 2nd Street right-of-way, the Commission stated that its approval of the design was limited to the design of the Project, and that the design of the 2nd Street right-of-way was beyond the scope of its review.

Description of Surrounding Area

27. The Property is known as Parcel L and is located within the 42-acre site known as The Yards. The Yards is a former annex of the U.S. Navy Yard and is being redeveloped into a mixed-use waterfront neighborhood that will include office space, residential and commercial uses, a waterfront park, and open space.
28. The Property is bounded by Tingey Street, S.E. to the north, 3rd Street, S.E. to the east, Water Street, S.E. to the south, and 2nd Street, S.E. to the south. Neither Water Street, S.E. nor 2nd Street, S.E. adjacent to the Property have been constructed as streets open to vehicular travel. Tingey Square borders the Property to the northwest.

29. Across Tingey Street, S.E. to the north is the federal Department of Transportation headquarters office building. East of the Property is the six-story Foundry Lofts residential apartment building. South of the Property is The Yards Park. West of the Property is the DC Water Main Pumping Station. An entrance to the Navy Yard Metrorail station is located approximately one and a half blocks northwest of the Property.
30. The Property is located within the boundaries of the Washington Navy Yard Annex Historic District.
31. The Property is currently used as a surface parking lot serving other uses in the vicinity.

Project Overview

32. Consistent with the purposes and objectives of the SEFC-2 zone, the Applicant proposed a mixed-used building containing residential apartment units, ground-floor retail and restaurant space, and two levels of below-grade parking for the southern two-thirds of Parcel L (“Parcel L2”). A future phase of development anticipates a hotel on the northern third of Parcel L (“Parcel L1”). Only Parcel L2 is the subject of this case.
33. The Project’s design, orientation and massing is informed by the historic preservation design guidelines that are part of the Master Plan. The Project’s north-south orientation recalls the location, height, and bulk of the now-demolished Building 159, with a U-shaped apartment building that opens up to the south, facing the water. At the same time, the eastern leg of the “U” steps down through a series of terraces as it approaches The Yards Park. The height of the eastern wing also corresponds to the historic Foundry Lofts building across 3rd Street, S.E. Consistent with the massing of Building 159, the Project is generally set back ten feet from the western lot line along 2nd Street S.E.
34. Two primary material “skins” clad the Project’s exterior: the first skin mixes an external pre-cast concrete framework of horizontal structural bays containing large punched openings that is reminiscent of the historic industrial character of Building 159, and the second skin includes a more contemporary blend of glass and metal. The heavier concrete materials recall and relate to the industrial character of The Yards, and the glass and metal give the Project a contemporary aesthetic consistent with its location overlooking The Yards Park. Large swaths of green spaces and planters on the Project’s south-facing terraces connect the Project to the adjacent Yards Park. Approaching the building from the Park, the Project’s terraces appear to be an extension of the public green space.
35. The Project’s ground level will include retail uses as well as lobby entrances to the upper story residential uses and, along 2nd Street S.E., some ground-floor residential units. The upper portions of the building contain residential units. In total, the Project will have approximately 270 residential units (including the proposed occupiable penthouse).

36. A two-level below-grade garage and at-grade loading facilities will support both the Project as well as the adjacent future building on the Parcel L1 portion of the Property.² The Project's parking garage includes a total of approximately 270 striped parking spaces accessible from an entrance on 3rd Street, S.E. Also included in the Project's garage are approximately 109 long-term bicycle parking spaces. An additional 24 short-term bicycle parking spaces will be provided as part of the Project on the streets and sidewalks surrounding the Project. The Project's entrance to the shared loading facility will also be from 3rd Street, S.E. The shared loading will include four 30-foot loading berths and three 20-foot berths, all of which will be fully enclosed. The Project's loading facilities accommodate internal turning and maneuvering.
37. The Project will be built in an environmentally sustainable fashion with the Applicant committing to constructing the building to a LEED-Gold level of certification. The Project also includes design elements – notably provision of visual noise (through architectural detailing), appropriate glazing ratios, landscaping plans, and light control measures – that ensure that it is consistent with the Bird Safe Building Guidelines established by the Audubon Society.

Zoning Overview

38. The Property is located in the SEFC-2 zone. Generally, the SEFC zones call for the development of a vibrant, urban, mixed-use waterfront neighborhood, offering a combination of uses that will attract residents, office workers, and visitors from across the District and beyond. (11-K DCMR § 200.1). Other relevant objectives of the SEFC zones include: assuring development with a mixture of residential and commercial uses and a suitable height, bulk, and design of buildings, as generally identified in the Comprehensive Plan of the District of Columbia (“Comprehensive Plan”), and in recognition of the objectives of the Anacostia Waterfront Initiative and the Near Southeast Urban Design Framework Plan; encouraging high-density residential development with a pedestrian-oriented streetscape through flexible zoning parameters; encouraging a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel or inn uses; providing for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings; requiring suitable ground-floor level retail and service uses near the Navy Yard Metrorail station and at other key pedestrian locations; and encouraging the design and development of properties in a manner that is sensitive to the adjacent Navy Yard and the historically significant buildings within the SEFC zones. (11-K DCMR § 200.2).
39. The purposes of the SEFC-2 zone specifically are to provide for high-density residential development with limited ground-floor retail, and the review of the relationship of new buildings to the SEFC waterfront park open space area. (11-K DCMR § 200.4.)

² The Project and the future building on the Parcel L1 portion of the Property function as a single building under the Zoning Regulations.

40. The SEFC-2 zone permits a mix of residential and commercial uses, with a maximum height of 110 feet (excluding habitable penthouse), a density of 6.5 floor area ratio (“FAR”) (where at least 0.5 of the ground floor is dedicated to certain “preferred uses”), and a lot occupancy of 100% of the ground floor and second floor if occupied by both residential and non-residential preferred uses, and 75% otherwise.
41. Other primary development standards in the SEFC-2 zone include a rear yard of two and one-half inches per foot in height, not less than 12 feet (where the depth of the rear yard is measured from the center line of the street abutting the lot at the rear of the structure for a building that fronts on three streets) and a side yard of at least five feet if any such yard is provided. Courts and penthouses must comply with certain dimensional requirements applicable generally in the Zoning Regulations. The minimum Green Area Ratio (“GAR”) in the SEFC-2 zone is 0.3. Vehicular parking is not required, and bicycle parking and loading is required pursuant to the standards established in Subtitle C of the Zoning Regulations.
42. The Project consists of approximately 17,320 square feet of gross floor area for retail uses on the ground floor and approximately 292,475 square feet of gross floor area for residential uses on the upper floors. The Project’s FAR is 6.25, 0.25 of which is devoted to “preferred uses” as defined in the Zoning Regulations for the SEFC-2 zone. The Project will have a maximum height of 110 feet excluding the penthouse. Less than half of the building reaches this maximum height, as the Project’s eastern wing steps down in the series of terraces leading to the riverfront plaza. The Project will occupy 92% of the lot at the ground floor and up to 67% of the lot on the upper stories.
43. As a corner lot, the rear yard is provided within the Water Street right-of-way. The Project is generally set back 10 feet along the 2nd Street frontage, creating a side yard, but the primary entrance pavilion and lobby to the residential component of the Project projects out into this side yard, necessitating a variance. An approximately 55-foot-wide open court will separate the upper stories of the Project from the tower of the proposed Parcel L1 building. A 42-foot-wide court separates the two residential wings of the Project. Two additional one-story courts of approximately 10 and 12 feet are provided above the ground level on the western side of the building between the Project and the proposed Parcel L1 building. The Project’s courts, which are all open courts, comply with the dimensional requirements of the Zoning Regulations. The Project’s penthouse contains habitable space, and all roof structures are set back from the edge of the roof at a ratio of at least one to one. The penthouse is limited primarily to the western wing of the Project and complies with the design requirements of the Zoning Regulations. The Project’s GAR satisfies the minimum requirements of the SEFC-2 zone.
44. Inclusionary zoning under the Zoning Regulations does not apply to multifamily rental properties in the SEFC zones (or their penthouses). (See 11-C DCMR § 1001.5; 11-K DCMR § 200.12.) However, pursuant to the Applicant’s development agreement with the District of Columbia, the Project will reserve no less than 20% of the total dwelling units (or approximately 54-57 units) for households earning up to 50% of the Area Median Income.

Design Approval

45. The Applicant sought design approval of the Project pursuant to Subtitle K §§ 238.3(a), 241, and 242 of the SEFC zone provisions of the Zoning Regulations. As an application for design review pursuant to Subtitle K §§ 238.3(a), 241, and 242, the Commission must consider the Project against the general design review criteria of Subtitle X § 604 and the SEFC zone design review criteria in Subtitle K §§ 241.1 and 241.2.
46. The Project satisfies the general design review criteria of Subtitle X § 604 insofar as the Project:
- a. Is not inconsistent with the Comprehensive Plan, its Future Land Use Map and Generalized Policy Map, and with other adopted public policies and active programs related to the Property, including the 2003 Anacostia Waterfront Framework Plan and more recent Anacostia Waterfront Initiative Master Plan (2014 Update), and the 2013 Near Southeast Urban Design Framework Plan. The high-density commercial and residential designation applicable to the Property supports structures of eight stories or more, as the Project is proposed to be. The policies of the Comprehensive Plan further encourage the provision of housing and affordable housing, increased access to the waterfront, and creating commercial waterfront development, all as exemplified by the Project. Other adopted public policies encourage linking new development to the Anacostia Riverwalk Trail system as the Project does, and prioritizing access and linkage to existing parks and clustering retail uses to create a high-density urban environment in Southeast DC. The Project advances these objectives as well;
 - b. Meets the general Special Exception criteria of Subtitle X, Chapter 9 because the Project will be harmonious with the general purpose and intent of the Zoning Regulations and Zoning Maps for the SEFC-2 zone and comply with the Zoning Regulations in terms of development standards, including height, FAR, proposed uses, and parking, except for a minor request for side yard variance relief. In addition, the Project will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, and instead the Project is designed to fit in and operate compatibly with neighboring properties and uses. The proposed height, massing, and orientation of the Project are appropriate given the context, and are comparable to adjacent development. The Project's architectural design has been well vetted, having been reviewed by GSA, CFA, SHPO, and NCPC. The Applicant has also engaged in extensive discussions with its neighbor DC Water regarding the Project.
 - c. Satisfies the urban design criteria of Subtitle X § 604.7 because it creates street frontages that will be safe, comfortable, and accommodating of pedestrian activity with multiple pedestrian entrances, the minimal possible curb cuts and driveway entrances (one total for the entire block) and ground-floor uses and design that activates the pedestrian realm; provides additional pedestrian and bicycle connections between the Metrorail station and the waterfront and outdoor cafes

and amenities that support and reinforce The Yards Park; preserves and enhances a visual connection to and the viewshed of the waterfront; respects the historic character of the waterfront and adjacent Navy Yard while providing a contemporary infill presence that respects important views along original L'Enfant planned streets; provides an attractive façade that reinforces the pedestrian realm through the provision of tall ground floors and appropriate levels of transparency and high quality materials and finishes; includes a significant amount of high-quality, environmentally-sensitive landscaping; and promotes connectivity both internally and with surrounding neighborhoods and demonstrates connectivity through its proximity and linkages to public transportation, including the Navy Yard Metro Station, several bus lines, and Capital Bikeshare stations and The Yards Park; and

- d. Satisfies the urban design criteria of Subtitle X § 604.7 in a way that is superior to any matter-of-right development possible on the Property because the Project incorporates design features that enhance the pedestrian experience, increase access to the waterfront, and add interest to the building design.
47. The Project satisfies the SEFC-2 design review criteria as set forth in Subtitle K § 241.1 because the Project:
- a. Advances the goals and objectives of the SEFC zone including by contributing to the ongoing developing of The Yards with a building that mixes retail and residential uses and is of a suitable height, bulk, and design given the proximity to transit and the waterfront park; providing high-density residential development with pedestrian-oriented streetscape, including creating a unique pedestrian connection to The Yards Park; encouraging a variety of support and visitor-related uses, including ground floor retail and providing the necessary parking and loading for the proposed hotel on Parcel L1; reducing its height along the riverfront in order to preserve views and provide publicly-accessible open space; providing suitable ground floor retail along three frontages;
 - b. Is sensitive to the surrounding historic context through the incorporation of design elements characteristic of the maritime industrial character of the area and recalling the industrial forms of the area including the former Building 159, will feature residential uses and provide a pedestrian-oriented streetscape, and will increase accessibility to the waterfront;
 - c. Provides for openness of view and vistas to and from the waterfront and monumental federal buildings because the terraced roof along the east wing preserves the views of the waterfront, while the bulk and orientation facilitate north-south views of the waterfront to the south and monumental federal buildings to the north, including along New Jersey Avenue, S.E.; and
 - d. Provides all parking below grade and not visible from the street.

48. The Project also satisfies the SEFC-2 additional design review of Subtitle K § 241.2 because the Project:
- a. Is compatible with buildings in the surrounding area through overall massing which responds to buildings and features on all sides, siting, high-quality architectural details, and landscaping, with such landscaping significantly enhancing the site, and linking the Project to The Yards Park and the adjacent waterfront;
 - b. Is designed to achieve LEED-Gold certification;
 - c. Has a ground floor that increases pedestrian transparency and views to the waterfront, with pedestrian-scale articulation along the west building elevation that includes recesses and other design features that increase pedestrian comfort and that has no blank walls;
 - d. Incorporates landscaping consisting of the use of native plants and enhanced landscaping on the roof and terraced roof of the Project, all of which landscaping is highly complementary of the context and program;
 - e. Includes preferred uses would be located at significant corners of the Project and designed to encourage pedestrian activity, activate adjacent sidewalks and public spaces, and ensure comfort and safety of visitors and residents;
 - f. Will have ground-floor retail uses of a scale that will be predominantly neighborhood-serving and will link the development and surrounding area to the neighboring waterfront, and therefore will not have a negative impact on residential uses; and
 - g. Provides strong connections to the adjacent waterfront park and includes a variety of active and passive recreational uses and amenities such as a rooftop swimming pool and private spaces on the rooftop terraces as well as public amenities such as pedestrian and bicycle connections and outdoor gathering spaces.

2nd Street Design

49. With regard to DC Water's concerns, the Commission takes note of DC Water's appearance at the public hearing and the materials that DC Water submitted into the record. The Commission has considered its opposition to certain aspects of the design of the 2nd Street right-of-way adjacent to the Property and the implications of this approval on such right-of-way design. The Commission has reviewed all of the evidence in the record with regard to the design of 2nd Street adjacent to the Property and makes the following findings:
- a. The Commission is mindful that DC Water provides vital services to the District the surrounding area, and the operations at the Main Pumping Station adjacent to 2nd Street are a critical, region-serving utility. The Commission is similarly concerned

- with its role in ensuring that the development of The Yards, including development of the Project pursuant to design review, not adversely affect neighboring properties, including such regionally significant infrastructure as DC Water's Main Pumping Station;
- b. The Commission's obligations with respect to design review also direct it to consider a number of additional and perhaps competing interests with respect to creating safe and effective transportation connections within The Yards. The Commission is sympathetic to DDOT's and OP's concerns that 2nd Street be a gateway to The Yards Park that is accommodating to pedestrians and cyclists seeking recreation along the Anacostia and use of the Anacostia Riverwalk Trail system, which is another piece of critical regional infrastructure; and
 - c. Both the Applicant and DDOT have generally made significant progress on coming to a common agreement on the design. At DC Water's request, the other parties agreed to refrain from designing the street to allow public vehicular traffic, and furthermore they have reduced the width of the non-vehicular infrastructure, so that the outstanding discrepancy is a matter of three feet.
50. As noted, the Commission finds that the design of 2nd Street is not relevant to its design of Parcel L2. The design of the Project is not dependent on the final design of 2nd Street. The street is to be a public right-of-way that was intended to be constructed and built independent of Parcel L. Nevertheless, the Commission has considered the issues raised by DC Water regarding 2nd Street and, to the extent the design of 2nd Street is germane to the design review for Parcel L2, the accommodations made by the Applicant and DDOT address any perceived impacts on DC Water and balance the SEFC zone's goal for safe and pedestrian-friendly connectivity with other planning considerations regarding water infrastructure.

Variance Relief-Side Yard Requirement

- 51. The Applicant requested variance relief from the side yard requirements of Subtitle K § 218.1 pursuant to the standards for such relief set forth in Subtitle X § 1002.1(a) and the Commission's authority to grant such relief under Subtitle X § 603.1.
- 52. Under the three-prong test for an area variance, the Applicant must demonstrate: (1) that the Property is affected by an exceptional or extraordinary situation or condition; (2) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (3) that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. (*Palmer v. D.C. Bd. of Zoning Adj.*, 287 A.2d 535, 541 (D.C. 1972).) Under the "practical difficulty" prong, the Applicant must show that compliance with the side yard requirement would be unnecessarily burdensome and that such practical difficulty is unique to this particular property.

Exceptional Condition

53. The Property is subject to exceptional conditions that arise from the unique nature of the immediately adjacent streets and public utilities. The Property comprises an entire block with dedicated streets on all four sides, and is unique insofar as two of the adjacent dedicated streets have not been and will not be constructed as open to vehicular traffic. The two street frontages for the entire Property limits possible locations for vehicular access for parking and loading to locations along 3rd Street, Tingey Street, and Tingey Square. A sewer underneath the northern part of Parcel L eliminates Tingey Street as an option for vehicular access, and Tingey Square's frontage is too narrow for a vehicular entry into a garage. In addition, the needs of DC Water and limitations imposed by DC Water infrastructure underneath the dedicated right-of-way for 2nd Street preclude vehicular access from any portion of Tingey Square at its intersection with 2nd Street. As a result, all vehicular access for the entire Property must occur via 3rd Street, which renders 3rd Street unsuitable for any major pedestrian access point in order to avoid vehicle-pedestrian conflicts.
54. For proper functioning, the primary pedestrian entrances to the Property must be located on or near vehicle-accessible streets to accommodate passenger drop off and pickup, building identification, parcel deliveries, and the like. Parcel L as a whole is left with limited locations on Tingey Square and Tingey Street for vehicle-accessible pedestrian entrances, and Parcel L2 is left with only one possible location for its residential entry pavilion—Tingey Square. Thus, one portion of the exceptional condition affecting the Property is that pedestrian access to the Property must occur via the portion of 2nd Street closest to Tingey Square.
55. At the street level, the street geometry of Tingey Square and its relationship to the Property and 2nd Street further compound the unique condition affecting the Property. There are few other properties in the District, if any, situated as Parcel L2: diagonal to a public square and fronting on a public street that will not permit public vehicular access. Because 2nd Street is not a through street for vehicular traffic, Tingey Square's southeast corner is a unique curved curb.
56. The historic preservation design guidelines for the Master Plan as well as exceptional conditions west of the Property arising from proximity to DC Water facilities and the unbuilt 2nd Street necessitate establishing a side yard from 2nd Street for a portion of the Property. That is, in order to align with the historic form of Building 159, accommodate pedestrian needs at the ground level, and provide sufficient distance between the Property and the DC Water facilities immediately to the west, the vast majority of the Project is set back 10 feet from the western boundary line of the Property. Because the adjacent conditions necessitate establishing a side yard for a portion of the Property, the entire western façade of the Property is subject to the five-foot yard requirement.

Practical Difficulty

57. The Zoning Regulations applicable to the SEFC-2 zone require a side yard, if one exists at all, to be at least five feet, and this requirement presents a practical difficulty that is unnecessarily burdensome in a manner that is unique to the Property. The side yard requirement has the effect of pushing the only possible pedestrian entrance to Parcel L2 further from the curb line of Tingey Square. This setback creates an unnecessary burden on the accessibility and visibility of Parcel L2's only practical pedestrian entry. The practical difficulty imposed by the required setback of the pedestrian entrance is unique; few, if any buildings in the District have a similar context for the location of their primary pedestrian entrance on a curved curb line that abuts a public square.

No Detriment to the Public Good or Impairment of the Intent of the Zoning Regulations

58. The requested variance relief does not create substantial detriment to the public good and indeed works in harmony with sound urban design principles. Second Street's configuration as non-vehicular roadway connects Tingey Square's sidewalk infrastructure to the waterfront park and trail system immediately to the south of the Property. The location of the entrance pavilion forward of the main mass of the Project creates a logical hierarchy as the prominent architectural gesture of the Project to Tingey Square before it gradually transitions away from the public realm towards the waterfront.
59. Likewise, the relief does not impair the intent, purpose, and integrity of the Zoning Regulations. Minimum distances for "optional" yards are sensible when such yards abut other private property in order to ensure adequate space for light and air once a setback is created. However, optional yards have less of a public purpose when abutting a street because the street itself serves as open space (often a significant open space) intervening between properties, and the additional yard setback creates only an incremental widening of that open space. Here, the side yard is not needed for light and air or other reasons as the property approaches Tingey Square because of ample distance between Parcel L and the Pumping Station. Moreover, the magnitude of the requested relief significantly mitigates any adverse effect on the intent, purpose, or integrity of the Zoning Regulations. Therefore, the relief granted here to allow the residential entry pavilion to be built to the lot line will not impair the intent, purpose, or integrity of the Zoning Regulations.

CONCLUSIONS OF LAW

1. The application was submitted, pursuant to Subtitle K §§ 238.3(a), 241, and 242, for design review and approval by the Commission. Pursuant to Subtitle X § 603.1, the application also sought a variance for the Project from the side yard requirements of Subtitle K § 218.1.
2. The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to ANC 6D, OP, and to

- owners of property within 200 feet of the Property. The Commission properly and timely referred the matter to NCPC.
3. Pursuant to Subtitle K §§ 238.3(a), 241, and 242 and Subtitle X § 604, the Applicant has satisfied the required burden of proof necessary for the Commission to approve the overall design of the Project. The Project's uses and preferred uses are in accordance with the standards specified in Subtitle K § 238.
 4. The Commission reviewed the Project against the general design review criteria of Subtitle X § 604, and based on the findings set forth above concludes that the Project satisfies such criteria. The Project is not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to the subject site, will not tend to adversely affect the use of neighboring property, is harmonious with the general purpose and intent of the Zoning Regulations and Zoning Maps, and satisfies the special exception criteria and urban design objectives in a manner superior to any matter-of-right development possible on the Property.
 5. The Commission also reviewed the Project against the SEFC design review criteria of Subtitle K § 241.1, and based on the findings set forth above concludes that the Project satisfies such criteria as well. Specifically, the Project will help achieve the goals and objectives of the SEFC zones, and the Project's design provides for an openness of view and vistas to and from the waterfront and maintains views of federal monumental buildings along the New Jersey Avenue, S.E. corridor. All parking for the Project is below grade.
 6. Subtitle K § 241.2 sets forth additional SEFC design review criteria against which the Commission may also consider the Project. The Commission has reviewed the Project against those additional SEFC zone design review criteria and concludes the Project satisfies such additional criteria as well. That is, the Project is within the allowable height, bulk, and density standards of the Zoning Regulations and the height and density will not cause an adverse effect on any nearby properties. In addition, the Project's massing, siting, details, and landscaping are compatible with the surrounding area, and the Project uses high standards of environmental design with a commitment to achieving LEED-Gold, has façades that minimize or eliminate unarticulated blank walls, includes complementary landscaping, incorporates an appropriate balance and placement of preferred uses, will have no adverse effect on nearby residential areas, and will encourage use of the adjacent waterfront park through appropriate design and provision of active and passive recreational uses.
 7. Pursuant to Subtitle X § 603.1, the Commission has carefully considered the Applicant's request for variance relief from the side yard requirements of Subtitle K § 218.1 and concludes that the Applicant has satisfied the elements necessary for variance relief. Under the three-prong test for an area variance, the Applicant has demonstrated: (1) that the Property is affected by an exceptional or extraordinary situation or condition arising from the situation of adjacent streets and major public utilities and the need for the pedestrian entrance to Parcel L2 to be located close to a vehicular street; (2) that the strict

application of the Zoning Regulations will result in a practical difficulty to the applicant with respect to such pedestrian access, and the practical difficulty flows directly from the Property's exception situation; and (3) that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan because such relief does not contravene the purposes of the side yard requirement in this instance because the side yard is adjacent to a dedicated public right of way, the relief is minor, and there is no requirement to provide a side yard.

8. The Commission concludes that the Applicant has satisfied all the necessary elements for design review as well as for the relief requested.
9. The application before the Commission is for approval of the design of Parcel L2. The design of the Project is not dependent on the final design of 2nd Street, and the Applicant is not proffering improvements to 2nd Street as part of the Project. Accordingly, the impacts of the design of 2nd Street on DC Water do not correlate into impacts of the design of the Project on DC Water. Furthermore, 2nd Street as dedicated by the D.C. Council is a public right-of-way that was intended to be constructed and built independent of Parcel L. Generally speaking, the details of the design of areas within public space are reviewed and approved by the public space permitting authorities. Nevertheless, the Commission has considered the issues raised by DC Water regarding 2nd Street and, to the extent the design of 2nd Street is germane to the design review for Parcel L2, the accommodations made by the Applicant and DDOT address any perceived impacts on DC Water and balance the SEFC zone's goal for safe and pedestrian-friendly connectivity with other planning considerations regarding water infrastructure. No other party spoke or submitted materials in opposition to the Project. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.
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 of the affected ANC expressed in its written report. As reflected in the Findings of Fact, at its duly noticed meeting held on September 12, 2016, ANC 6D, the ANC within which the Property is located, voted 6-0-0 to support the application for SEFC zone design review and related variance relief. The Commission notes that the ANC raised concerns about the design of the western façade and finds that the Applicant has conducted a thorough study of the proposed design and balanced comments from the ANC and other reviewing agencies against the design guidelines and objectives of the SEFC zone and the Master Plan. The Commission was persuaded by the testimony at the hearing that the texture, depth, and materiality of the two "skins" of the western façade were adequate to address the concerns expressed by ANC 6D about its design, and satisfied the relevant design review criteria. The Commission also concludes that the Applicant appropriately addressed the ANC's comments regarding bird safe design when it confirmed in its post-hearing filing that the Project satisfied the Audubon Society's Bird Safe Building Guidelines.
11. The Commission is also 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) to

give great weight to the recommendations of OP. As reflected in the Findings of Fact, OP presented a report and testimony at the public hearing in support of the application and the Applicant responded to questions and items raised in OP's report. The Commission gives OP's recommendation to approve the application great weight, concurs with OP's, and concludes that the Applicant's responses appropriately addressed OP's questions and concerns.

12. Finally, the Commission has considered DDOT's report and recommendations and has reviewed and considered materials submitted by NCPC and on behalf of CFA. The Commission concludes that the Applicant has appropriately addressed concerns raised in such report and materials.
13. Accordingly, the Commission, having given great weight to the ANC's concerns and the OP report and having considered all relevant facts and materials in the record, concludes that the design of the Project satisfies the requirements of the Zoning Regulations applicable to the design review of the Project and the variance relief requested.
14. The Project will promote the continued development of SEFC into a vibrant mixed-use neighborhood, is sensitive to the site's historic resources, and is in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and the Zoning Map of the District of Columbia.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for design review, including **APPROVAL** of variance relief and flexibility requested. The Parcel L1 portion of the Property shall be the subject of a separate design review, in which it will be reviewed for compatibility with Parcel L2 and consistency with the SEFC-2 standards and other applicable Zoning Regulations. This approval is subject to the following conditions, standards, and flexibility:

1. **Project Development.** The Project shall be built in accordance with the plans and elevations dated September 23, 2016, and marked as Exhibit 13A1-13A10 of the record, as amended and updated by the plans and elevations dated October 13, 2016 and marked as Exhibit 18, the plans and elevations dated October 13, 2016 and marked as Exhibit 19A1-19A10 of the record, and the plans and elevations dated December 8, 2016 and marked as Exhibit 30A, subject to the following areas of flexibility:
 - a. To make minor refinements to the design of the Project, if required by GSA in response to input from other stakeholders (including CFA, NCPC, and SHPO);
 - b. To adjust the design of the side yard space, the design of the landscaping within the side yard, and the location of the residential entrance pavilion adjacent to 2nd Street as needed to accommodate the final design of 2nd Street;

- c. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
- d. To vary final selection of the exterior materials within the color ranges of the materials types as proposed based on availability at the time of construction;
- e. To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction;
- f. To make minor refinements to exterior details and dimensions, including enclosures, belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the Construction Codes;
- g. To vary the final design of the retail storefront and signage, including the number, size, design, and location of windows, doors, awnings, canopies, and similar features, to accommodate the needs of tenants and code requirements, in accordance with the Signage Plan marked as Exhibit 18 of the record; and
- h. To vary the final number of residential units and parking spaces plus or minus five percent.

2. **Transportation Demand Management Measures. Prior to the issuance of a Certificate of Occupancy for the Project,** the Applicant shall demonstrate that it has or will adhere to the following Transportation Mitigation measures as set forth in the DDOT report:

- a. Exceed the minimum requirements of the Zoning Regulations with respect to the number of bicycle parking space and storage facilities at the Project and provide a bicycle repair facility in the Project;
- b. Unbundle the cost of residential parking from the cost of lease or purchase of the unit;
- c. Identify “TDM Leaders” (for planning, construction, and operations). The TDM Leaders will work with residents and employees in the building to distribute and market various transportation alternatives and options;
- d. Provide TDM materials to new residents in the Residential Welcome Package materials; and
- e. Install a Transportation Information Center Display (electronic screens) within the residential lobby, containing real-time information related to local transportation alternatives.

3. The application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application for building permit must be filed as specified in 11-Z DCMR § 702.2. Construction must begin within three years after the effective date of this Order. (11-Z DCMR § 702.3.)
4. 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.

On December 12, 2016, upon the motion of Commissioner Turnbull, as seconded by Commissioner May, 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 present, 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 June 23, 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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