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Submitted via Interactive Zoning Information System (IZIS)

February 14, 2025

District of Columbia Zoning Commission
441 4th Street, N.W., Suite 210-S
Washington, DC 20001

Re: Request for Two-Year Extension of Time to Begin Construction of Approved Planned Unit Development
Z.C. Order No. 18-03, 18-03(1) and 18-03A
4611–4615 41st Street, NW (Square 1769, Lot 32)

Dear Zoning Commissioners:

On behalf of Dancing Crab Properties, LLC and 10009 Fields Road, Inc. (together, the "Applicant"), this letter serves as a request for a two-year extension to begin construction of the approved development at 4611–4615 41st Street, NW (Square 1769, Lot 32)[1] (the "Property").

The development of the Property was approved pursuant to Z.C. Order No. 18-03 (Exhibit A). That order approved a consolidated Planned Unit Development ("PUD") and a related Zoning Map Amendment from the MU-4 zone to the MU-5B zone to redevelop the Property with a new mixed-use residential building consisting of (i) approximately 41 residential units, and (ii) a restaurant/bar use to be located on the ground floor and within the penthouse habitable space (collectively, the "Project"). Zoning Commission Order No. 18-03 was approved on December 17, 2018, with an effective date of March 1, 2019. Pursuant to Z.C. Order No. 18-03, Decision No. F.2, the order was valid for a period of two years, such that a building permit application was required to be filed no later than March 1, 2021, and construction of the Project was required to commence no later than March 1, 2022.

Pursuant to Z.C. Order No. 18-03(1) (Exhibit B), the Office of Zoning issued an administrative Covid-19 one-year extension of Z.C. Order No. 18-03, such that a building permit application was required to be filed no later than March 1, 2022, and construction of the Project was required to commence no later than March 1, 2023. The Applicant filed a building permit application within the required time limits set forth in Z.C. Order No. 18-03(1).

[1] When Z.C. Order No. 18-03 issued, the Property was known as Lots 1 and 2 in Square 1769. A subdivision plat was recorded in the Office of the Surveyor on September 30, 2019, at book 216, page 78, which plat consolidated Lots 1 and 2 into a single record lot that is now known as Lot 32 in Square 1769.

Pursuant to Z.C. Order No. 18-03A (Exhibit C), the Zoning Commission (the "Commission") approved the Applicant's application for a two-year time extension of the March 1, 2023 deadline to start construction, such that construction of the Project was required to commence no later than March 1, 2025.

Now, the Applicant respectfully requests a two-year extension of the deadline to begin construction of the Project. If approved, construction of the Project would be required to begin no later than March 1, 2027. This application is filed pursuant to Subtitle Z, Chapter 700 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Code ("11 DCMR") for good cause shown herein. As required by 11-Z DCMR § 1600.10(c), a filing fee of $1,500 is included with this application. An authorization letter from the Applicant is attached at Exhibit D, and a signed Application Signature Form 100 is attached at Exhibit E.

I. JURISDICTION OF THE ZONING COMMISSION

Pursuant to 11-Z DCMR § 705.2, the Zoning Commission may extend the time periods of PUD orders for good cause provided the following conditions are met:

1. The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;

2. There is no substantial change in any of the material facts upon which the Commission based its original approval of the application that would undermine the Commission's justification for approving the original application; and

3. The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in 11-Z DCMR § 705.2(c).

The sole consideration for determining if a PUD should be extended is whether "good cause shown" exists. The Zoning Regulations define "good cause shown" in 11-Z DCMR § 705.2(c) as evidence of one or more of the following:

1. An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;

2. An inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the governmental agency approval process 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 that renders the applicant unable to comply with the time limits of the order.

11-Z DCMR §§ 705.2(c)(1)–705.2(c)(3).

II. COMPLIANCE WITH STANDARDS FOR EXTENDING PUD VALIDITY

A. The Extension Request Has Been Served on All Parties

Other than the Applicant, the only party to the original application was Advisory Neighborhood Commission ("ANC") 3E. As indicated in the Certificate of Service, attached hereto, the Applicant has served this application upon ANC 3E, therefore providing ANC 3E the required time period to respond.

B. There is No Substantial Change in Material Facts

There have been no substantial changes in any of the material facts upon which the Commission based its approval of Z.C. Order No. 18-03. As described below, the Applicant applied for a building permit within the required timeframes, however, the Applicant has been unable to secure all required governmental agency approvals because of delays that are beyond the applicant's reasonable control. Despite its inability to obtain all required governmental agency approvals, the Applicant remains fully committed to moving forward with the construction of the Project and remains fully committed to complying with all conditions and obligations imposed as part of the PUD approval.

C. There is Substantial Evidence of "Good Cause Shown"

Pursuant to 11-Z DCMR § 705.2(c)(2), the Zoning Commission is authorized to extend the validity period of an approved PUD if the applicant demonstrates with substantial evidence "[a]n inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control."

As set forth in the affidavit of Tom McDowell, representative of the Applicant (the "Affidavit") (Exhibit F), this application satisfies the criteria of 11-Z DCMR § 705.2(c)(2) and thus meets the requirements for extending the deadline to start construction of the Project. The Applicant has taken many steps to move the construction of the Project forward, including preparing and recording the required PUD covenant, working diligently to apply for and obtain raze permits to demolish the existing structures on the Property, and to apply for and respond to comments from District reviewing disciplines as part of the building permit process, as set forth below:

- The Applicant applied for and received raze permits to demolish the existing structures on the Property on September 20, 2021 (Permit Nos. R2000073 and R2000077). As shown on the photographs of the Property, attached as Exhibit A to the Affidavit, the buildings on the Property have been fully demolished pursuant to these permits.

- On January 20, 2022, the Applicant timely filed a building permit application with the Department of Buildings ("DOB") (Permit No. B2203165), which was accepted as complete on January 30, 2022, and referred to the reviewing disciplines on February 1, 2022. Permit No. B2203165 was ultimately approved on June 5, 2023, after multiple rounds of comments and responses with various reviewing agencies.

- The Applicant also submitted a variety of other permits, including (i) an application for bay window projections on January 19, 2022, which was approved and issued on February 15, 2023, and (ii) an application for a public space permit on January 19, 2022, which was approved on February 16, 2023.

- The Applicant also prepared the PUD Covenant required by Z.C. Order No. 18-03, Conclusion of Law No. F.1, which was recorded in the Land Records of the District of Columbia on February 17, 2022, as Instrument No. 2022018979. Significantly, pursuant to 11-Z DCMR § 702.10, the Property must be constructed in accordance with the approved PUD.

- The Applicant also submitted a draft Inclusionary Zoning Covenant and Certificate of Inclusionary Zoning Compliance, which was approved by the Department of Housing and Community Development ("DHCD") on October 6, 2022.

- On May 5, 2022, the Applicant submitted an Environmental Impact Screening Form ("EISF") Application and associated documentation and correspondence to the Department of Energy and Environment ("DOEE"). By letter dated February 7, 2023, DOEE issued an Environmental Assessment Report for the Project, concluding that it found "no apparent significant adverse impact or likelihood of substantial negative impact on the environmental as a result of the proposed project."

- In anticipation of receiving a building permit, on January 5, 2023, the Applicant posted notice signs on the Property indicating the filing of a building permit, the signs were required to be posted for at least 30 days immediately prior to the issuance of a building permit. *See* 10-A DCMR § 106.2.18.3.1.1.

- In addition, the Applicant submitted an application for an Excavation Sheeting and Shoring permit on January 17, 2023, which is currently under review by DOB (Permit No. SH2300009).

- Further, as of February 4, 2025, Permit No. SH2300009's Scout tracking page indicates that (i) structural review and approval is still pending, (ii) District Department of Transportation ("DDOT") review and approval is still pending, and (iii) Washington Metropolitan Area Transit Authority ("WMATA") review and approval is still pending. *See* Exhibit B of the Affidavit. Additionally, in order to continue processing Permit No. SH2300009, the Applicant was recently made aware that it would have to post a new bond.

- Given the Property's close proximity to a WMATA Metrorail, the Project is required to obtain a "No Further Action" letter from WMATA authorizing construction to proceed. To date, WMATA has not issued its "No Further Action" letter.

Based on the foregoing summary of the information provided in the Affidavit, it is clear that the Applicant has taken many steps to move forward with developing the Project as quickly as possible and in accordance with the PUD approval. Although the Applicant has been unable to start construction, the Applicant has been working diligently to obtain all permits necessary to commence construction. The Applicant is very much committed to moving forward with

construction of the Project, and will do so as soon as they receive all necessary building permits and approvals. Indeed, the Applicant has invested substantial resources in the Property over many years, including legal, architectural, engineering, permitting, and other consulting fees, such that there is no financial advantage for the Applicant not to move forward with construction of the Project, and we have every incentive to do so as soon as feasible.

III. WAIVER PURSUANT TO 11-Z DCMR § 101.9

As this is the Applicant's second request for an extension, the Applicant requests a waiver from the timeframes set forth in 11-Z DCMR § 705.5, which states:

> *An applicant with an approved PUD may request no more than two (2) extensions. The second request for an extension may be approved for no more than one (1) year.*

Pursuant to 11-Z DCMR § 101.9, the Commission may, for good cause shown, waive any provision of Subtitle Z if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

As stated above, the Applicant has experienced significant delays which have been beyond the Applicant's reasonable control. These delays, while hopefully soon resolved, have significantly plagued the construction of the Project. As a result, the Applicant needs a waiver from the one-year limitation for the second extension request in Subtitle Z § 705.5. Granting the waiver will not prejudice the rights of the ANC because the Applicant remains fully committed to moving forward with the construction of the Project.

IV. NO HEARING NECESSARY

Pursuant to 11-Z DCMR § 705.7, the Commission shall hold a public hearing on a request for an extension of the validity of an application approval only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the proceeding concerning any of the criteria in 11-Z DCMR § 705.2. If a public hearing is held, that hearing shall be limited to the specific and relevant evidentiary issues in dispute.

A public hearing is not necessary because there are no material factual issues in question concerning any the criteria set forth in 11-Z DCMR § 705.2. The only other party to this case is ANC 3E, to whom the Applicant has served a copy of this request. Further, there should be no dispute that the Applicant has been unable to secure all required government agency approvals because of delays beyond the Applicant's reasonable control.

Indeed, the Applicant believes that it will be able to obtain all required government agency approvals soon and will subsequently start construction of the Project in the near-term. As such, there are no material factual conflicts concerning the criteria the Zoning Commission is required to evaluate.

V. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Commission approve a two-year extension to start construction of the Project, such that construction must begin no later than **March 1, 2027**. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: s/ *Kyrus L. Freeman*
Kyrus L. Freeman
John T. Oliver

Attachments

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2025, copies of the foregoing extension application were served by electronic mail on the following at the addresses stated below.

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John T. Oliver
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EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 18-03
Z.C. Case No. 18-03
Dancing Crab Properties, LLC
(Consolidated PUD and Related Map Amendment @ Square 1769)
December 17, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on October 29, 2018, to consider an application for a consolidated planned unit development ("PUD") and a related Zoning Map amendment filed by Dancing Crab Properties, LLC ("Applicant"). The Commission considered the application pursuant to Subtitle X, Chapter 3 and Subtitle Z 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-Z DCMR Chapter 400. For the reasons stated below, the Commission **HEREBY APPROVES** the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On March 26, 2018, the Applicant filed an application with the Commission for a consolidated PUD and a related Zoning Map amendment from the MU-4 zone to the MU-5-B zone for property located at 4611-4615 41st Street, N.W. (Square 1769, Lots 1 and 2) ("Site"). The Site has approximately 6,855 square feet of land area and is surrounded by private property to the north and south, 41st Street to the west, and a public alley to the east.

2. The Applicant will develop the Site with a new seven-story apartment house with approximately 41 residential units and restaurant/bar use on the ground floor and in penthouse habitable space. Two of the residential units will be two-bedroom Inclusionary Zoning ("IZ") units reserved for households earning up to 60% of the Median Family Income ("MFI"), and one of the residential units will be a one-bedroom IZ unit reserved for households earning up to 50% of the MFI. The project ("Project") will have a maximum building height of 79 feet, four inches, not including the penthouse. The Project will contain approximately 34,535 square feet of total gross floor area (5.04 floor area ratio ["FAR"]), of which approximately 28,762 square feet of gross floor area will be devoted to residential use, approximately 2,450 square feet of gross floor area will be devoted to the restaurant/bar use on the ground floor, and approximately 1,754 square feet of penthouse habitable space will be devoted to the restaurant/bar use on the roof. The Project will

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contain nine on-site parking spaces and one service-delivery loading space, all accessed from the rear alley.

3. By report dated June 1, 2018 (Exhibit ["Ex."] 10), the Office of Planning ("OP") recommended that the Commission set down the application for a public hearing. The OP setdown report requested that the Applicant: (a) confirm the number of IZ units in the Project; (b) provide additional details on the proposed public benefits and amenities package; and (c) provide samples of the building materials.

4. At its public meeting held on June 11, 2018, the Commission reviewed the application, requested additional information from the Applicant on various items, and voted to schedule a public hearing on the application.

5. On July 3, 2018, the Applicant submitted its prehearing submission. (Ex. 11-13.) The prehearing submission included revised architectural drawing sheets and responded to the comments and requests for additional information raised by the Commission at the setdown meeting and by OP in the OP setdown report. Specifically, the Applicant's prehearing submission: (a) confirmed that residents of the Project would not be eligible to obtain residential parking permits ("RPPs"); (b) confirmed that the Applicant was unaware of any other development plans for the block on which the Site is located; (c) provided a close up rendering showing a view of the building's front entrance; (d) provided more information on the rooftop and penthouse space, including detailed drawings and information on the proposed lighting and solar panels; (e) confirmed the requested design flexibility language; (f) clarified the IZ proffer and confirmed that the proffer exceeded the minimum IZ requirement imposed by the Zoning Regulations; and (g) provided more information on mural proposed to be located on the building's south façade. The Applicant also indicated that it was in the process of working with Advisory Neighborhood Commission ("ANC") 3E, the ANC in which the Site is located, on the public benefits and amenities package and would submit a complete list of public benefits prior to the public hearing. The Applicant also stated that it would provide samples of the proposed building materials at the public hearing.

6. On August 28, 2018, the Applicant submitted a Multimodal Transportation Assessment Report, prepared by Wells + Associates. (Ex. 18.) The cover letter submitting the transportation report indicated that the Applicant had also submitted the report to the District Department of Transportation ("DDOT") on August 13, 2018.

7. On September 7, 2018, the Applicant submitted a supplemental prehearing submission which included the following: (a) updated architectural drawings that included renderings of the building within its context, revised landscape and public space plans, and floor plans showing the locations and sizes of the proposed IZ units; (b) a description of the Applicant's proposed public benefits and amenities package; and (c) refined language regarding the requested design flexibility. (Ex. 19.)

8. On September 17, 2018, OP submitted a report recommending approval of the application with conditions. (Ex. 22.)

9. On September 17, 2018, DDOT submitted a report stating no objection to the application with conditions. (Ex. 21.)

10. On September 17, 2018, the Applicant submitted a letter requesting that the Commission postpone the public hearing until October 29, 2018, to give the Applicant additional time to continue working with ANC 3E. (Ex. 23.) The Applicant's request was approved and notice of the rescheduled public hearing was published in the *D.C. Register* on September 28, 2018. (Ex. 24-26.)

11. On October 22, 2018, ANC 3E submitted a resolution that was passed by a unanimous vote of 5-0-0 and a memorandum of understanding ("MOU") signed by the Applicant and the ANC setting forth the Applicant's commitments with respect to the Project's public benefits and amenities and other mitigation measures. (Ex. 28-28A.) The ANC resolution specifically requested that the Commission incorporate the provisions of the MOU into any order approving the Project.

12. On October 29, 2018, testimony was submitted by Ms. Marilyn Simon stating that: (a) any order approving the application should include a strong and enforceable condition restricting residents of the Project from obtaining RPP(s); and (b) the Applicant's affordable housing proffer incorrectly calculated the matter-of-right IZ set-aside requirements and therefore the Applicant should be required to increase its affordable housing proffer. (Ex. 30.)

13. On October 29, 2018, testimony was submitted by DC for Reasonable Development: Ward 3 Accountability Group ("DC4RD") stating that the Project was inconsistent with the Comprehensive Plan for two reasons. (Ex. 33.) First, DC4RD alleged that the amount of affordable housing in the Project could not be deemed a "substantial benefit" and that the lack of family-sized units (three or more bedrooms) was "unacceptable at a time of an affordability crises for families." Based on these assertions, DC4RD requested that 30% of the residential density in the Project be dedicated to family-sized affordable housing. Second, DC4RD claimed that the Project's cumulative impacts would have a substantial burden on public services, which had not been sufficiently evaluated as part of the PUD process.

14. After proper notice, the Commission held a public hearing on the application on October 29, 2018. The parties to the case were the Applicant and ANC 3E.

15. At the public hearing, the Applicant submitted a response to Ms. Simon's written testimony with calculations confirming that its IZ proffer was properly calculated. (Ex. 34.)

16. At the public hearing, OP rested on the record and confirmed its support for the application subject to the following conditions:

a. Hours of operation and use of roof must be limited to no later than midnight;

b. No live or amplified music permitted on the roof;

c. All lighting must be shielded so it is contained to the roof area and turned off by 1:00 a.m. except for any code-required emergency lights; and

d. The ground-floor restaurant space and rooftop restaurant/lounge should not be considered a proffered benefit.

17. At the public hearing the Applicant proposed the following conditions in response to and instead of OP's suggested conditions: (Ex. 35.)

a. The hours of operation and use of the rooftop restaurant/bar shall be limited to those hours authorized by any license(s) issued by the D.C. Alcoholic Beverage Regulation Administration ("ABRA");

b. Amplified live music shall not be permitted after midnight outside on the roof. Instrumental or recorded music conveyed via speakers, or other sound system, shall be permitted and shall comply at all times with the requirements of the D.C. Noise Control Act; and

c. All lighting will be shielded so it is contained to the roof area and complies with all applicable D.C. Building Code requirements.

18. At the public hearing, DDOT rested on the record and confirmed its support for the application subject to the following conditions, to which the Applicant agreed:

a. Design, fund, and install the proposed curb bulb-outs to facilitate safer pedestrian crossings;

b. Fund and install two electric vehicle charging stations;

c. Implement a loading management plan that restricts all trucks greater than 30 feet in length from serving the site; and

d. Implement the TDM plan proposed in the Applicant's August 13, 2018 transportation report, with the one modification: if an agreement is not reached with a carshare company to provide service in the two reserved carshare spaces prior to the Project's first Certificate of Occupancy, then the Applicant shall offer a $10 SmarTrip card to each dwelling unit.

19. At the conclusion of the public hearing the Commission took proposed action to approve the PUD and related Zoning Map amendment. The Commission left the record open only

for the three following submissions: (a) an analysis from OP regarding the Applicant's affordable housing proffer; (b) a response from Ms. Simon regarding the Applicant's affordable housing proffer and OP's analysis thereof; and (c) a post-hearing submission from the Applicant, to include a response to OP's and Ms. Simon's post-hearing submissions, a consolidated set of fully updated architectural plans and elevations, and draft Findings of Fact and Conclusions of Law.

20. On October 31, 2018, the proposed action was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. (Ex. 37.)

21. On November 2, 2018, OP submitted a supplemental report regarding the Applicant's affordable housing proffer. (Ex. 38.) In that report, OP stated that it "has confirmed that the [A]pplicant's use of the IZ set aside percentages is correct and consistent with intent and practice." (Ex. 38, p. 1.) OP referenced 11-X DCMR § 305.2, which provides that the PUD public benefits must be greater than would likely result from development of the site as a matter of right. Under the matter-of-right scenario, OP concluded that the Project would be required to set aside 2,746.03 square feet for IZ units, but that the Project proposes to set aside 3,882 square feet for IZ units, which is 1,136 square feet more than would have be required. Thus, OP concluded that "[t]he 1,136 sq. ft. is the public benefit." (Ex. 38, p. 1.) OP also indicated that the set aside section in the Zoning Regulations was being clarified in Z.C. Case No. 04-33I.

22. On November 9, 2018, Ms. Simon submitted a response to the Applicant's affordable housing proffer and OP's supplemental report, as requested by the Commission at the close of the public hearing. (Ex. 40.) Ms. Simon's response stated that: (a) the Applicant and OP are using the proposed IZ regulations (Z.C. Case No. 04-33I) rather than the current IZ regulations to calculate the IZ requirements for the Project, which create significantly different IZ requirements; and (b) the Applicant should use the current IZ regulations which do not permit the Project to take advantage of the "reduced" IZ requirement of eight percent GFA or 50% of the bonus density because the Project does not use steel and concrete to frame more than 50% of the dwelling units. Ms. Simon's supplemental report also commented on and provided proposed language for the RPP restriction proposed by the Applicant. However, the Commission did not request this information from Ms. Simon at the public hearing as it had already addressed and accepted the Applicant's condition related to RPP restrictions.

23. On November 16, 2018, the Applicant filed its post-hearing submission (Ex. 41), which included: (a) a response to OP and Ms. Simon's post-hearing submissions regarding the IZ proffer; (b) updated architectural plans and elevations depicting the final design of the enhanced public space improvements negotiated with ANC 3E; and (c) confirmation on the Applicant's RPP condition. (Ex. 41.)

24. On November 19, 2018, the Applicant filed its final list of proffers and draft conditions pursuant to 11-X DCMR § 308.12.

25. On November 30, 2018, NCPC's Director of Urban Design and Plan Review submitted a letter stating that the Project was determined to be exempt from NCPC review. (Ex. 43.)

26. The Commission took final action to approve the PUD and related Zoning Map amendment on December 17, 2018.

The Site and Surrounding Area

27. The Site is located in the Tenleytown neighborhood of Ward 3, directly adjacent to the commercial corridor of upper Wisconsin Avenue, N.W. The Site has approximately 6,855 square feet of land area and is surrounded by private property to the north and south, 41st Street to the west, and a public alley to the east. The Site is presently improved with two existing two-story buildings, one of which is operated as the Tenley Bar and Grill. The existing buildings will be razed as part of redevelopment.

28. The area surrounding the Site is generally improved with commercial office, retail, and service uses. To the south of the Site is a mixed-use retail district surrounding the Tenleytown Metrorail station, which is home to a variety of retail, service, and dining establishments, including stores such as Best Buy, CVS, The Container Store, and Whole Foods; fast-casual and full-service restaurants and bars; the Tenley-Friendship Neighborhood Library; The Citizen Heights Church; and various beauty salons, among other uses and commercial establishments. To the south of the Tenleytown Metrorail station is American University. To the north of the Site is the Fort Reno Park and Deal Middle School. To the east of the Site is the Woodrow Wilson High School, and to the west of the Site are additional neighborhood-serving restaurants and bars along Wisconsin Avenue, N.W. Farther to the east and west of the Site are low-density residential neighborhoods.

29. Immediately to the north of the Site is an existing four-story commercial building that is constructed to its southern property line. Immediately to the south of the Site is a parking lot at the corner of Wisconsin Avenue, N.W. and Brandywine Street, N.W. Across Wisconsin Avenue from the Site is a seven-story mixed-use building developed as a PUD pursuant to Z.C. Order No. 10-23, and an existing four-story building that was approved to be converted to an eight-story mixed-use building as a PUD pursuant to Z.C. Order No. 16-26, which had an effective date of March 30, 2018.

30. The surrounding neighborhood is well-served by multiple transportation options. The Tenleytown Metrorail station, which services the red line, is located approximately 0.1 mile to the south of the Site. At least 10 different bus lines are located along Wisconsin Avenue, with bus stops adjacent to the Site. Multiple permanent carshare spaces are located within a half-mile of the Site, serviced by Zipcar and Hertz on Demand, and a Capitol Bikeshare station is located approximately 0.2 miles from the Site. Public sidewalks, crosswalks, and bicycle lanes are also well established in the area.

Existing and Proposed Zoning

31. The Site's existing zoning is MU-4. The application requested a Zoning Map amendment to rezone the Site to the MU-5B zone. Properties on the east and west sides of Wisconsin Avenue, N.W. near the Site are primarily designated as MU districts. The PUDs across Wisconsin Avenue from the Site are zoned MU-7. The Tenleytown mixed-use retail district is zoned MU-7, properties to the north are zoned MU-4, and properties to the south are zoned MU-3, MU-4, and MU-5A. Properties near the Site but not located along Wisconsin Avenue are primarily zoned R-1-B and R-2.

32. Development Under Existing Zoning. The MU-4 zone is intended to permit moderate-density mixed-use development; provide facilities for shipping and business needs, housing, and mixed uses; and be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops and include office employment centers, shopping centers, and moderate bulk mixed-use centers. (11-G DCMR § 400.3.)

33. The MU-4 zone permits a maximum density of 2.5 FAR (1.5 FAR maximum non-residential), 3.0 FAR with IZ, 3.6 FAR as a PUD, and 2.01 FAR maximum non-residential as a PUD. (11-G DCMR § 402.1 and 11-X DCMR §§ 303.3 and 303.4.) The MU-4 zone permits a maximum building height of 50 feet with no limit on the number of stories, 65 feet for a PUD, and a maximum penthouse height of 12 feet (15 feet for penthouse mechanical space) and one story (second story permitted for penthouse mechanical space). (11-G DCMR §§ 403.1 and 403.3 and 11-X DCMR § 303.7.) The MU-4 zone permits a maximum lot occupancy of 60% and 75% with IZ. (11-G DCMR § 404.1.)

34. Development Under Proposed Zoning. The Applicant proposed to rezone the Site to the MU-5B zone to allow for the development of a mixed-use apartment house with ground-floor retail. The MU-5 zones are intended to permit medium-density, compact mixed-use development with an emphasis on residential use. (11-G DCMR § 400.4(a).) The MU-5 zones provide for areas with facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. (11-G DCMR § 400.4(b).) The MU-5 zones are located on arterial streets, in uptown and regional centers, and at rapid transit stops. (11-G DCMR § 400.4(c).)

35. The MU-5B zone permits a maximum density of 3.5 FAR (1.5 FAR maximum for non-residential uses) and 4.2 FAR with IZ. (11-G DCMR § 402.1.) The MU-5B zone permits a maximum building height of 75 feet with no limit on the number of stories and a maximum penthouse height of 20 feet and one story, with a second story permitted for penthouse mechanical space. (11-G DCMR §§ 403.1 and 403.3.) The MU-5B zone permits a maximum lot occupancy of 80%. (11-G DCMR § 404.1.)

36. A PUD in the MU-5B zone is permitted a maximum density of 5.04 FAR (2.01 FAR maximum for non-residential uses) and a maximum building height of 90 feet. (11-X DCMR §§ 303.3, 303.4, 303.7.)

Project Description

37. As shown on the Architectural Plans and Elevations dated November 16, 2018 ("Architectural Plans"), the Site will be redeveloped with a new seven-story apartment house with approximately 41 residential units and a restaurant/bar on the ground floor and in penthouse habitable space. (Ex. 41A1-41A3.) Two of the residential units will be two-bedroom IZ units reserved for households earning up to 60% of the MFI, and one of the residential units will be a one-bedroom IZ unit reserved for households earning up to 50% of the MFI. The Project will have a maximum building height of 79 feet, four inches, not including the penthouse. The Project will contain approximately 34,535 square feet of total gross floor area (5.04 FAR), of which approximately 28,762 square feet of gross floor area will be devoted to residential use, approximately 2,450 square feet of gross floor area will be devoted to the restaurant/bar use on the ground floor, and approximately 1,754 square feet of penthouse habitable space will be devoted to the additional restaurant/bar use on the roof.

38. The Project will contain nine on-site parking spaces and one service-delivery loading space, all accessed from the rear alley. Five of the parking spaces will be located in an interior parking garage, with two of the five spaces dedicated as electric vehicle charging stations. The remaining four parking spaces will be located at-grade in the rear yard perpendicular to the alley, with two of the four spaces dedicated as car-share spaces. The service/delivery loading space will abut a loading platform that will have direct access to the building's trash room, service area, and service elevator. Although not required, the service/delivery space is being provided to serve the loading needs of the bar/restaurant use. Residential loading facilities are not required for the Project. Long-term interior bicycle parking will be located in the cellar accessed via the building's primary residential entrance and via the rear alley.

39. The building includes expansive storefront windows and glass entry doors along 41st Street that were designed to activate the street level and create a strong physical relationship between interior and exterior spaces. Above the first level, the building façade is organized into three glassy volumes separated by brick piers that celebrate the building's verticality and identify the three apartment units fronting 41st Street on each residential floor. The building is primarily clad in red brick with limestone detailing that creates strong horizontal elements at regular intervals. The residential floors are identified by the uniform treatment of aluminum-clad sawtooth bays on 41st Street and at a large closed court on the east side of the building, which will be visible as the building is approached from the south.

40. The penthouse and roof terrace serve as an extension of the ground-floor bar/restaurant use. The penthouse will be clad in fiber cement panels that correspond with the building's limestone base. The penthouse will have floor to ceiling glazing along the majority of the south and west walls that will provide stunning, panoramic views of the city from inside, as well as connections to the exterior roof deck. A smaller room and separate roof deck will be located on the southeast corner of the roof and will separated from the main roof deck by the courtyard.

41. The public space streetscape and landscape design for the Project fosters an active and pedestrian-friendly environment. Large planted areas in public space provide greening of the public space between the sidewalk and the face of the building, capture stormwater, and define the residential entry and outdoor restaurant/bar seating areas. The existing red brick pavers in the strip between the curb and the sidewalk will be removed. The curb will be extended out to the bike lane and converted to a bioretention planting area paved plaza with a public art installation and short-term bicycle parking. The painted gore triangle between 41st Street, N.W. and Wisconsin Avenue, N.W. will be raised, and a new curb installed around a planted area. The curb extension, raised gore area will and a new raised crosswalk will slow traffic exiting Wisconsin Avenue, N.W. onto 41st Street, N.W., narrow the width of the pedestrian crossing and increase pedestrian safety around the site. The new concrete sidewalk in front of the Site will be widened to eight feet to provide a comfortable and safe pedestrian environment. The existing built-in planter in public space north of the Site will be maintained and integrated into the planting area in front of the Project. The area between the sidewalk and the property line will be paved with granite pavers. As set forth below, the Applicant worked closely with ANC 3E and DDOT to enhance the public space improvements such that they are being provided in excess of the standards normally required for public space adjacent to a PUD.

42. The Project is designed to integrate a host of sustainable features and will be designed to achieve LEED-Gold certification under v.4. In addition, the Site is located in a mixed-use, walkable neighborhood with convenient access to public transportation options and existing infrastructure and services. The Project will include a variety of strategies to satisfy the Green Area Ratio ("GAR") and stormwater management requirements, such as intensive and extensive green roof areas, a bioretention area at the third floor courtyard, permeable paving in the outdoor parking area accessed from the alley, and in-ground planters in public space. The Project will install solar photovoltaic panels on the penthouse roof.

Zoning Flexibility

43. Flexibility to Provide a Restaurant/Bar Use in the Penthouse. The Applicant requested flexibility to provide a restaurant/bar use in the penthouse of the proposed building. Pursuant to 11-C DCMR § 1500.3, a penthouse may house a nightclub, bar, cocktail lounge, or restaurant if approved as a special exception pursuant to 11-X DCMR Chapter 9. In this case, the Commission finds that the proposed restaurant/bar use in the penthouse will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The restaurant/bar use will provide a unique and enjoyable dining option for neighborhood residents, including residents of the Project, and will not create any adverse effects given the conditions imposed herein. The penthouse structure itself will comply with all height, bulk, and setback standards set forth in 11-C DCMR § 1500.

44. The Commission also finds that the proposed restaurant/bar use will not tend to affect adversely the use of neighboring property for the following reasons and because of the conditions imposed on its use in this Order. The Site is surrounded by commercial uses in

all directions. Directly to the north is a commercial building and directly to the south is a parking lot. Across Wisconsin Avenue to the west are other mixed-use residential and commercial buildings with ground-floor retail, with the closest residential use being the apartment house approved in Z.C. Order No. 10-23, which is approximately 150 feet away from the Site and across Wisconsin Avenue. To the east of the Site, across the alley, are commercial uses. Moreover, the ANC stated that the rooftop restaurant/bar space will "be among, if not the, highest in DC, with a commanding view, rooftop restaurant/bars are popular, and there are currently none in the immediate area." (ANC Resolution, Ex. 28A, p. 2.) Therefore, the Commission concludes that the proposed restaurant/bar use in the penthouse will have little or no impact on surrounding residential uses, and will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to adversely affect the use of neighboring property, given the conditions imposed by this Order.

45. Flexibility from the Minimum PUD Land Area Requirement. The Applicant requested flexibility from 11-X DCMR § 301.1, which provides that the minimum land area for a PUD in the MU-5B zone is 15,000 square feet. Pursuant to 11-X DCMR § 301.3, the Commission may waive the minimum PUD land area requirement to no less than 5,000 square feet for applications in Zone Groups 2, 5, and 6,[1] provided the Commission finds that the development is of exceptional merit and is in the best interests of the District of Columbia or the country and achieves one of the standards set forth in 11-X DCMR § 301.3(a)-(c). The criteria of 11-X DCMR § 301.3(c) is that the development is located outside of the Central Employment Area ("CEA") and at least 80% of the gross floor area of the development is used exclusively for dwelling units and uses accessory thereto.

46. The Commission finds that the Project meets the requirements of 11-X DCMR § 301.3(c) because the Site is located outside of the CEA and approximately 82% of the Project's gross floor area is dedicated to dwelling units and accessory uses thereto. Moreover, reducing the minimum PUD land area requirement for the Project is in the best interests of the District because it will allow for development of a PUD that includes new housing and affordable housing in an amount greater than the minimum required by the Zoning Regulations, will include larger-sized affordable units, and is located in a mixed-use, walkable, and transit-oriented location that will have a minimal impact on the environment. The Project is also one of exceptional merit due to its associated public benefits and amenities, architectural design, proposed ground-floor commercial uses that will benefit the neighborhood and increase economic development in the area, and improvements to the surrounding public space. The Commission agrees with OP's analysis as well, where it stated that the Project's "new housing and its amenities including the two-bedroom IZ units for families at up to 60% median income and the streetscape and public space improvements near the metro station should result in the Project being of an exceptional merit in the best interest of the City." (Ex. 22, p. 10.) Therefore, the Commission concludes that flexibility from the minimum PUD land area requirements is appropriate in this case.

[1] Per 11-X DCMR § 301.1, the MU-5B zone is within Zone Group 6 for "any other zone."

Development Flexibility

47. The Applicant also requests flexibility in the following additional areas:

a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

b. To vary the final selection of the color of the exterior materials, within the color ranges reflected in the approved Architectural Plans, without making changes to the exterior materials; and to make minor refinements to exterior details, locations and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes that do not substantially alter the exterior design necessary to comply with all applicable District of Columbia laws and regulations;

c. To provide a range in the number of residential dwelling units of plus or minus 10% from the number depicted on the approved Architectural Plans;

d. To make refinements to the parking configuration, including layout, number of parking spaces, and other elements, so long as the number of parking spaces provided is at least the minimum number of spaces required by the Zoning Regulations;

e. To vary the location, attributes, and general design of the streetscape incorporated in the Project to comply with the requirements of and the approval by the DDOT Public Space Division;

f. To vary the font, message, logo, location, and color of the proposed signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the approved Architectural Plans and compliant with the D.C. signage regulations; and

g. To vary the sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below LEED Gold v.4.

48. The Commission concluded the request for design flexibility for exterior materials was overly broad and granted similar, but narrower, design flexibility.

Public Benefits and Amenities

49. Superior Urban Design, Architecture, and Landscaping (11-X DCMR § 305.5(a) and (b)) and Site Planning and Efficient Economical Land Utilization (11-X DCMR § 305.5(c)). The Project's architectural character and ground-floor streetscape will be a significant improvement over the existing buildings on the PUD Site and the surrounding

neighborhood. The Project will use high quality materials throughout and will incorporate detailing at regular floor intervals to enhance the building's design and articulate its scale. Tall storefront glazing at the ground floor, an elegant steel and glass canopy at the building entrance, and metal-clad bays with large glass openings will all contribute to the building's dynamic façade. In addition, extensive landscaping in the public space at the front of the building will define the residential entry and outdoor seating area, and exterior lighting elements will be installed to create a safe and inviting streetscape and an enjoyable pedestrian experience.

50. The building's third-floor courtyard will be landscaped with a bioretention garden and will provide enhanced views. Areas of intensive and extensive green roof will also be provided.

51. In reviewing the Project, the ANC found that the "new residences and attractive retail space the Project will afford will enhance the vibrance of the neighborhood" (Ex. 28A, pp. 1-2) and OP similarly concluded that the Project's "landscaping and site planning would significantly improve the pedestrian environment around the site," and that the infill site is in a transit-oriented area that is "efficiently and economically utilizing land in the District." (Ex. 22, p. 14.)

52. Housing and Affordable Housing (Subtitle X § 305.5(f) and (g)). The Project results in the creation of new housing and affordable housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Future Land Use Map. The Project will replace an underutilized commercial site with approximately 41 new residential units, three of which will be designated IZ units. The affordable housing proffer exceeds the amount of square footage that would have been required through matter-of-right development under existing zoning. Specifically, the Applicant will dedicate a minimum of 12.7% of the residential gross floor area and including penthouse habitable floor area combined to IZ units (approximately 3,882 square feet of gross floor area). Two IZ units will be reserved for households earning up to 60% of the median family income ("MFI") and one IZ unit will be reserved for households earning up to 50% of the MFI. The units reserved at 60% of the MFI will each have approximately 1,445 square feet of gross floor area and two bedrooms. The unit reserved at 50% of the MFI will have approximately 992 square feet of gross floor area and one bedroom.

53. In reviewing the IZ proffer, the ANC explained that "like most of the District of Columbia, our neighborhood needs more affordable housing, and especially affordable housing suitable for families," and commended the Applicant for providing "greater than 25% more affordable housing than would be required under the existing MU-4 zoning, and greater than 50% more affordable housing than would be required under MU-5B zoning, including at least two affordable units with two bedrooms." The ANC also found that the Project "consists of a mix of unit sizes, some of which should be suitable for small families as well as singles." (Ex. 28A.) As set forth in the Contested Issues section of this Order, OP also reviewed and supported the Applicant's affordable housing proffer, and confirmed the Applicant's calculations with respect to the amount of IZ being provided over the amount required by the Zoning Regulations.

54. Environmental Benefits (Subtitle X § 305.5(k)). The Project has been designed to integrate a host of sustainable features, including providing a minimum of 640 square feet of solar panels on the top of the building's penthouse to help generate a portion of the building's energy consumption. In addition, the Applicant will certify the Project with the USGBC as LEED Gold v.4.

55. In its report, OP indicated that DOEE worked with the Applicant on its solar installation proposal and its LEED commitments and "is in support of the proposal." (Ex. 22, p. 15.)

56. Commemorative Works or Public Art (Subtitle X § 305.5(d)). Following the effective date of Z.C. Order No. 18-03, the Applicant will engage with ANC 3E to select the subject matter and artist for a mural to be located on the south façade of the Project, with the approximate location and dimensions as shown on Sheet A2.2 of the Architectural Plans. The Applicant will dedicate up to $25,000 for the design and installation of the mural prior to receiving the first certificate of occupancy for the Project, but the mural need not be installed prior to issuance of the first certificate of occupancy.

57. The OP report correctly notes that the mural is located along a property line and is therefore "at risk." The ANC understood that the location of the mural was "at risk" but still preferred the mural to be installed in its proposed location. The Applicant will work with the ANC to determine the appropriate artist and subject matter for the mural, and the ANC's support of the mural indicates that it would be a benefit to the community. (*See* Ex. 22, p. 14; Ex. 28A, p. 2.)

58. Uses of Special Value to the Neighborhood Subtitle X § 305.5(q).

    a. Landscaping and Public Space Improvements.

        i. As shown on Sheets A1.0, L1.0-L1.2 and L1.4-L1.7 of the Architectural Plans, the Project will include a variety of significant public space improvements adjacent to the Site and on the west side of 41st Street, N.W. The public space improvements will include the following:

            A. Enhanced streetscape design elements along 41st Street directly adjacent to the Project's entrance, including: (i) a bioretention planting area; (ii) granite pavers between the building façade and the sidewalk; (iii) bar-height seating facing the sidewalk and movable tables and chairs for the café seating; (iv) planters with stone curbs; (v) building exterior light fixtures and in-ground light fixtures; and (vi) bench seating at the residential entry;

            B. An eight-foot-wide concrete public sidewalk that replaces the existing six-foot-wide public sidewalk adjacent to the Site;

C. A speed table in the location and with the materials as shown on Sheets L1.0 and 1.1 of the Architectural Plans to slow traffic;

D. A new curb extension/bulb-out on the east side of 41st Street to shorten the pedestrian travel distance across 41st Street and slow vehicular traffic. As shown on Sheets L1.0 and 1.1 of the Architectural Plans, the bulb-out will include new stone pavers, short-term bicycle parking for eight bicycles, a public art feature, streetscape plantings, and signage for the new crosswalk; and

E. On the west side of 41st Street, a "traffic-calming curb extension" in the location and with the landscaping materials as shown on Sheets L1.0 and L1.1 of the Architectural Plans.

The Applicant will maintain the public space improvements listed in FF No. 58 for the life of the Project;

ii. The Applicant will spend up to $5,000 for the installation of landscaping on the northern portion of Reservation 503, which is located between 41st Street to the east and Wisconsin Avenue to the west ("Reservation 503 North"), and will maintain the landscaping in Reservation 503 North for the life of the Project;

iii. If or when the owner of property located at 4600 Wisconsin Avenue, N.W. (Square 1732, Lot 53) ("4600 Wisconsin Owner") stops maintaining the landscaped area approved to be developed in Z.C. Order No. 10-23, Decision No. 10 (view "A" in Ex. 19B) on the southern portion of Reservation 503 ("Reservation 503 South"), the Applicant shall maintain Reservation 503 South for the life of the Project; and

iv. In working with the Applicant on its proposed landscape and public space plans, the ANC noted that they would "[a]dd significant traffic calming and placemaking elements, including extending the pedestrian area in front of the restaurant into the street and improving the space with public art and special paving, transforming triangular road lane markings into a raised, landscaped space, and replacing an ordinary painted crosswalk with a raised, attractively-patterned crosswalk." (Ex. 28A, pp. 1-2.) OP agreed that the "streetscape improvements would be attractive additions to the pedestrian environment and would help to further activate the area."; and (Ex. 22, p. 16.)

b. Donation to Friendship Place. The Applicant will contribute $35,000 to Friendship Place to make improvements needed as a result of leaking and flooding in their basement, including but not limited to installing new pipes, waterproofing the basement's foundation, installing additional landscaping that would keep water

away from the building and its foundation, and replacing the building's front and side doors. The ANC and OP both agreed that this contribution amounted to a public benefit that would help to support a local homeless services provider. (Ex. 28A, p. 2; Ex. 22, p. 16.)

Transportation Demand Management

59. The Applicant committed to the following TDM measures:

a. Develop and maintain a property management website that will include information on and links to current transportation programs and services such as: (i) Capital Bikeshare, carsharing services, and ride-hailing services; (ii) information about transportation apps, such as Citymapper, Spotcycle, and Transit and other transportation resources, such as DDOT's D.C. Bicycle Map and goDCgo.com; (iii) links to the Commuter Connections Rideshare Program, which provides complimentary information on a variety of commuter programs to assist in determining which commuting options work best for commuters; (iv) information about the Commuter Connections Guaranteed Ride Home Program, which provides commuters who regularly carpool, vanpool, bike, walk or take transit to work with a free and reliable ride home in an emergency; and (v) information about the Commuter Connections Pools Program, which incentivizes commuters who currently drive alone to carpool;

b. Provide an electronic display in a common, shared space in the building that provides real-time public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the number of bicycles available at each location;

c. Provide two Electric Vehicle ("EV") charging stations internal to the building's garage;

d. Offer two of the on-site vehicle parking spaces to a car-share provider(s), subject to demand. If an agreement with a car-share provider cannot be reached prior to the issuance of the first certificate of occupancy for the Project, then the Applicant will: (i) host a transportation event for residents and employees of the Project within the first year following the issuance of the first certificate of occupancy; and (ii) provide one $10 pre-loaded SmarTrip card per dwelling unit and employee upon initial lease-up of the building;

e. Unbundle the cost of parking spaces from the cost of residential leases; and

f. Restrict residents of the Project from obtaining a Residential Parking Permit ("RPP") by: (i) placing a clause in emphasized type in all residential leases that prohibits residents from applying for or obtaining RPPs, or using an RPP guest pass within one mile of the Site, upon penalty of mandatory lease termination to the full

extent permitted by law; and (ii) obtaining written authorization from each tenant through a required lease provision that allows the Department of Motor Vehicles ("DMV") to release to the Applicant every 12 months any and all records of that tenant requesting or receiving an RPP for the Site. The Applicant will take all reasonable steps to obtain and review such records for noncompliance with such lease provisions. The Applicant will also: (i) oppose any effort by Project residents or others to add the Site to the list of properties eligible for RPPs; and (ii) if the Applicant sells any unit(s) at the Project, the Applicant will add a covenant that runs with the land to the deed for the unit(s) prohibiting residents from applying for or obtaining RPPs.

Additional Commitments to ANC 3E

60. The Applicant also agreed to the following items as part of its MOU with ANC 3E. These items are not considered public benefits and project amenities under 11-X DCMR Chapter 3. However, the Applicant has committed to the following:

a. The Applicant will reserve a minimum of 4,971 square feet of gross floor area in the Project solely for use as full-service restaurant ("Restaurant Space") where food is: (i) delivered to the tables by a server; (ii) paid for after consumption; and (iii) served on non-disposable plates with non-disposable cutlery. Notwithstanding the definition of "Restaurant" in 11-B DCMR § 100.2, the tenant of the Restaurant Space may be permitted to serve alcoholic beverages, provide entertainment including televisions and live and/or amplified music, and allow dancing, but such uses will be subject to any otherwise applicable licensing restrictions, and the ANC will be permitted to render any such advice it deems appropriate on any future applications for new licenses or renewals;

b. The Applicant will install all kitchen exhaust systems associated with the eating and drinking establishment use so that they vent to the roof of the Project;

c. The Applicant will prohibit the following uses at the Property: sexually-oriented business establishment; a check-cashing establishment; a pawnbroker; a bank; a nightclub as defined by the D.C. Alcoholic Beverage Regulation Administration ("ABRA"); a mattress store; a convenience store such as 7-Eleven; a professional office; a drug store such as CVS; and any "chain" retail, service, or food service establishment (a "chain" being defined as a business with either at least 10 stores within the District of Columbia or at least 50 stores nationwide). Notwithstanding the foregoing, the ANC may approve a use otherwise prohibited in this paragraph that the ANC believes would provide substantial value for the community. Such approval shall be granted by the ANC only by a formal resolution; and

d. The Applicant will prepare a loading management plan as part of the building permitting process, to be implemented for the life of the Project.

Compliance with PUD Standards

61. The application complies with the standards for a PUD set forth in 11-X DCMR, Chapter 3 of the Zoning Regulations.

62. The Project offers a high level of public benefits and project amenities. When compared with the amount of development flexibility requested and project impacts, the application satisfies the balancing test required in 11-X DCMR § 304.3, as is further discussed below.

63. The Site is approximately 6,855 square feet in land area, or 0.15 acres. The Zoning Regulations require a minimum land area of 15,000 square feet for a PUD in the MU-5B zone, but the Commission may waive this requirement to no less than 5,000 square feet upon finding that the development is of exceptional merit and is in the best interests of the District of Columbia or the country and achieves one of the standards set forth in 11-X DCMR § 301.3(a)-(c). (*See* 11-X DCMR §§ 303.1 and 301.3.) As described in FF No. 45 and 46 and Decision A3, the Commission grants flexibility from the PUD land area requirements of 11-X DCMR § 303.1 because the Project achieves the applicable standards set forth in 11-X DCMR § 301.3.

64. The development is of exceptional merit and is in the best interest of the city. The Project will significantly improve the existing area by virtue of its architectural design, proposed ground floor and penthouse commercial uses that will benefit the neighborhood and increase economic development in the area, and improvements to the surrounding public space.

65. The PUD and related Zoning Map amendment are not inconsistent with the Comprehensive Plan as is set forth in FF Nos. 68-79.

66. The Project has been evaluated under the PUD guidelines for the MU-5B zone. The Project is within the height and density permitted for a PUD within the MU-5B zone.

67. Neither the Commission nor OP identified any unacceptable Project impacts on the surrounding area, and instead found that the Project impacts would be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project. OP recommended four conditions to approval, to which the Applicant responded with revised language. As described in FF Nos. 85-87, the Commission concluded that OP's conditions were appropriate and would mitigate any adverse impacts associated with use of the penthouse. DDOT also recommended conditions to approval. At the public hearing, the Applicant agreed to each of DDOT's conditions to mitigate any unfavorable impacts resulting from the Project. The Commission has incorporated the OP conditions, and DDOT conditions into this Order. Therefore, the Commission finds that the Project will not create any unacceptable impacts on the surrounding area.

Compliance with Guiding Principles of the Comprehensive Plan

68. The Commission finds that the Project is not inconsistent with the Comprehensive Plan for the National Capital, including the Future Land Use Map and the Generalized Policy Map. The Commission also finds that the Project complies with the guiding principles in the Comprehensive Plan and furthers a number of the major Citywide and Area Elements of the Comprehensive Plan.

69. The purposes of the Comprehensive Plan are six-fold: (a) to define the requirements and aspirations of District residents and, accordingly, influence social, economic and physical development; (b) to guide executive and legislative decisions on matters affecting the District and its citizens; (c) to promote economic growth and jobs for District residents; (c) to guide private and public development in order to achieve District and community goals; (e) to maintain and enhance the natural and architectural assets of the District; and (f) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Code §1-245(b)).)

70. The Project advances these purposes by promoting the social, physical, and economic development of the District through the provision of a high-quality residential development with a ground floor restaurant/bar on the Site, without generating any adverse impacts. The Project will improve the neighborhood and promote economic growth.

71. Future Land Use Map: According to the Comprehensive Plan Future Land Use Map, the Site is designated mixed use Medium-Density Residential and Moderate-Density Commercial. The Medium-Density Residential designation is used to define neighborhoods or areas where mid-rise (four to seven stories) apartment buildings are the predominant use. Pockets of low- and moderate-density housing may exist within these areas. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone Districts (the RA-2 and RA-3 zones under the 2016 Zoning Regulations) are generally consistent with the Medium-Density designation, although other zones may apply. (10A DCMR § 225.5.)

72. The Moderate-Density Commercial designation is used to define shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low- density commercial areas but generally do not exceed five stories in height. The corresponding zone districts are generally C-2-A, C-2-B, and C-3-A (the MU-4, MU-5, and MU-7 zones under the 2016 Zoning Regulations), although other districts may apply. (10A DCMR § 225.9.)

73. As the Commission has previously acknowledged, the Framework Element of the Comprehensive Plan provides that the Land Use Map is not a zoning map. (*See* 10A

DCMR § 226.1(a); *see also* Z.C. Order No. 11-13; Z.C. Order No. 10-28.) Whereas zoning maps are parcel-specific and establish detailed requirements for setback, 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. (*Id.*) By definition, the Map is to be interpreted broadly. (*Id.*) Furthermore, the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. The granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here. (*Id.* at § 226.1(c).) The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. (*Id.* at § 226.1(d).) Thus, in evaluating the proposed map amendment, the Site should be viewed in context and not as an isolated parcel.

74. Based on the text of the Comprehensive Plan and the foregoing guidance, and when considering the Site's surrounding context including the zone districts, uses, and approved PUDs in the area, the Commission finds that the Applicant's proposal to rezone the Site from the MU-4 zone to the MU-5B zone to construct a mixed-use building with new housing, affordable housing, and a neighborhood-serving restaurant/bar use is consistent with the Comprehensive Plan's Future Land Use Map designation of the Site. The proposal to construct the building to a height of 79 feet, four inches, and 5.04 FAR is also consistent with this designation. The Commission credits OP's analysis on this matter and its conclusion that the Project is not inconsistent with the Future Land Use Map designations. OP's setdown report stated that the "proposed seven-story, 79'-4" mixed use building has a 5.04 FAR, 0.36 of which is commercial FAR, and is not inconsistent with what is considered medium density residential and well within the limits of what is considered moderate density commercial development." (Ex. 10, p. 5; Ex. 22, p. 6.) OP also stated that "the Applicant has requested permission to construct a building at a higher height and density than is permitted as matter-of-right under MU-4 zoning. As the future land use map designates this area for medium density residential and moderate density commercial land use the proposal having MU-5-B level of development would be appropriate." (Ex. 10, p. 13.) OP concluded that the "proposal would be consistent with the intent of the MU-5 (MU-5B) zone and not inconsistent with the medium density residential and moderate density commercial land use designation of the striped Future Land Use." (*Id.* at 14.) Moreover, the MU-5 zone is specifically identified as a corresponding zone district in the Moderate Density Commercial land use category. Therefore, the Commission finds that the Project is not inconsistent with the Future Land Use Map designations for the Site.

75. Generalized Policy Map: The District of Columbia Comprehensive Plan Generalized Policy Map designates the Site as a Main Street Mixed-Use Corridor. Main Street Mixed-Use Corridors are traditional commercial business corridors with a concentration of older storefronts along the street. The service area for Main Streets can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper-story

residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment. (10A DCMR § 223.14.)

76. The Commission finds that the proposed rezoning and PUD redevelopment of the Site is consistent with the policies indicated for Main Street Mixed-Use Corridors because the Project will improve the traditional commercial corridor by providing a pedestrian-oriented streetscape with a traditional retail storefront with residential units in the upper stories. This redevelopment of the underutilized Site will foster economic development and create new housing opportunities within a dense urban neighborhood. The Site is also located in a transit-oriented location, such that redevelopment will support transit use. The Commission also agrees with OP's determination that redevelopment of the Site is consistent with the Main Street Mixed-Use Corridor designation, which is intended to encourage conservation and enhancement of traditional commercial areas. (*See* OP setdown report (Ex. 10, p. 5).) In reference to the Main Street Mixed-Use Corridor designation, OP stated that the "proposed development of the site is not inconsistent with that designation." (*Id.* and Ex. 22, p. 5.) The Project will enhance the pedestrian and transit-oriented environment by widening the sidewalk, adding bicycle and carshare spaces near the metro station, and by improving the streetscape. (Ex. 10, p. 6.) Thus, the Commission finds that the Project is not inconsistent with the Site's designation on the Generalized Policy Map.

77. Compliance with Guiding Principles of the Comprehensive Plan: Based on the entire case record, including the Applicant's statement in support, Comprehensive Plan analysis, and the OP reports, the Commission finds the Project to be not inconsistent with the guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as follows: (Ex. 2, 2F, 10, 22.)

a. Managing Growth and Change: In order to manage growth and change in the District, the Comprehensive Plan encourages, among other goals, the growth of both residential and non-residential uses. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. In this case, the Commission finds that the Project is not inconsistent with each of these goals. Redeveloping the Site as a vibrant mixed-use building with residential and restaurant/bar uses will further the revitalization of the surrounding neighborhood. The proposed restaurant/bar use will create new jobs for District residents, further increase the city's tax base, and help to reinvigorate the existing neighborhood fabric. The Applicant worked closely with ANC 3E to identify and commit to uses at the Site that would be valued and prioritized by the community. Therefore, the Commission finds that the proposed residential and non-residential uses at this infill, transit-oriented location will be successful in managing growth and change in the area;

b. Creating Successful Neighborhoods: One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development from development of the Comprehensive Plan to implementation of the plan's elements. The Commission finds that the Project furthers this goal since, as part of the PUD process, the Applicant worked extensively with ANC 3E to ensure that the Project provides a positive impact on the immediate neighborhood and includes an extensive public benefits and amenities package that is specific to the needs of the local community. A signed MOU between the Applicant and the ANC was submitted to the record with the ANC's resolution describing the ANC's unanimous vote in support of the application; and (Ex. 28, 28A.)

c. Building Green and Healthy Communities: A major objective for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. Based on its review of the record, the Commission finds that the Project includes a substantial number of sustainable design features, including rooftop solar panels and a commitment from the Applicant to certify the Project as LEED Gold v.4.

78. Compliance with the Citywide and Area Elements of the Comprehensive Plan. The Commission finds that the Project is not inconsistent with the objectives and policies contained within the Citywide and Area Elements of the Comprehensive Plan, as applicable. The Commission bases this conclusion on its review of the Applicant's statement in support and comprehensive plan analysis and the reports submitted by OP. (Ex. 2, 2F, 10, 22.) Specifically, the Commission concurs with OP's finding that the Project would "further policy statements contained in the Land use, Transportation, Housing, Environmental Protection, and Urban Design Citywide Elements, and the Rock Creek West Area Element" and agrees with OP's detailed analysis regarding the Project's compliance with each of these elements as set forth in the OP hearing report. (Ex. 22, p. 5; Ex. 10, pp. 6-12.)

79. Based on the foregoing, and consistent with the Commission's thorough review of the entire case record, the Commission concludes that the Project is not inconsistent with the Comprehensive Plan, including the Future Land Use Map and the Generalized Policy Map; complies with the guiding principles in the Comprehensive Plan; and furthers a number of the major Citywide and Area Elements of the Comprehensive Plan.

Office of Planning Reports and Testimony

80. On June 1, 2018, OP submitted a report recommending setdown of the application. (Ex. 10.) The OP setdown report provided an analysis demonstrating that the Project is not inconsistent with the Future Land Use and Generalized Policy Maps of the Comprehensive Plan, and that the Project advances the Land Use, Transportation, Housing, Environmental Protection, and Urban Design Area Elements and the Rock Creek West Area Element of the Comprehensive Plan. (Ex. 10, pp. 4-12.) The OP report stated that the Site would be

easily accessible on foot, bicycle, or vehicle, and that the building's design would blend in with the surrounding architecture along 41st Street, N.W. and Wisconsin Avenue, N.W. (Ex. 10, p. 3.) OP also found that the building's expansive storefront windows and glass door would contribute to the streetscape environment, and that the penthouse's floor to ceiling glazing along much of the south and west walls would to provide panoramic views of the city from the inside. (*Id.*)

81. The OP setdown report also requested that the Applicant submit additional materials clarifying the final IZ proffer and the public benefits package, and to provide samples of the building materials. The Applicant provided the requested information in its prehearing submission, supplemental prehearing submission, and at the public hearing. (Ex. 13, 19.)

82. On September 17, 2018, OP submitted a hearing report. (Ex. 22.) The OP hearing report stated that OP "continues to determine that, on balance, the proposal is not inconsistent with the Comprehensive Plan as a whole, including the maps and the policy statements." (Ex. 22, p. 5.) The OP hearing report also reiterated its support for and recommended approval of the Project subject to the following conditions:

    a. Hours of operation and use of roof must be limited to no later than midnight;

    b. No live or amplified music is permitted on the roof;

    c. All lighting must be shielded so it is contained to the roof area and turned off by 1:00 a.m. except for any code-required emergency lights; and

    d. The ground-floor restaurant space and rooftop restaurant/lounge should not be considered a proffered benefit.

83. At the public hearing, the Applicant responded to OP's requested conditions and submitted the following revised conditions: (Ex. 35).

    a. The hours of operation and use of the rooftop restaurant/bar shall be limited to those hours authorized by any license(s) issued by ABRA;

    b. Amplified live music shall not be permitted after midnight outside on the roof. Instrumental or recorded music conveyed via speakers, or other sound system, shall be permitted and shall comply at all times with the requirements of the D.C. Noise Control Act; and

    c. All lighting will be shielded so it is contained to the roof area and complies with all applicable D.C. Building Code requirements.

84. The Applicant also agreed that the ground-floor restaurant/bar use need not be considered a public benefit as part of the PUD.

85. The Commission considered both sets of conditions and finds that the OP's proposed conditions are appropriate. The Commission felt that the roof top restaurant/bar could cause adverse effects on nearby residences, namely noise and light pollution, and that these effects would be particularly acute late at night. It found that the less stringent conditions proposed by the Applicant were not sufficient to adequately mitigate them and that the conditions proposed by OP are sufficient. Accordingly, the Commission adopts OP's proposed conditions as part of this Order in Decision No. E.1.

86. OP also indicated that the Project's ground-floor and rooftop restaurant/bar use should not considered a proffered benefit. The Applicant agreed to that condition at the public hearing and the Commission therefore has not included the restaurant/bar use as a proffer in this Order. However, the Commission notes that ANC 3E viewed the restaurant/bar as an amenity to the PUD and the Applicant agreed to conditions related to providing a minimum amount of space in the building dedicated to restaurant/bar uses and restricting the types of uses and tenants that can occupy the restaurant/bar space. (*See* ANC Resolution where the ANC states that the sit-down restaurant use is something that "residents keenly desire" and that "rooftop restaurants/bars are popular, and there are currently none in the immediate area.") (Ex. 28A, p. 2.)

87. Based on the foregoing, as well as the Commission's review of the OP reports in the record, the Applicant's submissions in response thereto, and testimony presented at the public hearing, the Commission finds that the Applicant has fully addressed OP's concerns and has imposed conditions that will fully mitigate any potential impacts caused by the penthouse use such that the Commission can move forward in approving this case with the conditions included herein.

DDOT Report and Testimony

88. On September 17, 2018, DDOT submitted a hearing report. (Ex. 21.) The DDOT report indicated no objection to the application subject to the Applicant agreeing to do the following:

a. Design, fund, and install the proposed curb bulb-outs to facilitate safer pedestrian crossings;

b. Fund and install two electric vehicle charging stations;

c. Implement a loading management plan that restricts all trucks greater than 30 feet in length from serving the Site; and

d. Implement the TDM plan proposed in the Applicant's August 13, 2018 transportation report, with the one modification: if an agreement is not reached with a carshare company to provide service in the two reserved carshare spaces prior to the Project's first Certificate of Occupancy, then the Applicant shall offer a $10 SmarTrip card to each dwelling unit.

89. At the public hearing, the Applicant agreed to all of DDOT's conditions and also agreed that they should be included as conditions in this Order. Therefore, the Commission finds that the Applicant fully addressed the comments raised in DDOT's report and that accordingly the Project will not create any adverse impacts on the transportation network that will not be adequately mitigated. The Commission incorporates DDOT's conditions in Decision Nos. B6d., C1c., C1d., and D4. of this Order.

Interagency Review

90. Pursuant to 11-X DCMR § 304.4, the Commission shall find that the Project does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project.

91. In this case, and as set forth in the OP setdown report, OP referred the application to the Department of Energy and the Environment ("DOEE"), the Department of Housing and Community Development ("DHCD"), DDOT, the Department of Parks and Recreation ("DPR"), DC Public Schools ("DCPS"), the Department of Public Works ("DPW"), the Department of Aging ("DOA"), the Department of Employment Services ("DOES"), Fire and Emergency Management Services ("FEMS"), the Metropolitan Police Department ("MPD"), DC Water, and the Washington Metropolitan Area Transit Authority ("WMATA"). (Ex. 10, p. 18.) However, none of these agencies other than OP and DDOT submitted any documentation to the record or testified at the public hearing raising concerns or objections to the Project. However, based on the materials in the record and testimony presented at the public hearing, the Commission finds that the Applicant worked closely with OP and DDOT on this application and fully addressed their comments on potential Project impacts. Moreover, given that notice of the Project was provided to 11 other agencies well in advance of the public hearing, the Commission concludes that the lack of comments submitted from those agencies suggests that those agencies found that the Project would not result in unacceptable impacts on the surrounding area or on the operation of services and facilities within their purview.

92. Therefore, the Commission concludes that the Project will not have any negative impacts on the surrounding area and will not have an unacceptable impact on the operation of city services and facilities.

Advisory Neighborhood Commission

93. On October 22, 2018, ANC 3E submitted a resolution that was passed by a unanimous vote of 5-0-0. (Ex. 28A.) In its resolution the ANC stated that "the height and density sought for the Project are appropriate if the Applicant provides amenities and mitigation of harms commensurate with the Project's scope. We believe the Applicant has met that burden." (Ex. 28A, p. 1.) The ANC resolution also stated that the "new residences and attractive retail space the Project will afford will enhance the vibrance of the neighborhood" and that the "Project consists of a mix of unit sizes, some of which should be suitable for small families as well as singles." (*Id.*) The ANC noted that the "primary potential harms associated with

development of this scope are traffic increases and parking shortages. Here, the Applicant's traffic study reasonably predicts the Project will generate few additional car trips during peak periods. (*Id.*) Based on its overall review of the Project and the public benefits and amenities package proposed, ANC 3E also found that the "combination of amenities and mitigation proffered by the Applicant are exemplary, and justify the relief sought given the Project's location in a Medium Density zone and the relatively small number of residential units created by the Project." (Ex. 28A, p. 2.)

94. On October 22, 2018, the ANC also submitted a signed MOU setting forth the Applicant's commitments and requested that the Commission "incorporate each and every provision in the MOU in any order issued in connection with the above-referenced application." (Ex. 28A, p. 2.)

95. At the public hearing, the Applicant testified that it agreed to each of the conditions in the signed MOU. Therefore, as set forth in the Decision section of this Order, the Commission hereby incorporates the conditions of the MOU into this Order.

Contested Issues

Affordable Housing and Compliance with the PUD Requirements of 11-X DCMR § 305.5(f)

96. Ms. Simon provided written and oral testimony that the Applicant's affordable housing proffer incorrectly calculated the matter-of-right IZ set-aside requirements and therefore the Applicant should be required to increase its affordable housing proffer for it to be considered a PUD public benefit. (Ex. 30.)

97. Pursuant to 11-X DCMR § 305.5(f), public benefits of a proposed PUD may be exhibited and documented in a variety of categories, including "[h]ousing that [e]xceeds the amount that would have been required through matter-of-right development under existing zoning."

98. According to Ms. Simon's testimony, the Zoning Regulations do not define an IZ set-aside requirement when more than half of proposed residential units are not within steel and concrete construction and the Project is in a zone with a matter-of-right height of more than 50 feet. (*See* 11-X DCMR § 1003.1 and 1003.2.) Ms. Simon claimed that under the Site's proposed MU-5B zone the Project would be subject to the IZ set-aside requirement of 11-X DCMR § 1003.1 (10% of the residential square footage or 75% of the achievable bonus density). However, Ms. Simon alleged that "the Applicant chose to assume that, although they are not employing the more costly construction methods, the Project should qualify for the reduced IZ set-aside requirement based solely on their request for a map amendment." (Ex. 30, pp. 2-3.) Ms. Simon stated that the "affordable housing Project in this case meets the IZ requirement, but it exceeds the IZ requirement by only 108 [square feet]..." (*Id.* at 3.)

99. At the public hearing, the Applicant responded to Ms. Simon's testimony and also submitted a written response. (Ex. 34.) In its written response, the Applicant provided calculations showing the proposed IZ proffer (3,882 square feet) compared to: (a) the matter-of-right IZ requirement under the existing MU-4 zone (2,746.03 square feet); and (b) the PUD IZ requirement under the proposed MU-5B zone (2,539.57 square feet). Based on these calculations, the Applicant concluded that the Project would provide 1,136 square feet dedicated to IZ units more than would be required under the minimum requirements, such that all 1,136 square feet should be considered a public benefit of the approved PUD according to 11-X DCMR § 305.5(f). However, even if the Commission assumed Ms. Simon's testimony and calculations to be correct, the Project is providing more square footage devoted to IZ units than would be required by the current regulations since the Applicant is providing 3,882 square feet dedicated to IZ units. Indeed, Ms. Simon did not dispute that the Applicant is providing more IZ than required. (*See* Ex. 30, p. 3 and October 29, 2018 Public Hearing Transcript ["Tr."] p. 34.) At the public hearing, OP also stated that "the application does comply with the zoning regulations and it does exceed the zoning regulations" and also explained that it reviewed the Applicant's IZ calculations with its housing specialist at DHCD who "agreed with the numbers from the Applicant." (*See* Tr., p. 41.)

100. As requested by the Commission at the public hearing, OP submitted a supplemental report responding to the Applicant's affordable housing proffer, Ms. Simon's testimony, and the amount of "excess" affordable housing the Applicant was providing that could be counted as a PUD benefit consistent with 11-X DCMR § 305.5(f). (Ex. 38.) In its report, OP confirmed that "the [A]pplicant's use of the IZ set aside percentages is correct and consistent with intent and practice." (Ex. 38, p. 1.) OP referenced 11-X DCMR § 305.2, which provides that the PUD public benefits must be greater than would likely result from development of the site as a matter of right. Under the matter-of-right scenario, OP concluded that the Project would be required to set aside 2,746.03 square feet for IZ units, but that the Project proposes to set aside 3,882 square feet for IZ units, which is 1,136 square feet more than would have be required. Thus, OP concluded that "[t]he 1,136 sq. ft. is the public benefit." (Ex. 38, p. 1.) OP also indicated that the set aside section in the Zoning Regulations was being clarified in Z.C. Case No. 04-33I to reflect the original intent and practice of the current IZ regulations.

101. On November 9, 2018, Ms. Simon submitted a response to the Applicant's affordable housing proffer and OP's supplemental report, which stated that: (a) the Applicant and OP were using the proposed IZ regulations from Z.C. Case No. 04-33I rather than the current IZ regulations to calculate the IZ requirements for the Project; and (b) the Applicant should use the current IZ regulations for the proposed MU-5B zone, which do not permit the Applicant to take advantage of the "reduced" IZ requirement of eight percent GFA or 50% of the bonus density because the Project does not use steel and concrete to frame more than 50% of the dwelling units.

102. On November 14, 2018, the Applicant submitted a response to OP and Ms. Simon's IZ submissions, confirming its calculations and concluding again that 1,136 square feet of IZ

was being provided in the Project over the amount of IZ required under the matter-of-right requirements. (Ex. 34.) The Applicant's response also noted that the Project included 2,890 square feet dedicated to IZ units at 60% of the MFI (two two-bedroom units at 1,445 square feet each) and 992 square feet dedicated to an IZ unit at 50% of the MFI (one one-bedroom unit) as compared to 140.32 square feet of IZ required to be provided at 50% of the MFI. This affordable housing contribution is one of many other public benefits and project amenities proffered as part of this application, which include a contribution to a local community organization selected by the ANC, the installation of significant public space and traffic calming improvements and maintenance of landscaping in the area, contracting with a local artist to install a mural on the building, installing solar panels on the roof, and certifying the building as LEED Gold v.4, among others. The benefits and amenities package, including the proposed amount of IZ square footages, number of units, size, and subsidy levels, was fully vetted, prepared in consultation with, and supported by the ANC.

103. In addition to the specific issues on affordable housing raised by Ms. Simon, DC4RD also submitted testimony alleging that the amount of affordable housing in the Project could not be deemed a "substantial benefit" and that the lack of family-sized units (three or more bedrooms) was "unacceptable at a time of an affordability crises for families." (Ex. 33.) Based on these assertions, DC4RD requested that 30% of the residential density in the Project be dedicated to family-sized affordable housing. DC4RD also asserted that the Project was inconsistent with a number of Comprehensive Plan policies related to affordable housing.

104. Based on the testimony provided and the written materials filed in the case record, the Commission finds that the amount of affordable housing in the Project is a substantial benefit over the amount of IZ that would be required in the Project as a matter of right. The Commission reviewed Ms. Simon's written and oral testimony regarding the appropriate way to calculate the matter-of-right IZ requirements for the Project, and also reviewed OP's and the Applicant's responses thereto. Based on its review, the Commission agrees with OP and the Applicant that the Project is providing 1,136 square feet of IZ units more than would be required for the Project as a matter of right. The Applicant correctly applied the current IZ regulations as they have consistently been interpreted and applied in other cases, and agrees with OP that ZC Case No. 04-33I is simply being clarified to reflect the original intent and practices of the current IZ requirements. (OP Report, p. 1.) Therefore, the Commission agrees that the matter-of-right IZ requirement for the Project would be 1,136 square feet, acknowledges that the Applicant is providing 3,882 square feet, and concludes that the IZ proffer consistent with 11-X DCMR § 305.5(f) is 1,136 square feet.

105. In addition, the Project also provides 992 square feet of gross floor area dedicated to an IZ unit at 50% of the MFI whereas only 140.3 square feet of IZ at 50% of the MFI would be required based on the size of the penthouse habitable space. (See 11-C DCMR § 1003.2.) The Project provides two large two-bedroom IZ units at 60% of the MFI whereas no two-bedroom market rate units are provided in the Project, such that family-sized housing is specifically being dedicated to the IZ units. Therefore, based on its review of the documents submitted to the record, including Ms. Simon's filings, DC4RD's filing, the

Applicant's filings, and OP's filings (including OP's reference to Z.C. Case No. 04-33I which will clarify the IZ set aside requirements) and also based on the testimony presented at the public hearing, the Commission concludes that: (a) the Applicant is providing significantly more square feet dedicated to IZ units than would be required as a matter of right, all of which should be considered a public benefit in accordance with 11-X DCMR § 305.5(f); (b) the Applicant is providing significantly more square footage devoted to IZ units at 50% of the MFI than would be required under the Zoning Regulations; (c) the Applicant is specifically dedicating the largest units in the Project to IZ units to accommodate families; and (d) a requirement to provide 30% of a residential building to IZ units generally applies to dispositions of District-owned land (*see* D.C. Official Code § 10-801(b-3)(1)(A)) and in this case the Site is not being sold or developed by the District. Therefore, the Commission finds that the Applicant's affordable housing proffer is consistent with the text of Zoning Regulations, amounts to a significant public benefit, and when taken together with the entirety of the Applicant's public benefits and amenities package, finds that the PUD benefits and amenities are reasonable tradeoffs for the requested development flexibility. The Commission further finds that the Project is not inconsistent with the Comprehensive Plan policies cited by DC4RD.

Residential Parking Permit Restrictions

106. Ms. Simon's written and oral testimony stated that any Order approving the application should include a strong and enforceable condition restricting residents of the Project from obtaining an RPP(s).

107. At the public hearing, the Applicant testified that although the Project fully complied with the off-street parking requirements of the Zoning Regulations and although no parking relief was needed or requested, the Applicant was still committed to restricting residents of the Project from obtaining RPPs. The conditions agreed to with respect to RPP restrictions were established between the Applicant and the ANC and are set forth in the MOU. (Ex. 28; Decision No.C1f. herein.) Moreover, the ANC stated that the "primary potential harms associated with development of this scope are traffic increases and parking shortages. Here, the Applicant's traffic study reasonably predicts the Project will generate few additional car trips during peak periods." (Ex. 28A, p. 1.) DDOT agreed that the Project "likely will not generate this many peak hour vehicle trips due to the low parking ratio." (Ex. 21, p. 2.) In addition, DDOT found that the "proposed parking ratio is very low and is consistent with DDOT's approach to encouraging non-automotive travel, discouraging automobile ownership, and minimizing traffic congestion in the District." (Ex. 21, p. 2.) Therefore, because the amount of on-site parking and the RPP restrictions have been thoroughly reviewed and supported by both the ANC and DDOT, and because the Commission finds that the restrictions are both enforceable and consistent with other orders issued by the Commission (Z.C. Order Nos. 16-26, 14-14, 16-10, and 10-23), the Commission adopts the Applicant's proposed RPP language as part of this Order.

Impacts on Public Services

108. DC4RD alleged that the Project's cumulative impacts would have a substantial burden on public services, which had not been sufficiently evaluated as part of the PUD process. (Ex. 33.)

109. The Commission finds that the Project had been referred to 13 District agencies for review, including OP and DDOT, as well as DOEE, DHCD, DPR, DCPS, DPW, DOA, DOES, FEMS, MPD, DC Water, and WMATA. (*See* Ex. 10, p. 18.) OP and DDOT submitted reports on the application and testified at the public hearing that the Project would not create any adverse impacts that could not be adequately mitigated, and the Commission has imposed conditions herein to ensure that any potential impacts will be mitigated. Although other District agencies did not submit reports to the record on this case, the Commission concludes that notice was properly given to those agencies and they did not provide any written or oral testimony addressing concerns with the Project. The Commission therefore finds that the Applicant complied with the applicable Zoning Regulations and the Project is not inconsistent with the Comprehensive Plan policy cited by DC4RD.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; and (c) protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan. (11-X DCMR § 300.1.)

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

3. Development of the property included in this application carries out the purposes of 11-X DCMR, Chapter 3 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mix of uses for the Project is appropriate for the Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.

5. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

6. The Applicant's requests for flexibility are not inconsistent with the Comprehensive Plan. Moreover, the PUD benefits and amenities are reasonable tradeoffs for the requested development flexibility.

7. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

8. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP reports in this case and, as explained in this Order, finds its recommendation to grant the application subject to conditions persuasive.

9. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. ANC 3E voted unanimously to support the application based on the signed MOU between the ANC and the Applicant, and asked that the Commission to incorporate the terms of the MOU in this Order. The Commission supports the benefits and mitigation measures included in the MOU and agrees with the ANC's vote in support of the application, and has included the terms of the MOU as conditions of this Order. Therefore, the Commission has given great weight to the ANC.

10. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2- 1401 et seq. (2007 Repl.).

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission **ORDERS APPROVAL** of the application for a consolidated PUD and related Zoning Map amendment to rezone the Site from the MU-4 zone to the MU-5B zone. This approval is subject to the following guidelines, conditions, and standards. Whenever compliance is required prior to, on or during a certain time, the timing of the obligation is noted in bold and underlined text.

A. PROJECT DEVELOPMENT

1. The Project shall be developed substantially in accordance with the Architectural Plans and Elevations prepared by Bonstra Haresign Architects, dated November

16, 2018, and included in the record at Exhibits 41A1-41A3 (the "Plans"), as modified by the guidelines, conditions, and standards herein

2. The Applicant is permitted to establish a bar/restaurant use in the penthouse of the building pursuant to 11-C DCMR § 1500.3 for the reasons set forth in FF Nos. 43-44.

3. The Applicant is granted flexibility from the minimum PUD land area requirements of 11-X DCMR § 301.1 for the reasons set forth in FF Nos. 45-46.

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

   a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

   b. To vary the final selection of the colors of the exterior materials, based on availability at the time of construction, provided such colors are within the color ranges proposed in the Plans; and to make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;

   c. To provide a range in the number of residential dwelling units of plus or minus 10% from the number depicted on the approved Plans;

   d. To make refinements to the parking configuration, including layout, number of parking spaces, and other elements, so long as the number of parking spaces provided is at least the minimum number of spaces required by the Zoning Regulations;

   e. To vary the location, attributes, and general design of the streetscape incorporated in the Project to comply with the requirements of and the approval by the DDOT Public Space Division;

   f. To vary the font, message, logo, location, and color of the proposed signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the approved Plans and compliant with the DC signage regulations; and

   g. To vary the sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below LEED Gold v.4.

B. PUBLIC BENEFITS

1. **For the life of the Project**, the Applicant shall provide the following housing and affordable housing set forth in the following chart:

Residential Unit Type	Square Feet & Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	28,762 sf GFA resid. + 1,754 sf penthouse habitable space = 30,516 sf total (100%)	41	N/A	N/A	N/A
Market Rate	26,634 sf GFA (87.3%)	38	Market Rate	N/A	Rental
IZ at 60% MFI	2,890 sf GFA (9.5%)	2	Up to 60% MFI	Life of the Project	Rental
IZ at 50% MFI	992 sf GFA (3.2%)	1	Up to 50% MFI	Life of the Project	Rental
Total IZ	3,882 sf GFA (12.7%)	3	50% and 60% MFI	Life of the Project	Rental

2. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition.

3. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a minimum of 640 square feet of solar panels on the top of the building's penthouses as shown on Sheet A1.8 of the Plans. (Ex. 41A1.)

4. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has registered the Project with the USGBC to commence the LEED-certification process by furnishing a copy of its LEED-certification application to the Zoning Administrator. The application shall indicate that the Project has been designed to include at least the minimum number of points necessary to achieve Gold certification under the USGBC's LEED v.4 standards.

5. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has paid up to

$25,000 and entered into a contract with the artist or a third party for the design and installation of a mural on the south façade of the Project, with the approximate location and dimensions as shown on Sheet A2.2 of the Plans. The mural does not need to be installed prior to issuance of the first certificate of occupancy for the Project. (Ex. 41A2.)

6. **Prior to the issuance of the first certificate of occupancy for the Project**, and subject to DDOT approval, the Applicant shall demonstrate to the Zoning Administrator that it has made the following public space improvements, as shown on Sheets A1.0, L1.0-L1.2 and L1.4-L1.6 of the Plans: (Ex. 41A2-41A3.)

   a. Installed the following enhanced streetscape design elements along 41st Street directly adjacent to the Project's entrance: (i) a bioretention planting area; (ii) granite pavers between the building façade and the sidewalk; (iii) bar-height seating facing the sidewalk and movable tables and chairs for the café seating; (iv) planters with stone curbs; (v) building exterior light fixtures and in-ground light fixtures; and (vi) bench seating at the residential entry;

   b. Widened from six feet to eight feet the existing public sidewalk adjacent to the Site and installed new concrete pavers;

   c. Installed a speed table in the location and with the materials as shown on Sheets L1.0 and 1.1 of the Plans to slow traffic;

   d. Installed a new curb extension/bulb-out on the east side of 41st Street to shorten the pedestrian travel distance across 41st Street and slow vehicular traffic. As shown on Sheets L1.0 and 1.1 of the Plans, the bulb-out shall include new stone pavers, short-term bicycle parking for eight bicycles, a public art feature, streetscape plantings, and signage for the new crosswalk; and

   e. On the west side of 41st Street, installed a "traffic-calming curb extension" in the location and with the landscaping materials as shown on Sheets L1.0 and L1.1 of the Plans.

   The Applicant shall maintain the public space improvements listed in Decision No. B6 **for the life of the Project**.

7. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has spent up to $5,000 and installed landscaping in Reservation 503 North. The Applicant shall maintain landscaping in Reservation 503 North **for the life of the Project.**

8. If or when the 4600 Wisconsin Owner stops maintaining the landscaped area on Reservation 503 South, the Applicant shall maintain the Reservation 503 South landscaping **for the life of the Project.**

9. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has contributed $35,000 to Friendship Place to make improvements needed as a result of leaking and flooding in their basement, including but not limited to, installing new pipes, waterproofing the basement's foundation, installing additional landscaping that would keep water away from the building and its foundation, and replacing the building's front and side doors, and provide a letter from Friendship Place indicating that the work has been or is being performed.

C. TRANSPORTATION DEMAND MANAGEMENT MEASURES

1. **For the life of the Project**, the Applicant shall implement the following TDM measures:

   a. Develop and maintain a property management website that will include information on and links to current transportation programs and services such as: (i) Capital Bikeshare, carsharing services, and ride-hailing services; (ii) information about transportation apps, such as Citymapper, Spotcycle, and Transit and other transportation resources, such as DDOT's DC Bicycle Map and goDCgo.com; (iii) links to the Commuter Connections Rideshare Program, which provides complimentary information on a variety of commuter programs to assist in determining which commuting options work best for commuters; (iv) information about the Commuter Connections Guaranteed Ride Home Program, which provides commuters who regularly carpool, vanpool, bike, walk or take transit to work with a free and reliable ride home in an emergency; and (v) information about the Commuter Connections Pools Program, which incentivizes commuters who currently drive alone to carpool;

   b. Provide an electronic display in a common, shared space in the building that provides real-time public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the number of bicycles available at each location;

   c. Provide two EV charging stations internal to the building's garage;

   d. Offer two of the on-site vehicle parking spaces to a car-share provider(s), subject to demand. If an agreement with a car-share provider cannot be reached **prior to the issuance of the first certificate of occupancy for the Project**, then the Applicant shall (i) host a transportation event for residents and employees of the Project within the first year following the issuance of

the first certificate of occupancy; and (ii) provide one $10 pre-loaded SmarTrip card per dwelling unit and employee at initial occupancy of the Project;

e. Unbundle the cost of parking spaces from the cost of residential leases; and

f. Restrict residents of the Project from obtaining an RPP by: (i) placing a clause in emphasized type in all residential leases that prohibits residents from applying for or obtaining RPPs, or using an RPP guest pass within one mile of the Site, upon penalty of mandatory lease termination to the full extent permitted by law; and (ii) obtaining written authorization from each tenant through a required lease provision that allows the DMV to release to the Applicant every 12 months any and all records of that tenant requesting or receiving an RPP for the Site. The Applicant shall take all reasonable steps to obtain and review such records for noncompliance with such lease provisions. The Applicant shall also (i) oppose any effort by Project residents or others to add the Site to the list of properties eligible for RPPs; and (ii) if the Applicant sells any unit(s) at the Project, the Applicant shall add a covenant that runs with the land to the deed for the unit(s) prohibiting residents from applying for or obtaining RPPs.

D. ADDITIONAL COMMITMENTS TO ANC 3E

1. **Prior to the issuance of the first certificate of occupancy for the Project, and for the life of the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has reserved a minimum of 4,971 square feet in the Project solely for use as a full-service Restaurant Space where food is (i) delivered to the tables by a server; (ii) paid for after consumption; and (iii) served on non-disposable plates with non-disposable cutlery. Notwithstanding the definition of "Restaurant" in 11-B DCMR § 100.2, the tenant of the Restaurant Space may be permitted to serve alcoholic beverages, provide entertainment including televisions and live and/or amplified music, and allow dancing, but such uses shall be subject to any otherwise-applicable licensing restrictions, and the ANC shall be free to render any such advice it deems appropriate on any future applications for new licenses or renewals.

2. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed all kitchen exhaust systems associated with the eating and drinking establishment use so that they vent to the roof of the Project.

3. **For the life of the Project**, the Applicant shall prohibit the following uses at the Property: sexually-oriented business establishment; a check-cashing establishment; a pawnbroker; a bank; a nightclub as defined by ABRA; a mattress store; a convenience store such as 7-Eleven; a professional office; a drug store such as CVS;

and any "chain" retail, service, or food service establishment (a "chain" being defined as a business with either at least 10 stores within the District of Columbia or at least 50 stores nationwide). Notwithstanding the foregoing, the ANC may approve a use otherwise prohibited in this paragraph that the ANC believes would provide substantial value for the community. Such approval shall be granted by the ANC only by a formal resolution.

4. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has prepared a loading management plan for the Project, which the Applicant shall implement **for the life of the Project**.

E. CONDITIONS LIMITING USE OF THE ROOFTOP RESTAURANT/BAR

1. **For the life of the Project**, the Applicant shall:

   a. Restrict the hours of operation and use of roof to no later than midnight;

   b. Prohibit live or amplified music on the roof; and

   c. Shield all lighting so it is contained to the roof area and turned off by 1:00 a.m. except for any code-required emergency lights.

F. MISCELLANEOUS

1. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities,

matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On October 29, 2018, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter A. Shapiro to approve).

On December 17, 2018, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, 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 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 1, 2019.

BY THE ORDER OF THE D.C. ZONING COMMISSION
A majority of the Commission members approved the issuance of this Order.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

EXHIBIT B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

OFFICE OF ZONING
ZONING COMMISSION
ZC Order No. 18-03(1)
ZC Case No. 18-03
Dancing Crab Properties, LLC
Subtitle Z § 705.9 Administrative Covid-19 One-year Time Extension for Consolidated PUD & Related Map Amendment @ Lot 32, Square 1769 (4611-4615 41st Street, N.W.)
January 26, 2021

- Z.C. Order No. 18-03 (the "Order"), effective on March 1, 2019, is valid until March 1, 2021.

- The applicant filed an application to extend the Order's validity per Subtitle Z § 705.9, as adopted by the Zoning Commission's emergency action in Z.C. Case 20-26 by one year.

- Pursuant to Subtitle Z § 705.9, the Director of the Office of Zoning extends the Order's validity to expire on March 1, 2022.

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on February 5, 2021.

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

ZONING COMMISSION
District of Columbia
CASE NO.18-03
EXHIBIT NO.38

EXHIBIT C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 18-03A
Z.C. CASE NO. 18-03A
Dancing Crab Properties, LLC & 10009 Field Road, Inc.
(Two-Year PUD Time Extension @ Square 1769, Lot 32)
March 30, 2023

Pursuant to notice, at its public meeting on March 30, 2023, the Zoning Commission for the District of Columbia (the "Commission") considered an application of Dancing Crab Properties, LLC and 10009 Field Road, Inc. (together, the "Applicant") for a two-year time extension of the March 1, 2023, deadline to start construction of the planned unit development ("PUD") located at 4611-4615 41st Street, N.W. (Square 1769, Lot 32) (the "Property")[1] and approved pursuant to Z.C. Order No. 18-03, as extended by a Covid-19 one-year extension approved in Z.C. Order No. 18-03(1) (the "Application").

The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Development of the Property was originally approved pursuant to Z.C. Order No. 18-03, effective March 1, 2019, which granted a consolidated PUD and a related Zoning Map Amendment from the MU-4 zone to the MU-5-B zone to develop the Property with a new mixed-use residential building consisting of approximately 41 residential units and restaurant/bar use on both the ground floor and penthouse habitable space.

2. Decision No. F.2 of Z.C. Order No. 18-03 required the Applicant to file a building permit application no later than March 1, 2021, and start construction no later than March 1, 2022.

3. Pursuant to Z.C. Order No. 18-03(1), effective February 5, 2021, the Office of Zoning issued an administrative Covid-19 one-year extension of Z.C. Order No. 18-03, such that

[1] At the time that Z.C. Order No. 18-03 was issued, the Property was known as Lots 1 and 2 in Square 1769. A subdivision plat was recorded in the Office of the Surveyor on September 30, 2019, at book 216, page 78, which consolidated Lots 1 and 2 into a single record lot that is now known as Lot 32 in Square 1769. (Ex. 2.)

ZONING COMMISSION
District of Columbia
CASE NO.18-03A
EXHIBIT NO.8

the Applicant was required to file a building permit application no later than March 1, 2022, and start construction no later than March 1, 2023.

4. The Applicant complied with the first deadline by filing a building permit application, Permit No. B2203165, for the Property on January 20, 2022, as documented by an affidavit submitted with the Application. (Exhibit ["Ex."] 2E.)

PARTIES

5. The parties to Z.C. Case No. 18-03 were the Applicant and Advisory Neighborhood Commission ("ANC") 3E.

II. THE APPLICATION

6. On February 17, 2023, prior to the March 1, 2023 deadline to commence construction of the approved PUD, the Applicant filed the Application requesting a two-year extension of the aforementioned deadline to begin construction of the approved PUD. (Ex. 1-2E.)

7. The Application asserted that it satisfied the requirement of Subtitle Z § 705.2(a) to serve the extension request on all parties as attested by the Certificate of Service included with the Application, which stated that the Applicant served the Application on ANC 3E, ANC Single Member District Commissioner 3E05, the District Department of Transportation ("DDOT"), and the Office of Planning ("OP") on February 17, 2023. (Ex. 2.)

8. The Application asserted that it satisfied the requirements of Subtitle Z § 705.2(b) because no substantial change had occurred in any of the material facts on which the Commission had relied upon in approving Z.C. Order No. 18-03. (Ex. 2.)

9. The Application asserted that it satisfied the requirements of Subtitle Z § 705.2(c)(2) for a time extension due to an inability to secure all required governmental agency approvals because of delays in the governmental agency approval process that were beyond the Applicant's control. The Application asserted that the Applicant has taken many steps to move the PUD project forward, including preparing and recording the required PUD covenant, applying for and obtaining raze permits to demolish the existing structures on the Property, and applying for and responding to comments from District agencies as part of the building permit process. (Ex. 2.)

III. RESPONSES TO THE APPLICATION

OP REPORT

10. OP submitted a report on March 16, 2023 (Ex. 5) (the "OP Report"), which recommended approval of the Application based on OP's conclusion that the Applicant had satisfied the relevant standards of Subtitle Z § 705.2. The OP Report noted that the Property's designation on the Comprehensive Plan Future Land Use Map had changed from Mixed Use: Medium Density Residential / Moderate Density Commercial to Mixed Use: High Density Residential / Medium Density Commercial in 2021 and that the PUD remains not inconsistent with this updated designation. (Ex. 5.)

ANC REPORT

11. ANC 3E submitted a resolution on March 16, 2023, titled "Resolution of Support in ZC #18-03, 4611-4615 41st Street, N.W." (Ex. 6) (the "ANC Resolution"), which stated that the Application appears to demonstrate that the Applicant had met the standards for a PUD time extension to begin construction and that the "project and amenities that will be delivered… will provide significant benefit to the community, and, given that the site has been vacant for several years, the ANC hopes and expects construction will begin soon." (Ex. 6, p. 2.)

12. The ANC Resolution stated that it passed by a vote of 8-0-0 at a properly noticed meeting held on March 9, 2023, at which a quorum was present. (Ex. 6, p. 2.)

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order approving a PUD for good cause upon determining that the time extension request demonstrated satisfaction of the requirements of Subtitle Z § 705.2 and upon a determination that the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6 have been adhered to.

2. The Commission concludes that the Applicant timely filed the Application on February 17, 2023, prior to the March 1, 2023 deadline to commence construction of the approved PUD.

3. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond.

4. The Commission concludes that the Applicant has satisfied the requirement of Subtitle Z § 705.2(a) to serve all parties by demonstration that the Applicant served the only other party to Z.C. Case No. 18-03, which was ANC 3E, and that the ANC was given more than 30 days to respond from the February 17, 2023, date of service and did respond by filing the ANC Resolution.

5. The Commission concludes, based on the Application and the OP Report, that the Application satisfied the requirement of Subtitle Z § 705.2(b) that no substantial change in any of the material facts upon which the Commission based its original approval of Z.C. Case No. 18-03 occurred that would undermine the Commission's justification for that approval.

6. The Commission concludes, based on the Application and the OP Report, that the Application met the standard of review of Subtitle Z § 705.2(c)(2) because the Application demonstrated that the Applicant had taken many steps to move the project forward, including preparing and recording the required PUD Covenant, applying for and obtaining raze permits to demolish the existing structures on the Property, and applying for and responding to comments from District reviewing disciplines as part of the building permit process, but that despite these efforts, the Applicant was unable to secure all required governmental agency approvals to pull the final building permit and begin construction.

These delays were beyond the Applicant's reasonable control and prevented the Applicant from complying with the deadline to commence construction of the approved PUD.

"GREAT WEIGHT" TO THE RECOMMENDATIONS OF OP

7. The Commission must give "great weight" to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)), and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

8. The Commission found OP's recommendation that the Commission approve the Application persuasive and concurs in that judgment.

"GREAT WEIGHT" TO THE WRITTEN REPORT OF THE ANC

9. The Commission must give "great weight" to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)), and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

10. The Commission found ANC 3E's resolution in support of the Application persuasive and concurs in that judgment.

DECISION

In consideration of the case record, the Findings of Fact, and the Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application's request for a two-year time extension of the March 1, 2023, deadline to start construction of the PUD approved pursuant to Z.C. Order No. 18-03, as extended by 18-03(1).

VOTE (March 30, 2023): 4-0-1 (Anthony J. Hood, Joseph S. Imamura, Robert E. Miller and Peter G. May to **APPROVE**; 3rd Mayoral Appointee position vacant, not voting.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 18-03A shall become final and effective upon publication in the *D.C. Register*; that is, on August 25, 2023.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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

EXHIBIT D

January 13, 2025

Zoning Commission
of the District of Columbia
441 Fourth Street, N.W., Suite 220S
Washington, D.C. 20001

Re: Authorization Letter from Applicant/Owner
Application for an Extension to Begin Construction of an Approved PUD
4611-4615 41st Street, NW (Square 1769, Lot 32)

Dear Members of the Commission:

This letter serves as authorization for the law firm of Holland & Knight LLP to represent Dancing Crab Properties, LLC and 10009 Fields Road, Inc., the owners of the property located at 4611-4615 41st Street, NW (Square 1769, Lot 32) (the "Property"), in all proceedings before the Zoning Commission regarding the Property. As set forth in 11-Z DCMR § 200.3, this authorization includes the power to bind the owners in the case before the Commission.

Sincerely,

DANCING CRAB PROPERTIES, LLC,
a District of Columbia limited liability company

By: _____
Name: CARLOS HORCASITAS
Title: MEMBER

10009 FIELDS ROAD, INC.,
a Maryland corporation

By: _____
Name: CARLOS HORCASITAS
Title: PRESIDENT

EXHIBIT E

(Revised 8/6/19)

BEFORE THE ZONING COMMISSION
FOR THE DISTRICT OF COLUMBIA

FORM 100 – APPLICATION SIGNATURE PAGE

All Zoning Commission applications shall be filed through the Interactive Zoning Information System (IZIS). Pursuant to Subtitle Z §§ 300.5, 301.4, and 302.4, please use Form 100 to provide the name(s), address(es), and signature(s) of each owner of property included in the area to be developed, or of the owner's authorized agent.

PUD: ☐ 1st Stage ☐ 2nd Stage ☐ Consolidated		Modification: ☐ Minor ☐ Consequence ☐ Significance	
☐ Map Amendment	☐ Design Review	☐ Campus Plan	☒ Time Extension

I/We hereby certify that the information contained on the application for the relief filed with the Zoning Commission is true and correct to the best of my/our knowledge, information, and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application/petition is in violation of D.C. Law and subject to a fine of more than $1,000 or 180 days' imprisonment or both. (D.C. Official Code § 22 2405.)

Owner's Name:	Dancing Crab Properties, LLC		
Owner's Address:	9101 River Road, Potomac, MD 20854-4627		
Owner's Signature:		**Date:**	1/13/2025
Owner's Name:	10009 Fields Road, Inc.		
Owner's Address:	9101 River Road, Potomac, MD 20854-4627		
Owner's Signature:		**Date:**	1/13/2025
Owner's Name:			
Owner's Address:			
Owner's Signature:		**Date:**	
Owner's Name:			
Owner's Address:			
Owner's Signature:		**Date:**	
Owner's Name:			
Owner's Address:			
Owner's Signature:		**Date:**	
Owner's Name:			
Owner's Address:			
Owner's Signature:		**Date:**	
Owner's Name:			
Owner's Address:			
Owner's Signature:		**Date:**	

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THIS FORM WILL NOT BE ACCEPTED.

EXHIBIT F

District of Columbia Zoning Commission
Z.C. Order Nos. 18-03 *et seq.*

Affidavit in Support of a Two-Year Extension of Time

I, Tom McDowell, being duly sworn, depose and state as follows:

1. I am Tom McDowell, the representative of Dancing Crab Properties, LLC and 10009 Fields Road, Inc., which are together the owner of the property located at 4611–4615 41st Street, NW (Square 1769, Lot 32) (the "Property").

2. The development of the Property was approved pursuant to Z.C. Order No. 18-03. That order approved a consolidated Planned Unit Development ("PUD") and a related Zoning Map Amendment from the MU-4 zone to the MU-5B zone to redevelop the Property with a new mixed-use residential building consisting of (i) approximately 41 residential units, and (ii) a restaurant/bar use to be located on the ground floor and within the penthouse habitable space (collectively, the "Project").

3. Zoning Commission Order No. 18-03 was approved on December 17, 2018, with an effective date of March 1, 2019. Pursuant to Z.C. Order No. 18-03, Decision No. F.2, the order was valid for a period of two years, such that a building permit application was required to be filed no later than March 1, 2021, and construction of the Project was required to commence no later than March 1, 2022.

4. Pursuant to Z.C. Order No. 18-03(1), the Office of Zoning issued an administrative Covid-19 one-year extension of Z.C. Order No. 18-03, such that a building permit application was required to be filed no later than March 1, 2022, and construction of the Project was required to commence no later than March 1, 2023. The Applicant filed a building permit application within the required time limits set forth in Z.C. Order No. 18-03(1).

5. Pursuant to Z.C. Order No. 18-03A, the Zoning Commission (the "Commission") approved the Applicant's application for a two-year time extension of the March 1, 2023 deadline to start construction, such that construction of the Project was required to commence no later than March 1, 2025.

6. However, despite our good faith efforts to start construction of the Project, we have been unable to do so due to our inability to secure all required governmental agency approvals to commence construction due to delays in the approval process that are beyond our reasonable control. Indeed, we have taken many steps to move construction of the Project forward, including preparing and recording the required PUD covenant, working diligently to apply for and obtain raze permits to demolish the existing structures on the Property, applying for and responding to comments through the building permit review process, and filing and processing a variety of other construction prerequisites.

7. For example, we applied for and received raze permits to demolish the existing structures on the Property on September 20, 2021 (Permit Nos. R2000073 and R2000077), which have since been demolished. *See* Exhibit A.

8. On January 20, 2022, we timely filed a building permit application with the Department of Buildings ("DOB") (Permit No. B2203165), which was accepted as complete on January 30, 2022, and referred to the reviewing disciplines on February 1, 2022. Permit No. B2203165 was ultimately approved on June 5, 2023, after multiple rounds of comments and responses with various reviewing agencies.

9. We also submitted a variety of other permits, including (i) an application for bay window projections on January 19, 2022, which was approved and issued on February 15, 2023, and (ii) an application for a public space permit on January 19, 2022, which was approved on February 16, 2023.

10. We prepared the PUD Covenant required by Z.C. Order No. 18-03, Conclusion of Law No. F.1, which we recorded in the Land Records of the District of Columbia on February 17, 2022, as Instrument No. 2022018979. Significantly, pursuant to 11-Z DCMR § 702.10, the Property must be constructed in accordance with the approved PUD.

11. We also submitted a draft Inclusionary Zoning Covenant and Certificate of Inclusionary Zoning Compliance, which was approved by the Department of Housing and Community Development ("DHCD") on October 6, 2022.

12. On May 5, 2022, we submitted an Environmental Impact Screening Form ("EISF") Application and associated documentation and correspondence to the Department of Energy and Environment ("DOEE"). By letter dated February 7, 2023, DOEE issued an Environmental Assessment Report for the Project, concluding that it found "no apparent significant adverse impact or likelihood of substantial negative impact on the environmental as a result of the proposed project."

13. In anticipation of receiving our building permit, on January 5, 2023, we posted notice signs on the Property indicating the filing of a building permit, which signs were required to be posted for at least 30 days immediately prior to the issuance of a building permit. *See* 10-A DCMR § 106.2.18.3.1.1.

14. In addition, we submitted an application for an Excavation Sheeting and Shoring permit on January 17, 2023, which is currently under review by DOB (Permit No. SH2300009).

15. Further, as of February 4, 2025, Permit No. SH2300009's Scout tracking page, attached as Exhibit B, indicates that (i) structural review and approval is still pending, (ii) District Department of Transportation ("DDOT") review and approval is still pending, and (iii) Washington Metropolitan Area Transit Authority ("WMATA") review and approval is still pending. Additionally, in order to continue processing Permit No. SH2300009, we were recently made aware that we would have to post a new bond.

16. Given the Property's close proximity to a WMATA Metrorail, the Project is required to obtain a "No Further Action" letter from WMATA authorizing construction to proceed. To date, WMATA has not issued its "No Further Action" letter.

Based on the foregoing, it is clear that we have taken many steps to move forward with developing the Project as quickly as possible and in accordance with the PUD approval. Although we have been unable to start construction, we have been working diligently to obtain all permits necessary to commence construction. We are still very much committed to moving forward with construction of the Project, and will do so as soon as we receive all necessary building permits and approvals. Indeed, we have invested substantial resources in the Property over many years, including legal, architectural, engineering, permitting, and other consulting fees, such that there is no financial advantage for us not to move forward with construction of the building, and we have every incentive to do so as soon as feasible.

I solemnly affirm under the penalty of perjury that the contents of this Affidavit are true and correct to the best of my personal knowledge.

Dancing Crab Properties, LLC
10009 Fields Road, Inc.

FARUK DIAMOND HARJI
Notary Public
Montgomery County
Maryland
My Commission Expires Sept. 27, 2025

By: _____
Tom McDowell, representative

Sworn and subscribed to me this 13 day of February, 2025.

_____
Notary Public

Exhibit A

4615 Wisconsin Ave NW
Washington, District of Columbia
Google Street View
Aug 2022
See latest date
VERSAILLES
Bistro
sportsHealth

Exhibit B

Permit No. SH2300009's Scout Tracking Page

Permit #	Permit Type	Date Filed	Address	Name	SSL	
SH2300009	Construction/Sheeting and Shoring		4611 41ST ST NW, WASHINGTON, DC 20016	DANCING CRAB PROPERTIES LLC	1769 0032	HIDE DETAILS

Owner Name: DANCING CRAB PROPERTIES LLC

Applicant Name: BETH N DAVIS; NA

Trade Name:

Permit Status: **Review in Process** Get Current Permit Status

Job Classification:

More Info

Job Class Code	Size	Classification	End of Initial Review Cycle (Projected)
C-C	2,000 - 4,000 sq ft	Commercial	2023/01/09

Description of work/ Review status:

Sheeting and shoring in association with New building on site. *** B2203165 *** *** RAZE UNDER (R2000073) ***

Discipline	Review Status	Status Date
File Room	Applicant Notified by DCRA with Comments for Corre	2024-10-17
Structural Review Pending	Comments Submitted to Applicant for Correction	2024-10-17
DDOT Review Pending	Comments Submitted to Applicant for Correction	2024-09-25
WMATA Review Pending	Comments Submitted to Applicant for Correction	2024-09-17
Plan Review Coordinator	Projectdox Under Review	2024-09-10

File Room	NA	2023-11-19
Structural Review Pending	Comments Submitted to Applicant for Correction	2023-11-17
WMATA Review Pending	Comments Submitted to Applicant for Correction	2023-11-07
File Room	Plans and Application Resubmitted by the Applicant	2023-11-06
File Room	Applicant Notified by DCRA with Comments for Corre	2023-10-04
WMATA Review Pending	Comments Submitted to Applicant for Correction	2023-09-26
Structural Review Pending	Comments Submitted to Applicant for Correction	2023-09-26
DOEE SE-SW Review	DOEE SE-SW Review Approved	2023-09-07
Plan Review Coordinator	Projectdox Under Review	2023-09-07
File Room	NA	2023-01-20
Structural Review Pending	Comments Submitted to Applicant for Correction	2023-01-19
DDOT Review Pending	Comments Submitted to Applicant for Correction	2023-01-17
DOEE SE-SW Review Pending	Comments Submitted to Applicant for Correction	2023-01-17
File Room	Plans and Application Resubmitted by the Applicant	2023-01-17
File Room	Applicant Notified by DCRA with Comments for Corre	2023-01-03
Zoning Review	Zoning Review Approved	2023-01-03

Structural Review Pending	Comments Submitted to Applicant for Correction	2022-12-08
DDOT Review Pending	Comments Submitted to Applicant for Correction	2022-12-06
DOEE SE-SW Review Pending	Comments Submitted to Applicant for Correction	2022-11-29
Plan Review Coordinator	Projectdox Under Review	2022-11-29
Plan Review Coordinator	Projectdox Accepted	2022-10-19
Plan Review Coordinator	Projectdox Accepted	2022-10-19
Plan Review Coordinator	Projectdox Accepted	2022-10-19