

GOVERNMENT OF THE DISTRICT OF COLUMBIA



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 19-10

Z.C. Case No. 19-10

Valor Development, LLC

(Consolidated PUD @ Square 1499, Lots 802, 803, 806, and 807)

December 9, 2019

Pursuant to notice, at its public hearings on October 7 and 10, 2019, the Zoning Commission for the District of Columbia (the “Commission”) considered a request from Valor Development, LLC (the “Applicant”) for a consolidated planned unit development (“PUD”) to construct a new mixed-use development (the “Application”) on Lots 802, 803, 806, and 807 in Square 1499 (the “PUD Site”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations,” to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

NOTICE

1. On May 14, 2019, pursuant to Subtitle Z §§ 400.3 and 400.7, the Office of Zoning (“OZ”) sent a Notice of Filing of the Application to:
 - Advisory Neighborhood Commissions (“ANC”) 3D and 3E, the “affected ANCs” pursuant to Subtitle Z § 101.8;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”); and
 - Ward 3 Councilmember Cheh, the at-large Councilmembers, and the Council Chair. (Exhibits [“Ex.”] 6, 9.)

OZ also published the Notice of Filing in the *D.C. Register*. (Ex. 8.)
2. On July 30, 2019, OZ sent notice of the rescheduled public hearing¹ to:
 - The ANCs 3D and 3E;
 - The ANC Single Member District (“SMD”) 3E02;

¹ The hearing was originally scheduled for September 19, 2019, with the public hearing notice sent June 25, 2019 and published in the *D.C. Register* on June 28, 2019. (Ex. 14-16.) The hearing was subsequently rescheduled for October 7 and 10, 2019. (Ex. 20.)

- OP;
- DDOT;
- Department of Energy and the Environment (“DOEE”);
- the District of Columbia Housing Authority (“DCHA”) relocation committee;
- Council of the District of Columbia (the “DC Council”); and
- Property owners within 200 feet of the PUD Site. (Ex. 20-23.)

OZ also published notice of the public hearing rescheduled to October 7, 2019, in the *D.C. Register* on August 9, 2019 (66 DCR 10206), as well as through the calendar on OZ’s website. (Ex. 21.)

3. On August 19, 2019, the Applicant filed an affidavit of posting the PUD Site with the Notice of Rescheduled Public Hearing and on October 1, 2019, the Applicant filed an affidavit of maintenance of the posted notice. (Ex. 24, 150.)

PARTIES

4. In addition to the Applicant, ANCs 3D and 3E were automatically parties to the case pursuant to Subtitle Z § 403.5.
5. The Commission received a total of four requests for party status, which the Commission granted:
 - Citizens for Responsible Development (“CRD”), as a party in opposition;
 - Spring Valley-Wesley Heights Citizens Association – Neighbors for a Livable Community (“SVWHCA-NLC”), as a party in opposition (collectively with CRD, the “Party Opponents”);
 - Ward 3 Vision (“W3V”), as a party in support; and
 - Spring Valley Neighborhood Association (“SVNA”) as a party in support (collectively with W3V, the “Party Supporters”).
 (Ex. 17, 31, 33, 34.)

THE PUD SITE

6. The PUD Site is located in the AU Park/Spring Valley neighborhood of Upper Northwest, Washington, D.C. The PUD Site is generally bounded by Yuma Street, N.W. on the north; Massachusetts Avenue, N.W. on the south; 48th Street, N.W. on the east; and the Spring Valley Exxon station on the west.
7. The PUD Site consists of approximately 160,788 square feet of land area, not including the area of a public alley, on the following lots:
 - Record Lot 9, comprised of:
 - The “Valor Lot” – Assessment and Taxation (“A&T”) Lot 807, improved with a building housing retail uses, including a vacant grocery store, with below-grade and surface parking, which the Application proposes to demolish and replace with a new mixed-used development; and

- The “AU Building Lot” – A&T Lot 806, improved with the former American University Law School building (the “AU Building”), with a building height of approximately 60 feet and contains approximately 179,302 square feet of GFA of commercial and education: college/university uses;² and
 - The “MAPS Site” – Record Lot 1, comprised of A&T Lots 802 and 803, improved with the historic Massachusetts Avenue Parking Shops (“MAPS”), which consists of approximately 16,922 square feet of gross floor area (“GFA”) of retail and service uses.
8. The MAPS Site is separated from Record Lot 9 by a 20-foot public alley that runs north-south through Square 1499 connecting Yuma Street to Massachusetts Avenue, N.W.
 9. The existing alley is in poor condition and is scattered with several trash dumpsters and receptacles, most of which are located within the public alley right-of-way, unscreened HVAC equipment, and other utilities/equipment associated with the MAPS.
 10. The PUD Site is bordered by two-story single-family residential dwellings to the north and east, and one- to five-story commercial, institutional, and retail buildings located to the south and west along Massachusetts Avenue, including MAPS and the AU Building, that collectively form a neighborhood-serving commercial center. The surrounding context, except for the AU Building, is generally characterized by Colonial Revival style architecture.
 11. The PUD Site is located in the MU-4 zone, which is intended to:
 - *Permit moderate-density mixed-use development;*
 - *Provide facilities for shopping 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.* (Subtitle G § 400.3.)
 12. The MU-4 zone permits residential and retail uses as a matter of right.
 13. The MU-4 zone permits a maximum building height as follows:
 - As a matter of right, 50 feet with no limit on the number of stories, with penthouses permitted to 12 feet for habitable space and 15 feet for mechanical space; and
 - For a PUD, 65 feet, with penthouses permitted to 12 feet for habitable space and 18.5 feet for mechanical space.
 (Subtitle G §§ 403.1, 403.3; Subtitle X §§ 303.7, 303.18.)

² A private, recorded Declaration of Easement and Agreement between the owners of the Valor and AU Building Lots (the “Allocation Agreement”), which remains in effect, allocated the square footage permitted under the Zoning Regulations between the two lots, with 179,302 square feet of GFA allocated to the AU Building Lot for the AU Building, and 63,242 square feet of GFA allocated to the Valor Lot. (Ex. 241C.) The Allocation Agreement granted a non-exclusive access easement to the AU Building Lot owner (currently American University) to not less than 236 parking spaces located on the Valor Lot. The Allocation Agreement noted that any subsequent remodeling, additions or replacement construction on the two lots would need to comply with the requirements of the Zoning Regulations applicable to Record Lot 9.

14. The MU-4 zone permits a maximum floor area ratio (“FAR”) as follows:
 - As a matter of right, 2.5 FAR (3.0 FAR for developments subject to Inclusionary Zoning (“IZ”)) with a limit of 1.5 for non-residential uses; and
 - For a PUD, 3.6 FAR with a maximum non-residential 2.01 FAR. (Subtitle G § 402.1 and Subtitle X §§ 303.3, 303.4.)
15. After accounting for the existing AU Building and MAPS, the total matter-of-right density available across all of the lots comprising the PUD Site is approximately 286,140 square feet of GFA, of which approximately 44,958 square feet of GFA may be devoted to non-residential uses.
16. The total matter-of-right density on Record Lot 9 specifically, is approximately 184,514 square feet of GFA, of which approximately 2,606 square feet of GFA may be devoted to non-residential uses.
17. The Comprehensive Plan (Title 10A of the DCMR, the “CP”) designates the PUD Site (except the AU Building Lot which the Application does not propose to change) on the Generalized Policy Map (the “GPM”) as a Neighborhood Commercial Center, which the CP describes as follows:

Neighborhood Commercial Centers meet the day-to-day needs of residents and workers in the adjacent neighborhoods. Their service area is usually less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and childcare. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. (CP § 223.15.)

18. The CP designates the PUD Site on the Future Land Use Map (the “FLUM”) for Low-Density Commercial, which the CP describes as follows:

This designation is used to define shopping and service areas that are generally low in scale and character. 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. Their common feature is that they are comprised primarily of one- to three-story commercial buildings. The corresponding Zone districts are generally C-1 (MU-3) and C-2-A (MU-4), although other districts may apply. (CP § 225.8.)

II. THE APPLICATION

19. On May 6, 2019, the Applicant filed the Application for a consolidated PUD to construct a mixed-use building (the “Building”) and five townhomes (the “Townhomes”) on the

Valor Lot, and to make a variety of other improvements to the open spaces within and surrounding the PUD Site (collectively, the “Project”). The Application did not include a request for a Zoning Map amendment.

THE BUILDING

Use

20. The Building will be mixed use and include:
- Approximately 219 residential units; and
 - Approximately 18,000 square feet of GFA of retail uses (not including loading), of which a minimum of 13,000 square feet of GFA would be devoted to a full-service grocery store.

Density

21. The Application proposes to redistribute approximately 50,115 square feet of GFA within the PUD Site from the MAPS Lot to the Valor Lot in order to construct the Project. This will result in a total residential FAR of 2.68, with an additional 0.26 non-residential FAR.

Height

22. The Building will have a maximum building height of approximately 43.5 feet, not including the penthouse, as measured from the level of the curb opposite the middle of the front of the building on 48th Street, N.W. to the top of the parapet; and a one-story penthouse meeting all required setbacks consisting of:
- Enclosed habitable and mechanical space, rising to a maximum height of 12 feet above the roof on which it is located; and
 - Unenclosed mechanical equipment above that rises to a maximum height of 15 feet.

Pedestrian Access

23. The main pedestrian entrance to the grocery store will be located at the northwest corner of the building along Yuma Street, set back approximately 17 feet from the property line. Due to the grade along Yuma Street, the grocery store entrance is approximately two feet lower than the adjacent sidewalk. Another retail entrance will be located at the southwest corner of the Building in close proximity to Massachusetts Avenue and the adjacent MAPS retail and service uses. This entrance will either be a second entrance to the grocery store or an entrance to a separate retail use. The main residential lobby will be located along Yuma Street closer to 48th Street.

Vehicular Access

24. The Building will contain a three-level, below-grade parking garage with approximately 370 vehicle parking spaces, inclusive of the 236 spaces mandated by the Allocation Agreement. In compliance with the loading requirements of Subtitle C, Chapter 9. The Building will contain a 55-foot loading berth, a 30-foot loading berth, and a 20-foot service/delivery space.
25. Access to the parking and loading facilities will be located on the south side of the Building, adjacent to the east-west public alley. This location will minimize views and the potential

for noise-related impacts on residential uses to the north and east of the PUD Site. It also improves circulation by locating these facilities closer to Massachusetts Avenue and away from the trash enclosures and other MAPS-related mechanical equipment located along the north-south alley.

Sustainable Features

26. The Project has been designed to integrate a host of sustainable features and will be designed to achieve LEED-Gold v.4 certification. The Project will have sustainable design features such as low-flow plumbing fixtures; energy efficient light fixtures, mechanical systems, and appliances; and low-VOC materials and finishes. Convenient opportunities for recycling will be provided within a trash/recycling room on each residential floor. Conduits to provide PV panels on the roof in the future will be provided.
27. The Project will include a variety of strategies to satisfy Green Area Ratio (“GAR”) and stormwater management requirements, such as intensive and extensive green roof areas and bioretention areas in the various courtyards.
28. The parking garage will include eight Level 2 charging stations for electric vehicles and infrastructure to permit the installation of additional electric vehicle charging stations in the future. At least five electrical outlets will be provided within each long-term bicycle storage room for the charging of electric bikes. Locations for car-share vehicles, interior retail employee bike storage and showers, and interior residential bike storage that exceeds the required number of spaces will also be provided.

Exterior Design

29. The Building is designed in two different Colonial Revival architectural styles, and in response to the lower-density residential uses to the north and east, the massing of the Building includes lower building height step-downs; substantial ground- and upper-level setbacks; large courtyards, terraces, and public plazas; and context-sensitive articulation.
30. Along the 48th Street property line, the massing of the Building is minimized through the use of pavilions that are separated by 40-foot deep, 43-foot wide landscaped courtyards. The height of the pavilions is further reduced through the use of bay projections that are similar in scale to the height of the residential dwellings across 48th Street, which has a right-of-way width of 90 feet. The distance between the Building and the residential dwellings to the east along 48th Street ranges between approximately 96 to 136 feet, with the penthouse further separated by meeting or exceeding the required 1:1 setback.
31. The massing of the Building is also minimized along Yuma Street, N.W., where there is a drop in grade from east to west. The eastern portion of the Yuma Street façade has a three-part composition, with two lower-height pavilions separated by the main residential entry courtyard. This portion of the façade shares the same architectural style as the 48th Street elevation. The western portion of the Yuma Street façade has a similar three-part composition but expresses a distinct architectural style through the use of a different material palette and window pattern. The western portion of the façade is also set back

from the property line approximately 17 feet to create an open public plaza outside the entry to the grocery store, and the upper-most level is set back an additional 14 feet.

32. The west and south façades of the Building are designed in the same architectural style as the street-facing façades and will be treated with the same high-quality materials. Along the west, adjacent to the north-south public alley between the Valor Lot and the MAPS Site, the Building will be set back from the property line approximately 10 feet to provide adequate and safe circulation in the alley for vehicles and pedestrians. Above the lower level, the setback will increase another 20 feet, for a total of approximately 30 feet from the property line, along the majority of the west façade. This will allow for a full 20 feet of drive aisle width for vehicles and a new three-foot delineated pedestrian pathway along the west side of the Building.

Townhomes

33. The Townhomes are located along 48th Street at the southern end of the Valor Lot. Townhomes 1 through 4 are set back approximately 20 feet from the property line. Due to the angled southern boundary of the Valor Lot, Townhome 5 is located at the property line along 48th Street in order to meet the minimum rear yard requirement.
34. The Townhomes will each have three stories and range in height from 36 feet, 8 inches to 37 feet. Each Townhome will have a hatch no greater than five feet in height to access a private roof deck. Parking for the Townhomes will be provided in a lower level “tuck-in” garage that is accessed from the existing alley system that services the PUD Site.
35. The architectural style of the Townhomes relates to the prevailing Colonial Revival style of the surrounding neighborhood and utilizes similarly compatible materials.

Landscaping and Alley Improvements

36. The Project includes a variety of landscape improvements, including two publicly accessible open spaces and plazas:
 - A publicly accessible open space framed by the Building and Townhouse 1 will be located along 48th Street (“Windom Park”). Windom Park will contain plantings, seating, and other decorative features; and
 - Another public plaza will be located at the northwest corner of the Building, providing a forecourt to the grocery store and creating opportunities for outdoor seating and small gatherings (“Northwest Plaza”). The Northwest Plaza will be approximately 1,700 square feet in area and located approximately two feet lower than the adjacent sidewalk due to the grade change along Yuma Street. The Northwest Plaza will provide a variety of social settings for people to interact through the use of both fixed and movable seating. To accommodate the grade difference between the sidewalk and the Northwest Plaza, a series of steps and planted slopes will be located along the sidewalk.
37. Private landscaped courtyards and terraces are also proposed as residential amenities for the Building and the Townhomes. The Building will have a large central courtyard with landscaping, a paved plaza, and a swimming pool, along with several private outdoor

terraces reserved for individual residential units. Around the exterior of the Building, two large landscaped courtyards with residential terraces will face 48th Street, and a residential entry courtyard containing landscaping and seating will face Yuma Street. The Building will also have a modest sized fourth floor outdoor terrace at its northwest corner that will contain flexible seating areas and other amenities. Finally, each Townhome will have a private landscaped front yard area, rear main floor balcony, and a small roof deck.

38. Along the south side of the Building and Townhouse 5, the Applicant will provide a new six-foot pedestrian sidewalk on private property between 48th Street and the north-south public alley.
39. The Applicant also proposes to upgrade the intersection of the east-west and north-south public alleys, and the intersection of the north-south public alley and Massachusetts Avenue. These upgrades include visibility mirrors, textured/differentiated pavement, crosswalk striping, and stop signs and/or other signage.
40. Along the existing north-south public alley between the Valor Lot and the MAPS Site, the Applicant will consolidate the trash containers and place them in new enclosures.

Design Flexibility

41. The Application requested design flexibility from the plans for the Project in the following areas:
 - Interior Components – To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, mechanical rooms, and elevators, provided that the variations do not change the exterior configuration of the buildings as shown on the plans approved by the Order;
 - Exterior Materials – Color: To vary the final selection of the colors of the exterior building materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the Order;
 - Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the buildings or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - Number of Units – To provide a range in the approved number of residential dwelling units of plus or minus 10%, except that (i) the total square footage of residential dwelling units shall not be reduced, and (ii) the total square footage reserved for affordable dwelling units shall not be reduced;
 - Affordable Units – To vary the number and location of affordable dwelling units, except that:
 - The number of three-bedroom affordable dwelling units shall not be reduced;
 - No affordable dwelling unit shall be located within a cellar; and
 - No more than two affordable units shall be located directly above and below each other on any immediately successive floors;

- Retail Uses – To vary the types of uses designated as “retail” use in plans approved by the Order to include the following use categories:
 - Retail (Subtitle B § 200.2(cc));
 - Services, General (Subtitle B § 200.2(dd));
 - Services, Financial (Subtitle B § 200.2(ee)); and
 - Eating and Drinking Establishments (Subtitle B § 200.2(j));
- Parking Layout – To make refinements to the approved parking configuration, including layout and number of parking spaces, provided the minimum number of spaces provided is not less than the number of spaces shown on the plans approved by the Order;
- Streetscape Design – To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- Signage – To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage shown on the plans approved by the Order and are compliant with the DC signage regulations, except that:
 - The content of the blade sign at the northwest corner of the Building shall be limited to directional signage only; and
 - No more than two retail tenant signs are permitted along Yuma Street at the northwest corner of the Building; and
- Sustainable Features – To vary the approved sustainable features of the project, provided the total number of LEED points achieved by the project does not decrease below the minimum required for the LEED standard required under the Order.

RELIEF REQUESTED

PUD Development Incentives Requested

42. Other than the ability to distribute density between individual lots on the PUD Site as permitted by Subtitle X § 303.2, the Applicant did not request any development incentives as part of the application:
- The proposed heights of the Project are below the maximum height permitted as a matter of right in the MU-4 zone;
 - The density of the buildings within the Overall PUD Site, as calculated pursuant to Subtitle X § 303.2, does not exceed the maximum overall and nonresidential density permitted as a matter of right in the MU-4 zone; and
 - The Applicant did not seek a Zoning Map amendment as part of the Application.

Special Exception Relief

43. Separate from the PUD, the Application requested relief from the rear yard requirement for the Building and the penthouse requirements for the Townhomes, both of which are permitted by special exception. The Application requested the Commission to consider these special exceptions by the standard special exception criteria and not as PUD development incentives, and so not part of the PUD balancing test.

Rear Yard Special Exception Relief for The Building (Subtitle G § 405.2)

44. The Application requested rear yard relief for the Building from Subtitle G § 405.2, which requires a minimum rear yard of 15 feet in order to provide a minimum rear yard depth of 10 feet along portions of Floors 1-4 at the northwest and southwest corners³ of the Building.

Penthouse Special Exception Relief for the Townhomes (Subtitle C § 1500.4)

45. The Application requested penthouse relief for the Townhomes from:
- Subtitle C § 1500.4, to permit a penthouse containing a limited amount of ancillary storage space and a stairway to provide access to a roof deck; and
 - Subtitle C § 1500.9, to permit the penthouse enclosing walls to be of unequal heights in order to minimize massing and views of the penthouses from surrounding streets.
46. In response to comments from the Commission at the public hearing, the Applicant agreed to significantly modify its design by substituting roof hatches for the proposed penthouse access stairways. Nonetheless, because the final design of hatches could potentially require relief, the Applicant did not withdraw its requested penthouse relief.

PUD JUSTIFICATION

Not Inconsistent with Comprehensive Plan and Other Adopted Public Policies (Subtitle X § 304.4(a))

47. The Application asserted it was not inconsistent with the CP, including its maps and policies, and in fact furthers many of its elements as follows:

GPM

48. The Application asserted that the Project was not inconsistent with the GPM's Neighborhood Commercial Center designation because it will provide a new mixed-use building, including a full-service grocery store and additional retail, that will serve the day-to-day commercial needs of the new and existing residents, workers, and visitors. The Project will also complement and contribute to the existing commercial node formed by the businesses on either side of Massachusetts Avenue. (Ex. 2F.)

FLUM

49. The Application asserted that the Project was not inconsistent with the FLUM's Low Density Commercial designation because the Project will provide a mix of uses that will support and enhance the surrounding commercial development, while also providing needed commercial uses for the surrounding residential areas. The Application also noted that all commercially designated areas on the FLUM permit residential development. The Application also noted that the MU-4 zone (previously the C-2-A) is specifically called out in the CP as being compatible with the Low Density Commercial designation. The Application also reiterated that the FLUM is not a zoning map and does not specify dimensional standards and noted that while the FLUM designation notes that Low-Density

³ The relief is limited to these areas because above 20 feet, the rear yard must be measured from the rear property line, instead of from the centerline of the north-south public alley.

Commercial areas are “comprised **primarily** of one- to three-story commercial buildings” (emphasis added) this is intended only as general guideline for building heights and uses, and not an outright limitation. (Ex. 2F.)

Land Use Element

50. The Application asserted that the Project furthers the CP’s Land Use Element because it would redevelop a long-term vacant site with a compatible infill development that would complement and respect the surrounding lower-scale residential uses, while serving as a buffer between the residential uses and the commercial uses along Massachusetts Avenue. The Project would also support and enhance the existing commercial node by adding a needed retail use and additional residents to serve as a customer base for existing retail establishments. The Application noted that it would advance the following element policies: LU-1.4.1 Infill Development; LU-1.4.2 Long Term Vacant Sites; LU-2.1.3 Conserving, Enhancing, and Revitalizing Neighborhoods; LU-2.1.5 Conservation of Single Family Neighborhoods; LU-2.2.4 Neighborhood Beautification; LU-2.3.3 Buffering Requirements; LU-2.4.1 Promotion of Commercial Centers; LU-2.4.2 Hierarchy of Commercial Centers; LU-2.4.5 Encouraging Nodal Development; and LU-2.4.6 Scale and Design of New Commercial Uses.

Housing Element

51. The Application asserted that the Project furthers the CP’s Housing Element because the Project will provide new market rate and affordable (12%) housing opportunities, including family-sized units within a mixed-use building with easy access to surrounding retail and transportation options. The Application noted that it would advance the following area policies: H-1.1.1 Private Sector Support; H-1.1.3 Balanced Growth; H-1.1.4 Mixed Use Development; H-1.2.3 Mixed Income Housing; H-1.3.1 Housing for Families; and H-4.2.2 Housing Choice for Seniors.

Environmental Protection Element

52. The Application asserted that the Project furthers the CP’s Environmental Protection Element because the Project will redevelop the existing impervious site with a LEED-Gold certified building incorporating green roofs and a sustainable stormwater management system. The Application noted that it would advance the following element policies: E-3.1.2 Using Landscaping and Green Roofs to Reduce Runoff; and E-3.2.1 Support for Green Building.

Economic Development Element

53. The Application asserted that the Project furthers the CP’s Economic Development Element because it will provide new neighborhood-serving retail uses, including a full-service grocery store, and the new residents are also expected to utilize the existing area commercial uses. The Application noted that it would advance the following element policies: ED-2.2.3 Neighborhood Shopping; ED-2.2.6 Grocery Stores and Supermarkets; and ED-3.1.1 Neighborhood Commercial Vitality.

Urban Design Element

54. The Application asserted that the Project furthers the CP's Urban Design Element because the Project had been carefully designed to respect the scale and character of the surrounding neighborhood. The Application noted that various design details had been chosen in order to relate to the residential areas to the north and east, while providing a smooth visual transition to the larger commercial and institutional buildings to the south and west. The Application noted that it would advance the following element policies: UD-2.2.1 Neighborhood Character and Identity; UD-2.2.4 Transitions in Building Intensity; UD-2.2.5 Creating Attractive Facades; UD-2.2.7 Infill Development; and UD-2.2.8 Large Site Development.

Historic Preservation Element

55. The Application asserted that the Project furthers the CP's Historic Preservation Element because the Project responds to the existing Historic MAPS in both its design and massing and serves as a transitional site between both the larger AU Building, the residential properties and the MAPS. The Project will also assist in the long-term preservation of the MAPS by shifting density to the Valor Lot thereby reducing the economic incentive to redevelop the MAPS. The Application noted that it would advance the following element policies: HP-2.4.3 Compatible Development; and HP-3.1.2 Incentives for Special Property Types.

Transportation Element

56. The Application asserted that the Project furthers the CP's Transportation Element because the Project will provide a number of transportation related improvements including improvements to the pedestrian network around the Property and in the existing alley, the installation of the HAWK signal, and numerous other strategies included in the Applicant's Transportation Demand Management ("TDM") Plan. The Application noted that it would advance the following element policies: T-1.1.2 Land Use Impact Assessment; T-1.1.B Transportation Improvements; T-1.2.3 Discouraging Auto-Oriented Uses; T-2.2.2 Connecting District Neighborhoods; T-2.3.3 Bicycle Safety; T-2.3.A Bicycle Facilities; T-2.4.1 Pedestrian Network; T-2.4.2 Pedestrian Safety; T-3.1.1 Transportation Demand Management (TDM) Programs; T-3.1.3 Car-Sharing; T-3.1.A TDM Strategies; and T-3.2.D Unbundle Parking Costs.

Rock Creek West Area Element

57. The Application asserted that the Project was not inconsistent with the CP's Rock Creek West Area Element because the Project would construct a mixed-use building that responds to and respects the character and scale of the surrounding residential neighborhoods while providing a transition to the more dense commercial uses along Massachusetts Avenue. The Application also asserted that the Project would support the existing commercial development and would provide a needed, local-serving grocery store which has long been missing in the area. The Application noted that it would advance the following element policies: RCW-1.1.3 Conserving Neighborhood Commercial Centers; RCW-1.1.4 Infill Development; and RCW-1.1.5 Preference for Local-Serving Retail.

No Unacceptable Potential Project Impacts (Subtitle X § 304.4(b))

Impacts to Land Use

58. The Applicant asserted that potential impacts of the Project on land use will be favorable. The Valor Lot is presently underutilized; improved with a vacant grocery store building, some additional retail space that is currently in use, and a large impermeable surface parking lot. The mixed-use/mixed-income development proposed by the Project will significantly improve the PUD Site's utilization, particularly in light of its designation as a Neighborhood Commercial Area on the CP's GPM, and its location in an area of the District with a significant need for more affordable housing. The Applicant also noted that opportunities for multi-family housing in this area are rare and so where opportunities do exist, such as on the PUD Site, they should be taken advantage of in a manner that takes into consideration and balances potential impacts on transportation and on the surrounding context.

Impacts to Housing

59. The Applicant asserted that potential impacts of the Project on housing will be favorable. The Project will produce approximately 219 new dwelling units in a desirable area of the District that contains high-quality public and private schools, abundant parks and open space, and many neighborhood-serving amenities. Most importantly, the Project will contain 20% more affordable housing GFA than would otherwise be required under matter-of-right development on the PUD Site and will do so without requesting any additional PUD-related density. This will result in approximately 30 dedicated affordable housing units devoted to households earning up to 50% and 60% of the median family income ("MFI").

Impacts to Environmental Protection

60. The Applicant asserted that potential impacts of the Project on environmental protection will be favorable. The Project will redevelop an underutilized, impervious property with a new mixed-use development that will be certified LEED Gold v.4. The significant reduction in impervious surface is likely to have favorable impacts on urban heat island effect, and the new landscaping and green roof elements will provide new habitat. The Project is not expected to have any impacts on water quality or hydrology.
61. As noted by the Applicant at the public hearing, the assessment of the Project's environmental impacts does not conclude with the Commission. Rather there is an entirely separate set of regulatory requirements under the D.C. Environmental Protection Act (the "Environmental Act") and implementing regulations that require the evaluation of the potential environmental impacts before the issuance of a building permit. Further, the D.C. Court of Appeals has held that "implementation" of a zoning approval occurs when construction actually begins. (*See Foggy Bottom Ass'n v. D.C. Bd. Of Zoning Adjustment*, 791 A.2d 64, 73 (D.C. 2002).)
62. Thus, the Applicant will be required to complete an Environmental Impact Screening Form ("EISF") when submitting its building permit application. Various District agencies will analyze the different topics covered by the EISF including; water quality, sedimentation,

and storm water management, watershed protection, air quality (which will take into account the results of the Applicant's CTR), underground storage tanks, toxic substances, hazardous waste, and environmental justice. To the extent that a reviewing agency identifies impacts that exceed established thresholds, the Applicant will be required to work with that agency to avoid, minimize, and/or mitigate such impacts to the extent necessary before the Project is implemented. Further, to the extent that any mitigation measures identified by a reviewing agency require modifications to the Project that are not covered by flexibility granted in this Order, the Applicant would be required to seek a PUD modification from the Commission.

Impacts to Infrastructure

63. The Applicant asserted that any potential impacts to infrastructure will be favorable or capable of being mitigated. With respect to storm water runoff, currently the Valor Lot is entirely impervious, and what storm water management infrastructure exists most likely does not provide any treatment of runoff before it enters the municipal sewer system due to its age. The Project will replace this impervious surface condition with a LEED-Gold certified development that will meet or exceed the District's current storm water management regulations, which are far more stringent than the regulations that existed in the 1960s when the existing improvements on the Valor Lot were constructed. Overall, as a result of the extensive amount of green roof, landscaping, and pervious surfaces proposed in the Project, the volume of storm water runoff entering the District's municipal sewer system will be significantly reduced. Finally, comments provided by DC Water expressed no concerns or objections to the Project. (Ex. 53 at 25.)

Impacts to Economic Development

64. The Applicant asserted that any potential impacts to economic development will be favorable or capable of being mitigated. The Project will result in new businesses and employment opportunities created by the proposed grocery store, and potentially at existing businesses in the surrounding area as a result of additional demand generated by future residents of the Project. Moreover, the Applicant has agreed to offer, on a right of first refusal basis, any retail space (between approximately 1,614 and 5,198 square feet) within the Building that is not leased to the grocery store to the businesses currently operating on the PUD Site as a mitigation measure.
65. The Project will also have favorable impacts on tax revenue through increased property, income, and sales taxes. While the exact amount of additional revenue is not known, the redevelopment of the Valor Lot will certainly increase the assessed value of the Valor Lot given the age and condition of the existing improvements on that property. New income tax revenue will result from residents that move to the Project from other jurisdictions, and increased sales tax revenue will result from the additional business generated by residents of the Project.

Impacts to Urban Design

66. The Applicant asserted that any potential impacts to urban design will be positive or acceptable given the quality of benefits provided by the Applicant. The Project will replace

a largely vacant and underutilized property that is almost entirely impervious with a new high-quality mixed-use development that is pedestrian-oriented and has been designed to appropriately relate to the surrounding context. The Project supports its designation on the GPM as a Neighborhood Commercial Center by improving the mix of uses that are available to residents and supporting existing businesses through increased residential density. The Project will also provide significant improvements to the public realm.

67. The Project will also successfully complement the established character of the surroundings and provide an appropriate transition between the lower-scale residential neighborhood to the north and east and the larger-scale AU Building. The height of the Building is below the maximum permitted as a matter of right, is only slightly taller than the maximum height permitted in the adjacent R-1-B zone, and is not substantially taller than the highest point of the roofs of the houses along 48th and Yuma Streets from street grade. The Project is also separated from the houses to the east and north by approximately 96 to 137 feet.

Impacts to Historic Preservation

68. The Project will help protect the historic MAPS by limiting the economic feasibility of selling the MAPS, and the economic incentive for future development on the MAPS Site, because density on the MAPS Site will be permanently reduced to that permitted under existing zoning minus the FAR allocated to the Valor Lot. Furthermore, as stated in the HPO report, the Project will “enhance the character of the [MAPS] by improving its architectural setting through compatible design and superior execution as ensured through the PUD process” (Ex. 187.)

Impacts to Transportation

69. The transportation aspects of the Project were thoroughly analyzed in the Applicant’s Comprehensive Transportation Review (“CTR”) that was prepared in coordination with, and reviewed by, DDOT. The CTR found that the Project will not have a detrimental impact on the surrounding transportation network, and that no mitigation was required with respect to roadway capacity and operations. As such, DDOT stated in its hearing report that “no mitigation for traffic impacts is requested by DDOT.” (Ex. 52 at 2.)
70. The DDOT Report did note that it considered the Project to be “over-parked,” which had the “potential to induce additional demand for driving.” (Ex. 52 at 3.) However, the DDOT Report noted that these potential adverse impacts could be mitigated through the Applicant’s agreement to fund pedestrian improvements at four adjacent intersections in order to encourage pedestrian trips to and from the Project, and by the Applicant’s adoption of its “robust” TDM and Loading Management Plans (“LMP”). (Ex. 52 at 3.)
71. The Applicant will fund and construct pedestrian network improvements in the immediate vicinity of the PUD Site to encourage walking and mitigate the potential impacts of being over-parked. Specifically, the Applicant will upgrade substandard curb ramps, stripe missing crosswalks, and install curb extensions, subject to DDOT public space approval, at the following intersections:

- 49th Street and Yuma Street, N.W.;
- 48th Street and Yuma Street, N.W.;
- 48th Street and Windom Place, N.W.; and
- 48th Street and Warren Street, N.W.

72. The Applicant will implement the following TDM Plan:

- Exceed the minimum zoning requirements for bicycle parking/storage facilities, which includes secure long-term bicycle storage rooms located within the Building and short-term bicycle parking located around the perimeter of the PUD Site;
- Install a bicycle repair station in each of the long-term bicycle storage rooms located within the Building;
- Unbundle the cost of residential parking from the cost of lease or purchase of each residential unit in the Building. The unbundled cost of parking will be at a minimum equal to the average market rate within a quarter mile of the PUD Site;
- Not offer free parking to any resident, employee, student, or otherwise, and only offer daily, weekly and monthly rates for purchase;
- Identify TDM leaders (for planning, construction, and operations) who will work with residents and grocery/retail employees to distribute and market various transportation alternatives and options;
- Work with DDOT and goDCgo to implement TDM measures;
- Share the full contact information of the TDM leaders with DDOT and goDCgo;
- Post all TDM commitments online for easy reference;
- Provide TDM materials to new residents in the Resident Welcome Package materials;
- Provide residents and grocery/retail employees who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by Metropolitan Washington Council of Governments (“MWCOG”);
- Install a Transportation Information Center Display (electronic screen) within the residential lobby of the Building containing information related to local transportation alternatives;
- Offer either a one-year membership to Capital Bikeshare or a one-year membership to a car-sharing service to each residential unit for the initial lease of each unit;
- Dedicate four vehicle parking spaces in the parking garage for car-sharing services to use with right of first refusal. If an agreement has not been reached with a carsharing service to occupy the four spaces, then the Applicant will provide an additional year of Capital Bikeshare memberships to new residents within the Building; and
- Provide one shopping cart for grocery shopping and running errands for every 30 residential units in the Building.

73. The Applicant will implement the following LMP:

- A loading dock manager will be designated by the building management. The dock manager will coordinate with vendors and tenants to schedule deliveries and will be on duty during delivery hours;

- All tenants in the Building will be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 20 feet in length or larger;
- Commercial deliveries will be scheduled between 7:00 a.m. – 7:00 p.m. (7 days a week), and discouraged from making deliveries after 4:00 p.m. on weekdays;
- Waste collection (both commercial and residential) is allowed 7:00 a.m. – 4:00 p.m. (seven days a week);
- Residential move-ins/outs are allowed 9:00 a.m. – 4:00 p.m. (seven days a week);
- The dock manager(s) will schedule deliveries such that the dock’s capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as to not impede the drive aisle that passes in front of the loading dock;
- The dock manager(s) will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular traffic except during those times when a truck is actively entering or exiting the alley;
- The loading manager(s) will monitor the alley to keep the designated loading areas clear for deliveries, keep the alley from being blocked due to vehicle loading/unloading activity, and enforce the no parking restrictions;
- Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT’s Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System;
- The Applicant will continue to coordinate with DDOT and the owners of the MAPS Site (Lots 802 and 803) regarding loading operations for the MAPS Site; and
- Trucks traveling to the MAPS Site will be directed not to pick-up or drop-off on Yuma Street, N.W. and will be directed to use the alley network.

74. In addition, the Project will have several favorable transportation impacts that result from the proposed improvements, which are being proffered as public benefits because they were not required as mitigations by DDOT. These improvements include, upgrades to the alley system, the closure of large curb cuts adjacent to the Valor Lot, the installation of a HAWK signal, contributions for connections to Metrorail and to conduct specified transportation studies, as well as others and are discussed in the public benefits section below.

Impacts to Community Services and Facilities

75. The Project will not have any adverse impacts on publicly owned land, health care facilities, libraries, emergency services, or community centers. The PUD Site is located in a part of the District that has numerous parks and open spaces and a variety of recently renovated schools, libraries, and community centers. Finally, the Project was reviewed by D.C. Fire and Emergency Management Services (“FEMS”) and the D.C. Public Library (“DCPL”), neither of which expressed objections. (Ex. 53 at 23-24.)

Impacts to Educational Facilities

76. The Project will not result in unacceptable impacts to educational facilities. As stated in the report by the Deputy Mayor for Education (“DME”):

DME estimates that the additional impact that the [Project] would have on the three DCPS by-right schools is low. While there is overutilization now and estimated in the future, this development has been incorporated into the [Master Facility Plan] 2018 estimates and DCPS planning efforts. Therefore, the additional small number of students that may live in the Project in the future should not negatively influence decisions about the merit of this PUD case. (Ex. 53 at 26-29.)

Impacts to Parks, Recreation and Open Space

77. The Project will provide new publicly accessible open spaces in the form of the Northwest Plaza and Windom Park, and the Project also includes significant landscaping improvements to adjacent public spaces. (Ex. 53 at 23.)

Public Benefits and Amenities (Subtitle X § 304.4(c))

78. The Application asserts that the Project provides the following public benefits as prescribed by Subtitle X § 305.5.

Superior Urban Design, Architecture, and Landscaping (Subtitle X § 305.5(a) and (b)) and Site Planning and Efficient Economical Land Utilization (Subtitle X § 305.5(c))

79. The proposed height and mass of the Project has been carefully designed to relate to the scale and character of the surrounding neighborhood through height reductions, courtyards, landscaping, façade articulation, upper-level setbacks, and high-quality, context-sensitive materials.
80. The Project exhibits efficient and economical land utilization through:
- The provision of multiple residential building types (multi-family and townhomes) within a designated neighborhood commercial center in close walking proximity to numerous amenities, such as retail, services, parks, schools, and convenient bus service; and
 - The utilization of unused density from the historic MAPS Site, which will facilitate additional housing, restore a full-service grocery store to the neighborhood, and permanently reduce the amount of density that could potentially be constructed on the historic MAPS Site in the future.
81. The Project includes development of Windom Park, a new publicly accessible open space along 48th Street; the Northwest Plaza, a new landscaped plaza adjacent to the grocery store entrance along Yuma Street; and a variety of private landscaped courtyards and terraces. In addition to the superior landscaping surrounding the PUD Site and within Windom Park and the Northwest Plaza, the Applicant will construct improvements specifically intended to activate these spaces and the surrounding streetscape. To demonstrate this commitment, the Applicant stated that it will dedicate \$15,000 toward such improvements, the design of which will be developed based on input from ANC 3E, and will be subject to review and

approval by District public space permitting authorities, as necessary. As part of this effort, the Applicant will also consider incorporating playable and interactive elements into the design of these spaces.

82. The Project's site plan also takes into consideration the potential for pedestrians to circulate through the public alley system through pedestrian improvements that do not currently exist, including a new three foot delineated pedestrian path along the north-south alley, a new six foot sidewalk along the east-west alley, and improvements at the alley intersections.

Historic preservation of private or public structures, places, or parks (Subtitle X § 305.5(e))

83. The Project's allocation of approximately 50,115 square feet of unused GFA from the MAPS Lot (approximately 0.31 FAR based upon the land area of the PUD Site) to the Valor Lot will help protect the historic MAPS by limiting the economic feasibility of selling the MAPS, and the economic incentive for future development, because development on the MAPS Lot will be permanently reduced to that permitted under existing zoning minus the FAR allocated to the Valor Lot.

Housing, including housing that provides units with three or more bedrooms (Subtitle X § 305.5(f))

84. The Project results in the creation of new housing consistent with the objectives and policies of the CP and the Mayor's Housing Initiative. Overall, the Project will replace a long vacant and underutilized site with approximately 219 new residential units in approximately 214,094 square feet of residential GFA. The Project's unit mix includes studio, one-, two-, and three-bedroom units.

Affordable Housing in an amount that exceeds what would have been required through matter-of-right development (Subtitle X § 305.5 (g))

85. The Applicant will set aside a minimum of 12% of the residential GFA to IZ units devoted to households earning up to 60% of the MFI, and 12% of the non-communal penthouse habitable space to IZ units devoted to households earning up to 50% of the MFI. The Applicant will also set aside 12% of cellar floor area dedicated to residential dwelling units, and projection floor area dedicated to residential use, to IZ units devoted to households earning up to 60% of the MFI. The amount of affordable GFA proffered by the Applicant exceeds the amount that would have otherwise been required through matter-of-right development on the PUD Site by 20%. Further, the Applicant will provide a minimum of four, three-bedroom IZ units in the Building.

Environmental and sustainable benefits (Subtitle X § 305.5(k))

86. The Project has been designed to integrate a host of sustainable features and will be designed to achieve LEED-Gold v.4 certification.
87. The Applicant will redevelop the PUD Site, which is presently impervious and lacks any form of sustainable storm water management, with new landscaping, trees, open space, green roof systems, and bioretention areas. The parking garage includes eight electric

vehicle charging stations that will be Level 2 chargers or greater, and the Applicant will install infrastructure to permit the installation of additional electric vehicle charging stations in the future. Electrical outlets will also be provided within the long-term bicycle storage rooms for the charging of electric bikes. Locations for car-share vehicles, interior retail employee bike storage and showers, and interior residential bike storage that exceeds the required number of spaces will also be provided.

Transportation infrastructure beyond that needed to mitigate any potential adverse impacts of the Application, including provision of a public easement for a pedestrian walkway that would not otherwise be required (Subtitle X § 305.5(o))

88. The Applicant will provide the following transportation-related benefits that are not required by DDOT to mitigate any potential adverse transportation impacts created by the Project:

- Fund a new high intensity activated crosswalk (“HAWK”) signal on Massachusetts Avenue, between 48th and 49th Streets, subject to DDOT public space approval;
- Allocate \$100,000 to means for connecting Project residents to the Tenleytown Metro station through shuttle or geofence with ride hailing services;
- Restrict residents of the Building from obtaining a Residential Parking Permit (“RPP”) with penalty of lease termination;
- Consolidate trash receptacles currently located in the north-south alley and in public space along Yuma Street to a new enclosure along the north-south alley;
- Improve the existing alley system by widening the north-south public alley by seven feet onto private property to maintain a 20-foot vehicle travel way and provide a new 3-foot pedestrian path; providing a new 6-foot sidewalk on private property along the east-west alley; constructing a new 5- to 6-foot sidewalk along the western side of the public alley entrance from Massachusetts Avenue; and constructing improvements to the alley intersection to increase pedestrian safety and visibility;
- Contribute \$15,000 toward studying the potential to open the median on Massachusetts Avenue to improve porosity and turning movements at the MAPS Site, and/or studying the installation of a “pork chop” near Massachusetts Avenue and 49th Street;
- Work with ride hailing services to designate the building entrance on Yuma Street as the preferred pick-up and drop-off location; and
- Work with DDOT to designate a section of 48th Street between Yuma Street and Warren Street as an “alternative transportation block” where transit options such as electric scooters, bikes, and mopeds; bike shares; and car shares can be co-located.

Uses of special value to the neighborhood or the District of Columbia as a whole (Subtitle X § 305.5(q))

89. The Applicant will dedicate approximately 18,000 square feet of GFA to retail space, of which no less than 13,000 square feet will be dedicated to a full-service grocery store for at least 10 years from the date of the first certificate of occupancy.

Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan (Subtitle X § 305.5(r))

90. The Applicant will plant any missing trees within the tree-box areas located along the east side of 48th Street between Yuma Street and Massachusetts Avenue, and along the north side of Yuma Street between 48th and 49th Streets.

Applicant's Submissions

91. The Applicant submitted a total of seven submissions to the case record as follows:

- On May 6, 2019, the Applicant filed its initial Application submission (the "Initial Submission"); (Ex. 1-2I.)
- On June 17, 2019, the Applicant filed a Prehearing Submission responding to the comments made in the OP setdown report (the "Prehearing Statement"); (Ex. 12.)
- On September 3, 2019, the Applicant filed a copy of its Comprehensive Transportation Review (the "CTR"), a copy of which was also sent to DDOT; (Ex. 25.)
- On October 4, 2019, the Applicant submitted a response to the OP and DDOT Hearing Reports (the "Response to OP and DDOT"); (Ex. 151.)
- On October 24, 2019, the Applicant submitted its post-hearing submission (the "Post-Hearing Statement"); (Ex. 241.)
- On October 31, 2019, the Applicant also filed a response to the Party Opponents' post-hearing submissions (the "Response to Party Opponents"); (Ex. 246.) and
- On November 5, 2019, the Applicant submitted a motion to strike a portion of CRD's post-hearing submission that included a newly prepared shadow study ("Applicant's Motion to Strike"); (Ex. 249.)

The Initial Submission

92. The Initial Submission included:

- A statement in support of the Application; (Ex. 2.)
- The initial set of architectural plans for the Project; (Ex. 2C1-2C11.)
- An analysis of the Project's consistency with the CP; (Ex. 2F.)
- Authorization letters; (Ex. 2H.) and
- Certificate of notice. (Ex. 2I.)

The Prehearing Statement

93. The Prehearing Statement responded to the questions raised by the OP setdown report as follows:

- **Unbundling Residential Parking** – The Prehearing Statement noted that the Applicant was working on developing a CTR with DDOT, in which the Applicant intended to include a proposal to unbundle the cost of residential parking from the cost to lease or purchase one of the residential units in the Building;
- **Townhome Roof Access** – The Prehearing Statement noted that the Applicant would reevaluate the proposed design and materials for the roof access stairs on the Townhomes in order to reduce their visibility; and

- **Housing Choices for Seniors** – The Prehearing Statement noted that the Project would provide new market-rate and affordable housing units for seniors looking to simplify their housing needs and demands. The Prehearing Statement also noted that the Project was designed to be accessible and “senior friendly.”

94. The Prehearing Statement also noted that the Commission had not raised any questions at the Setdown meeting and provided a list of the Applicant’s proposed witnesses and outlines of their testimony.

The CTR

95. The analysis provided in the Applicant’s CTR included an estimate of the number of vehicle and truck trips that were expected to be generated by the Project and applied these trips to the surrounding transportation network (together with background trips and pipeline projects) to determine whether the Project will have unacceptable traffic impacts. The CTR also analyzed pedestrian circulation and truck maneuverability along streets and in the alleys. Overall, the results of the CTR concluded that the Project will not have unacceptable impacts on the transportation network. (Findings of Fact [“FF”] 69-74.)

96. With respect to traffic volume, while the Project is projected to generate more trips than what are currently generated by the existing uses on the Valor Lot, the CTR found that all of the intersections analyzed around the PUD Site will continue to operate at acceptable levels of service. Regarding truck circulation along streets and within the alleys, the CTR demonstrates through a series of truck maneuver diagrams that vehicles and trucks will be able to successfully access and navigate the alley and loading facilities.

97. As set forth in the CTR, the Project will provide more than enough parking to accommodate parking demand and will exceed the minimum parking required under the Zoning Regulations. In direct response to requests from the community and ANCs, the Applicant will provide one parking space per dwelling unit in the Building by allocating a greater percentage of the 236 parking spaces required under the Allocation Agreement to the Building, based upon the final number of dwelling units. Furthermore, the Applicant will impose RPP restrictions on the Building residents with the penalty of lease termination.

98. To mitigate the potential impacts caused by the Project being “over-parked,” the CTR recommends certain pedestrian improvements to specified intersections around the PUD Site and the implementation of several TDM strategies. (FF 72.) Finally, the CTR recommends implementation of an LMP to offset any potential impacts that loading activities might have on surrounding intersections and the neighborhood. (FF 73.) The Applicant has committed to implement the mitigation measures identified in the CTR, and any others requested in the report submitted by DDOT.

The Response to OP and DDOT

99. In response to the OP Hearing Report, the Applicant made the following commitments:

- The Applicant would provide two grocery signs on the north building façade;
- The corner “retail/amenity” space would be devoted to retail uses only;

- The Applicant would install conduit to the roof so that it is “solar ready”;
- The Applicant would provide Level 2 electric vehicle chargers and install infrastructure to allow additional charging stations to be readily added in the future;
- The Applicant would work with ANC 3E to consider providing “playable” elements in the common areas and public spaces as part of its \$15,000 contribution to improve these spaces;
- The Applicant submitted updated PUD flexibility language; (Ex. 151A.)
- The Applicant provided details on the long- and short-term bicycle parking spaces including their location, rack type and rack spacing. (Ex. 151C, Sheets A02, A09, L1.1.) The Applicant also agreed to provide electrical outlets within the long-term bicycle storage rooms;
- The Applicant provided dimensioned sections and renderings showing the walk-out unit at the corner of 48th and Yuma Streets and the outdoor patios along 48th Street; (Ex. 151C, Sheet A15.1.)
- The Applicant stated that it had not yet determined the tenure type of the Townhomes. The Applicant also reconfirmed its IZ commitment that 11% of the Project’s residential GFA, including the GFA of the Townhomes, would be dedicated to IZ units at 50% and 60% of the MFI, which is greater than the amount of IZ square footage required by the Zoning Regulations. However, the Applicant increased this commitment to 12% at the public hearing; and
- The Applicant submitted an updated list of public benefits and amenities. (Ex. 151B.)

100. The Applicant agreed to the conditions of the DDOT Report as follows:
- The Applicant agreed to construct the pedestrian improvements requested at the intersections identified in the DDOT report;
 - The Applicant agreed to implement the TDM plan as proposed in the CTR, and as set forth in Condition No. C.2 of this Order; and
 - The Applicant agreed to implement the LMP as proposed in the CTR, and as set forth in Condition No. D.1 of this Order.
101. The Applicant also agreed to all of the additional comments listed in the DDOT Report and responded to all of the items identified by DDOT as considerations to be reviewed during public space permitting.

Applicant’s Public Hearing Testimony

First Public Hearing Session – October 7, 2019

102. At that hearing, the Applicant proffered the following expert witnesses: Sarah Alexander of Torti Gallas Urban, expert in architecture; Erwin Andres of Gorove/Slade Associates, expert in transportation planning and engineering; and Shane Dettman of Holland & Knight LLP, expert in zoning and land use planning. The Commission accepted these witnesses as experts in their respective fields.
103. Mr. Dettman testified as to the Project’s consistency with the CP. Mr. Dettman noted that the MU-4 zone (previously the C-2-A) was expressly stated as not being inconsistent with

the low-density commercial designation on the FLUM. Mr. Dettman also cited to the Commission’s decision in the Cathedral Commons case (as upheld by *Wisconsin-Newark Neighborhood Coalition v. District of Columbia Zoning Com’n*, 33 A.3d 382 (2011)) which determined that the MU-4/C-2-A zone was not inconsistent with the low-density commercial designation and that development that is consistent with the development standards of the MU-4 is not inconsistent with the CP. (October 7, 2019 Public Hearing Transcript [“Oct. 7 Tr.”] at 25.)

104. Mr. Dettman also rebutted the Party Opponents reliance on the *Durant*⁴ line of cases by noting that *Durant* concerned a very different application than the current one, including *Durant*’s inclusion of a PUD related map amendment and the *Durant* PUD’s location in low-density zones with more restrictive development requirements. Mr. Dettman noted that the Project had been designed to comply with the development standards of the MU-4 zone. Further, unlike the zoning map amendments proposed in *Durant*, the MU-4 zone is specifically identified by the CP as being consistent with the FLUM designation of Low-Density Commercial. (Oct. 7 Tr. at 25-27.)
105. Mr. Dettman addressed the Project’s density with a diagram showing the Commission how, within the PUD Site, approximately 50,115 square feet of unused GFA from the historic MAPS Site will be redistributed to the Valor Lot for purposes of providing a new full-service grocery store and additional housing that would not otherwise be possible under matter-of-right development. Mr. Dettman noted that this aggregation of density from the MAPS Site to the Valor Lot is expressly permitted under Subtitle X § 303.2, which allows the Commission to consider density across the entirety of a PUD site, with flexibility to distribute density across different lots and buildings within an overall PUD site. Mr. Dettman cited to the Court of Appeals’ upholding of the Commission’s ability to aggregate density in a PUD in *Dupont Circle Citizens Ass’n v. District of Columbia Zoning Commission*, 335 A.2d 550, 556-57 (D.C. 1976), in which the Court stated that:

[t]he very nature of the Planned Unit Development concept as promulgated by the Zoning Commission ... suggests that a transfer of development rights from one building to another must have been contemplated as one that was both feasible and appropriate in the development of such a plan...It is not surprising then that the Commission provided ... that “[t]he floor area of all buildings shall not exceed the aggregate of the floor area ratios as permitted in the several districts included within the project area...” On the other hand, there is no provision in the PUD regulations that the floor area ratio of each building in the PUD must be within the maximum permitted in the district. The requirement to be met is that the FAR of all buildings does not exceed the “aggregate” permitted within the project area.

⁴ Party Opponents cited to both *Durant v. District of Columbia Zoning Com’n*, 99 A.3d 253 (D.C. 2014) (“Durant II”) and *Durant v. District of Columbia Zoning Com’n*, 139 A.3d 880 (D.C. 2016) (“Durant III”).

106. Mr. Dettman rebutted the Party Opponents' contention that the grade of 48th Street was the result of an artificial embankment, by testifying that the curb grade of 48th Street, N.W. has an elevation of 262 feet, which is unchanged since the street's construction. Mr. Dettman further testified that the construction of the existing SuperFresh Building on the Valor Lot did not result in the raising of 48th Street, N.W., but rather cut into the existing slope running west from 48th Street, N.W. Therefore, the Applicant had used the correct building height measuring point to calculate the height of the Building. (Oct. 7 Tr. at 34-36.)
107. Mr. Dettman responded to the Commission's questions regarding the balancing of the CP's competing and overlapping policies by testifying that the Project is consistent with the Low-Density Commercial FLUM description due in part to the fact that the Project does not utilize any PUD height or density incentives, but rather it is well below the matter-of-right height and density limits of the MU-4 zone. The Applicant noted that while the density of a PUD is measured across the entire PUD site, at 2.95 FAR, even the overall density on the Valor Lot is within matter-of-right permissions. Further, while as a matter of right, up to 1.5 FAR of nonresidential use is permitted in the MU-4 zone, the nonresidential density on the Valor Lot is only 0.26 FAR. (Oct. 7 Tr. at 46-50, 51-52.)
108. The Applicant also explained that even though the height and density of the Project are below the matter-of-right permissions, it still employed a number of design elements including, massing reductions, upper-level setbacks, large courtyards, high-quality materials, and landscaping, in order to advance the various CP policies relating to infill development, preservation of single-family neighborhoods, building transitions, and neighborhood conservation.
109. The Applicant also testified that to the extent the Project was inconsistent with one or more of these specific policies, the inconsistency was far outweighed by other competing policies and considerations in the CP that relate to housing, affordable housing, environmental sustainability, and uses of special value to the neighborhood.

Continued Public Hearing of October 10, 2019

110. At the continued hearing on October 10, 2019, the Applicant provided rebuttal testimony to the testimony given by the various parties and was subject to cross-examination by other parties.
111. In response to the Party Opponents' arguments concerning the building height measuring point ("BHMP"), the Applicant presented testimony from Brad Glatfelter of Bowman Consulting. Mr. Glatfelter testified that in order to determine the true curb elevation, he had reviewed historical maps starting in 1900 showing the site elevation of approximately 265 feet. Mr. Glatfelter stated that this elevation was maintained in maps from 1945 and 2015 (the existing conditions survey). To address the Party Opponents' assertion that the road had been artificially elevated by an embankment, Mr. Glatfelter also reviewed aerial photos of the Valor Lot during the construction of existing building during the 1960s and 70s. Based on these photos, Mr. Glatfelter confirmed that the site had been excavated out and the street level of 48th Street maintained with sheeting and shoring. Finally, Mr.

Glatfelter noted that the measurements had been taken of the existing street trees along 48th Street, N.W., which showed that they were approximately 75 years old, and as such indicated that the curb grade had not changed in the past 75 years. (Public Hearing of October 10, 2019 Transcript [“Oct. 10 Tr.”] at 164-166.)

112. In response to the Party Opponents’ arguments concerning traffic volume, the Applicant’s traffic expert, Mr. Andres, testified that the traffic projections needed to be understood in the context of the uses that had previously been existing on the Valor Lot. Mr. Andres testified that when compared to the previously existing 44,000 square-foot combined grocery and retail use, the Project results in less traffic during the evening and weekend peak hours. As Mr. Andres explained, this is because “retail per square-foot generates more traffic than residential.” Mr. Andres also pointed out that due to the lack of a grocery store in the immediate area, many of the existing vehicle trips could be reduced by providing a grocery store within walking and biking distance. (Oct. 10 Tr. at 170-172.)

Post-Hearing Statement

113. The Post-Hearing Statement responded to the requests made by the Commission at the conclusion of the second public hearing by providing the following:
- A response on the affordable housing issues and options that were raised during the public hearing, including confirmation of the Applicant’s revised IZ proffer of 12%; (Ex. 241 at 1.)
 - Contested issues of fact;
 - Contested conclusions of law;
 - An evaluation of the requested special exception relief; and
 - An evaluation of the Project against the PUD standards of Subtitle X, Chapter 3.

Response to the Party Opponents

114. In the Response to the Party Opponents, the Applicant rebutted the assertion that the Allocation Agreement was intended to benefit nearby property owners because the Allocation Agreement is a private agreement to which the nearby property owners are not parties or beneficiaries. (Ex. 246.) Rather, the Applicant stated that the Allocation Agreement simply established an allocation of development rights as permitted by the Zoning Regulations between the tax lots within Record Lot 9, and the only beneficiaries to the Allocation Agreement are the parties – the owners of the Valor and AU Building Lots.
115. The Applicant asserted that the Party Opponents mischaracterized the opinion of the Court in *AU Park Citizens Assoc. v. Burka*, a case in which the Petitioner was challenging the D.C. Council’s approval of the closing of a public alley that existed in the area that is now at the rear of the AU Building on the AU Building Lot. The Applicant noted that the line from the opinion, “... *benefiting the neighboring residents*” was taken out of context and erroneously attributed to the reduction of density on the Valor Lot. As noted by the Applicant, this line was actually in reference to an easement for vehicular and pedestrian access associated with the closing of the public alley. (Ex. 241 at 5.) In support of its position, the Applicant also submitted copies of the opinion and the underlying easement to the record. (Ex. 241B, 241C.)

116. The Response to the Party Opponents also addressed the following issues:
- Affordable Housing Proffer – The Applicant noted that the IZ proffer is particularly important given the current lack of affordable housing units in the Rock Creek West area and noted that the Project would increase the pipeline of affordable units by approximately 36%. In support of this position, the Applicant provided a chart comparing the Project to other recent PUD approvals and noting that the Project was requesting minimal relief while still providing a greater percentage of affordable units. Finally, the Applicant defended the Application’s IZ calculations and noted that neither OP nor the Department of Housing and Community Development (“DHCD”) had raised any concerns with regard to the calculations; (Ex. 246 at 3.)
 - BHMP – the Applicant reiterated its testimony from the public hearings that the BHMP was properly calculated and that 48th Street does not rest upon an artificially elevated embankment based on analysis of historic data and street elevations; and
 - Historic Preservation – The Applicant rebutted the Party Opponents’ challenges by asserting that the PUD process authorizes the Applicant to allocate density within the PUD Site and that distributing 50,115 square feet of unused GFA from the MAPS Site to the Valor Lot would result in a tangible quantifiable historic preservation benefit to the MAPS Site by reducing the available unused GFA on the MAPS Site and so reducing the economic feasibility of further developing the MAPS Site.

Applicant’s Motion to Strike

117. The Applicant’s Motion to Strike requested that the Commission strike the Party Opponents’ submission of a new shadow study which was beyond the scope of the post-hearing information requested by the Commission. (Ex. 244 at 22-27.) The Applicant’s Motion to Strike requested that the Commission strike the filing from the record or, in the alternative, reopen the record to allow the Applicant an opportunity to respond to the new information.

III. RESPONSES TO THE APPLICATION

OP REPORTS AND TESTIMONY

118. In addition to its testimony at the public hearings, OP Submitted a total of two reports to the case record as follows:
- A setdown report, dated May 31, 2019, recommending that the Commission setdown the Application for a public hearing (the “OP Setdown Report”); and (Ex. 11.)
 - A hearing report dated September 27, 2019 recommending approval of the Application with conditions (the “OP Hearing Report”). (Ex. 53.)

OP Setdown Report

119. The OP Setdown Report included comments on the Application and a description of items where resolution or additional information was required prior to the public hearing. Specifically:

- An explanation of how the Project would provide housing choices for seniors;
- A determination as to whether the cost of residential parking could be unbundled from the cost of leasing or purchasing a residential unit; and
- A suggestion that the Applicant refine the design of the proposed access stairs for the Townhome roof decks.

The Applicant responded in its Prehearing Statement. (FF 93.)

120. The OP Setdown Report concluded that the Project would not be inconsistent with the CP map designations and would further these designations as follows:
- The Project was not inconsistent with the GPM designation as a Neighborhood Commercial Center because it is a mixed-use development that would also provide a full-service grocery store and additional retail space that “would make it easier for existing and new residents and workers to meet their day-to-day needs”; and
 - The Project was also not inconsistent with the FLUM’s Low Density Commercial Designation because the Project would provide a mixed-use building with ground-floor commercial space that OP determined was appropriate for the designation. The OP Setdown Report also noted that the overall PUD Site provides a range of densities and building heights and that the Project was compatible with this range.
121. The OP Setdown Report also concluded that the Project was not inconsistent with the CP and furthered various CP Elements including the Land Use, Transportation, Housing, Environmental Protection, Economic Development, Urban Design, Historic Preservation, and Rock Creek West Area Elements.
122. The OP Setdown Report noted that OP had referred the Application to DOEE, DHCD, DDOT, Department of Parks and Recreation (“DPR”), DME, Department of Public Works (“DPW”), Department of Aging (“DOA”) [now the Department of Aging and Community Living (“DACL”)], Department of Employment Services (“DOES”), FEMS, Metropolitan Police Department (“MPD”), DC Water, and Washington Metropolitan Area Transit Authority (“WMATA”) for further review. (Ex. 11 at 18.)

OP Hearing Report

123. The OP Hearing Report contained a total of 11 conditions and comments that it requested the Applicant address at or prior to the Public Hearing, including:
- Provide a revised sign plan that reduces the number of grocery signs on the north building façade to no more than two signs;
 - Determine whether the 1,109 square-foot space at the southwest corner of Building 1 will be used for retail or amenity;
 - Incorporate solar photovoltaics (PV) and design the remaining roof space to be as solar-ready as possible for potential expansion in the future;
 - Ensure the electric vehicle supply equipment is at least a Level 2 charger and consider the installation of additional make-ready infrastructure to install future charging equipment at significantly lower expense and disruption;

- Provide playable elements in the common areas and public space, especially geared at younger kids and toddlers;
 - Address any conditions recommended by DDOT;
 - Continue to work with OP and the Office of the Attorney General to refine the requested common flexibility language;
 - Provide a detail for the long-term bike parking, including access, racks, and rack spacing;
 - Provide a detailed drawing, including a dimensioned section, of the walk-out and patios on the east facade;
 - Confirm that the townhouses would be rental and consider locating one Inclusionary Zoning (IZ) unit in a townhouse; and
 - Submit a final list of proffered project benefits and amenities.
124. The OP Hearing Report also noted that none of the District Agencies to which the Application had been referred had objected to the Application and that all comments received recommended approval of the Application or expressly stated no objection. The comments and reports received by these entities were included in the OP Hearing Report. (Ex. 53 at 22-25.)
125. The Applicant included its responses in its Response to OP and DDOT. (Ex. 151; FF 99-101.)

OP Public Hearing Testimony

126. At the October 7, 2019 public hearing, OP testified in support of the Application noting that the Application was not requesting a map amendment or any PUD related flexibility. OP also noted that it concluded that the site was appropriate for the proposed use and scale of the Project, that the Project was offering a commendable number of public benefits, particularly with regards to housing, and that it would overall constitute a better than matter-of-right development. (Oct. 7 Tr. at 97-99.)
127. In terms of the Applicant’s housing proffer, OP testified that “Rock Creek West has the smallest percentage of income-restricted affordable housing units of the District’s Comprehensive Plan planning areas.” OP also noted that the opportunities for multi-family developments, as well as opportunities to utilize IZ and bonus densities, were very limited in this area of the District. (Oct. 7 Tr. at 99-100.)
128. Finally, OP noted that all questions and issues raised in the OP Hearing and Setdown Reports had been addressed. (Oct. 7 Tr. at 101-103.)

DDOT REPORT AND TESTIMONY

129. On September 27, 2019, DDOT filed a hearing report stating no objection to the application subject to conditions. (Ex. 52.) The conditions listed in DDOT’s report were as follows:
- Fund and construct pedestrian network improvements in the immediate vicinity of the PUD Site to encourage walking and offset the impacts of being over-parked.

Specifically, upgrade substandard curb ramps, stripe missing crosswalks, and install curb extensions, subject to DDOT approval, at the following intersections:

- 49th Street and Yuma Street, N.W.;
 - 48th Street and Yuma Street, N.W.;
 - 48th Street and Windom Place, N.W.; and
 - 48th Street and Warren Street, N.W.;
- Implement the TDM Plan as proposed in the Applicant’s August 23, 2019, CTR for the life of the Project, unless otherwise noted; and
 - Implement the LMP proposed in the Applicant’s August 23, 2019, CTR for the life of the Project, unless otherwise noted.
130. The DDOT report also commented that the Applicant should do the following:
- Provide a public access easement on the seven-foot private space setback along the public alley; and
 - Ensure that all trucks serving [MAPS] are directed not to load or unload on Yuma Street, and instead utilize the alley or internal private drive aisles.
131. The DDOT report also noted seven items for the Applicant to address during the public space permitting process including:
- The existing curb cuts on Yuma Street and 48th Street, N.W. should be closed and replaced with green space and street trees;
 - An occupancy permit will be required for any portion of the outdoor café in public space near the Yuma Street, N.W. grocery store entrance;
 - Building projections on Yuma Street, N.W. should not project more than four feet into public space;
 - The concrete strips running north-south in the middle of the green space near the grocery store entrance on Yuma Street, N.W. should be removed;
 - The proposed trash enclosures along the public alley will require a public space occupancy permit;
 - All dumpsters currently located in public space along Yuma Street west of the alley and east of Exxon, which is within the DDOT right-of-way, should be moved to the new enclosures in the public alley; and
 - Several sections of pavement in public space along Yuma Street west of the alley and east of Exxon, within the PUD area. These areas should be restored to green space with leadwalks connecting from the sidewalk to building entrances.
132. The Applicant responded to DDOT’s comments in its Response to OP and DDOT. (Ex. 151; FF 99-101.)

DDOT Public Hearing Testimony

133. At the public hearing of October 7, 2019, DDOT testified in support of the Application, reiterating that based on its analysis of the CTR that “there would not be any impacts to the roadway operations necessitating the need for any mitigation at intersections in the

vicinity of the site.” DDOT also indicated that all issues and proposed conditions of the DDOT report had been addressed and agreed to by the Applicant. (Oct. 7 Tr. at 105-106.)

134. In response to questions from the Commission, DDOT confirmed that the only mitigations requested by DDOT were the TDM Plan, the LMP, and the intersection improvements. All other transportation-related improvements were being proffered by the Applicant as amenities or benefits. (Oct. 7 Tr. at 111.)
135. In response to questions from the Party Opponents, DDOT explained that its design and engineering manuals did not require sidewalks in alleys. DDOT further noted that the alley walkways and sidewalks proposed by the Project are all on private property and therefore outside of DDOT’s jurisdiction. (Oct. 7 Tr. at 115.) DDOT also confirmed that it agreed with the findings of the Applicant’s CTR that the residential use would generate less traffic during peak hours than the grocery and retail uses it was replacing. (Oct. 7 Tr. at 118.)

HPO REPORT

136. On October 7, 2019, the Historic Preservation Office (“HPO”) filed a report on the Application (“HPO Report”). (Ex. 187.) The HPO Report stated that although the Overall PUD Site includes the MAPS, a District of Columbia historic landmark, the Project is not subject to review by the Historic Preservation Review Board (“HPRB”) because no construction is proposed on the MAPS site (Lots 802 and 803), except for low trash enclosures along the north-south alley. The HPO Report stated specifically that it did not have review authority over the Valor Lot.
137. Nevertheless, the HPO Report evaluated the potential impacts of the Project on the historic MAPS, noting that “[t]he proposed PUD would have no direct physical impact on the historic landmark” but concluded that “the setting of the landmark would be positively improved by the proposed upgrading of the rear alley and reconfiguration of the street wall line along Yuma Street to the east.”
138. The report also found that the scale and design of Project are compatible with the landmark and overall will have favorable impacts on the MAP Site. Specifically, the HPO Report states that:

[t]he rear wall of the SuperFresh [, the existing vacant building proposed to be replaced by the Project,] and its rooftop mechanical equipment is un-designed and unattractive, thereby detracting from the landmark, while the rear wall of the proposed structure is a well-designed primary façade in a compatible architectural style using materials, coloration, fenestration and a window-to-wall ratio that harmonize with the landmark. Its horizontal massing with forward-projecting end pavilions echoes the arm-like embrace of the horizontal shopping center and its forecourt, responding in a similar way to the dignified character of Massachusetts Avenue. Although the proposed building is taller, it does not visually overwhelm the landmark... Overall, the [proposed building]

would improve the architectural setting of the landmark through compatible design ensured through the PUD process.

ANC REPORTS

ANC 3D

139. On September 6, 2019, ANC 3D filed a resolution stating that at its regularly scheduled and publicly advertised meeting on September 4, 2019, at which a quorum of commissioners was present, it voted to support the Application and authorized Troy Kravitz, SMD 3D02, to represent the ANC before the Commission (the “ANC 3D Report”). (Ex. 26.)
140. The ANC 3D Report stated that it was most concerned with the impacts of the Project on the District’s education and transportation systems:
- **Education** - The ANC Report concluded that despite many local schools being at or near capacity, the ANC “did not expect the project to have an appreciable impact upon the utilization of public school facilities.” In fact, the ANC believed that creating the opportunity for more members of the community to utilize the high performing local public schools constituted a project benefit; and
 - **Transportation** – The ANC Report credited the findings of the CTR which had concluded that the traffic impacts of the Project would be “about the same as if the existing buildings were simply reoccupied.”
141. The ANC 3D Report also noted that it considered the proposed grocery store as a “highly-valued” public benefit, which would be “right-sized” for the surrounding neighborhood and allow residents to fulfill their shopping needs by foot or bicycle instead of by automobile.
142. The ANC 3D Report also stressed its support for the creation of new housing, and in particular the Project’s provision of 10% (later revised to 20%) more IZ units than required. The ANC 3D Report noted that it believed that the Project was managing to advance the Mayor’s housing goals with a building that was compatible with the height and scale of the surrounding community.
143. The ANC 3D Report also noted the numerous transportation improvements being provided by the Project, particularly the HAWK signal across Massachusetts Avenue and the improvements to the Alley network, which the ANC believed would greatly improve pedestrian safety over the existing conditions.
144. The ANC 3D Report ultimately concluded that it believed the Project to be compatible with the surrounding neighborhood and better than a matter-of-right development. The ANC did make several requests of the Commission to be included as conditions to any approval including:
- Memorializing an agreement by the Applicant to include at least 13,000 square feet for exclusive use by a full-service grocery store for at least 10 years;
 - Memorializing the Applicant’s agreement to provide at least 144 parking spaces of the 236-easement held by AU for use by tenants and patrons of the Property;

- Noting that the ANC was supportive of limiting the Applicant’s requested design flexibility to increase the number of units in the Building;
- Encouraging the Applicant to utilize high-quality materials and architectural stylings;
- Encouraging the Applicant to expand the sidewalks within the alley system from three to four feet; and
- Allowing the Applicant, at its discretion, to substitute approved residential GFA for additional commercial GFA on a 1:1 basis up until the new building contains leasable square footage of 44,000 square feet.

145. On October 17, 2019, ANC 3D submitted its post-hearing submission which defended the ANC’s ability to analyze the Project and explained the criteria required for the Commission to grant the ANC Report “great weight.” ANC 3D also submitted a revised version of the ANC 3D Report with corrected citations to the Zoning Regulations of 2016. (Ex. 231.)

ANC 3E

146. On September 27, 2019, ANC 3E filed a resolution stating that at its properly noticed meeting on September 25, 2019,⁵ at which a quorum of commissioners was present, ANC 3E voted in support the Application and authorized Commissioners Amy Hall and Jonathan McHugh to represent the ANC before the Commission (the “ANC 3E Report”). (Ex. 48.) ANC 3E also filed a Memorandum of Understanding (“MOU”) and a draft parking management plan. (Ex. 49-50.)

147. The ANC 3E Report noted the numerous design changes that the Applicants had made since the Project had initially been proposed and also emphasized that the Application was not requesting any additional height or density and would be within the development standards for the zone district. The ANC 3E Report also noted that the Applicant was providing more parking than required under the Zoning Regulations and had worked with the ANC to propose a “wide range of transit options to serve the site.” Further, the ANC 3E Report noted that the Project was providing numerous other improvements to the surrounding transportation network and alley system that the ANC believed would greatly benefit pedestrian safety.

148. The ANC 3E Report did acknowledge that some members of the community had raised concerns about the scale and impact of the Project but that the ANC believed that the Applicant had sufficiently addressed these issues through its design changes and through its agreement to the MOU.

149. Both ANCs provided written and oral testimony in support of the Application. (Ex. 26, 48-50, 154, 200, 201, 218, 229, 231.)

PARTY SUPPORTERS

150. SVNA made a total of three submissions to the record:

⁵ The ANC’s resolution incorrectly stated that the meeting occurred on October 25, 2019, but the meeting was actually held on September 25, 2019.

- On September 20, 2019, SVNA filed its request for party status in support. The request noted SVNA’s strong support for the Application and noted that the Project would provide a number of public benefits to the surrounding community; (Ex. 34.)
 - On October 24, 2019, SVNA filed its post-hearing submission; and (Ex. 240.)
 - On November 11, 2019, SVNA submitted a letter in support of the Applicant’s motion to strike. (Ex. 251.)
151. W3V made a total of five submissions to the record:
- On September 20, 2019, W3V filed its request for party status in support; (Ex. 31.)
 - On October 6, 2019, W3V filed a letter in support of the Application noting the need for more housing units in Ward 3, the benefit of a full-service grocery store and commending the Applicant for its efforts to address the concerns of the community; (Ex. 157.)
 - On October 22, 2019, W3V submitted its post-hearing submission; (Ex. 235.)
 - On October 31, 2019, W3V submitted a response to the Party Opponents’ post-hearing submissions; and (Ex. 243.)
 - On November 11, 2019, W3V submitted a letter in support of the Applicant’s motion to strike. (Ex. 252.)
152. At the public hearing of October 7, 2019, both SVNA and W3V testified in support of the Application, reiterating the issues raised in their written submissions.

PARTY OPPONENTS

CRD

153. On October 3, 2019, CRD submitted:
- A statement in opposition to the Application (“CRD’s Statement”); and (Ex. 118.)
 - A response to the Applicant’s CTR, which included its own analysis of the Project’s transportation impacts (the “CRD Traffic Study”). (Ex. 124.)
154. CRD’s Statement raised several issues concerning the Project, including:
- The Project’s consistency with the CP, including the FLUM;
 - The relationship of the Project to the D.C. Court of Appeals (“Court”) decision in the *Durant* case;
 - The adequacy of public benefits and project amenities proffered by the Applicant;
 - The potential impacts of the Project on the surrounding area, particularly with as to traffic and congestion, pedestrian safety, and deprivation of sunlight;
 - The manner in which the height of the Building is measured relative to the Zoning Regulations and the 1910 Height of Building Act (the “Height Act”);
 - The impacts of the Project on the historic MAPS;
 - The calculation of the amount of affordable housing required under IZ; and
 - The Applicant’s failure to submit its agreements with other property owners within the PUD Site to the Commission.

NLC

155. On October 4, 2019, NLC filed comments in opposition to the Application. The issues raised in NLC's comments relate primarily to:
- The consistency of the Project, including the residential use, with the CP, including the FLUM;
 - The adequacy of public benefits and project amenities proffered by the Applicant;
 - The scale and massing of the Project relative to the surrounding neighborhood;
 - The impact of the Project on existing businesses on the Valor Lot;
 - The impacts of the Project on traffic; and
 - Vehicular circulation and pedestrian safety in the alleys.

SVWHCA

156. On October 7, 2019, SVWHCA submitted a letter in opposition to the Application. The issues raised by SVWHCA in its letter relate primarily to:
- The scale of the Project relative to the surrounding neighborhood;
 - The adequacy of public benefits and project amenities proffered by the Applicant;
 - The impacts of the Project on public safety, particularly pedestrian safety in the alleys; and
 - The impacts of the Project on the historic MAPS and the adequacy of the Applicant's proffered historic preservation benefit.

Party Opponents Contested Issues

Noncompliance of the Project

Measurement of Building Height

157. CRD asserted that the Applicant's BHMP for the Building violates Subtitle B § 307.7, which dictates how a BHMP must be established when the curb grade adjacent to a site has been artificially changed by, among other things, an embankment. Pursuant to Subtitle B § 307.5, where a building fronts on more than one street, any front may be used to measure the height of the building. In this case, the Building fronts on both 48th and Yuma Streets, and, as permitted under the Zoning Regulations, the Applicant measured the height of the Building from the elevation of the curb opposite the middle of the front of the Building along 48th Street. The Party Opponents asserted that the Applicant is not permitted to measure the height of the Building from the elevation of the curb along 48th Street, N.W. because the grade of the curb along 48th Street rests upon an artificially elevated roadway embankment. The Party Opponents supported their claim through a series of existing conditions photographs taken along 48th Street.

Calculation of Project Density

158. The Party Opponents asserted that the Project contains almost 50,000 square feet of GFA more than what is available on the Valor Lot as a matter of right. Specifically, CRD included a table in their Statement in Opposition showing that while 185,514 GFA is available for development on the Valor Lot as a matter of right, the Applicant is proposing 234,629 GFA on the Valor Lot. (Ex. 118.)

Violation of the Allocation Agreement

159. The Party Opponents claimed that the Project violates the terms of the Allocation Agreement.
160. CRD responded to the Applicant’s testimony at the public hearing by asserting that “[b]y allowing greater density on the AU Building Lot and limiting density on the Valor Lot, [the Allocation Agreement] effectively pushed development to the Massachusetts Avenue side of Record Lot 9, thereby benefitting the nearby property owners by reducing density on the portions of the SuperFresh site facing the neighborhood. This is consistent with sensible land use principles, as encouraged by the Comprehensive Plan.” CRD further asserted that in *AU Park Citizens Assoc. v. Burka*, “[t]he District of Columbia Court of Appeals...opined that the beneficiaries of the Easement were intended to be “nearby property owners.”

Durant

161. The Party Opponents cited to the *Durant* case in support of their argument that the Project is inconsistent with the CP. *Durant* involved a PUD-related Zoning Map amendment to establish C-2-B zoning (under the Zoning Regulations of 1958), which appears under the Moderate- and Medium-Density Commercial FLUM descriptions, on a site that was largely designated as Low-Density Residential on the FLUM.
162. The Party Opponents asserted that under *Durant*, the Applicant cannot seek approval of a PUD to construct a six-story mixed-use building by employing “flawed efforts to diminish the visual impact of the proposed structure” because the Court in *Durant* rejected reliance on architectural features to determine whether a project met a FLUM description. CRD further stated that the Project, “unlike the PUD in *Durant*, is not set back from the property line at ground level. Rather, the portions that are directly adjacent to the detached, single family homes on 48th and Yuma Streets mostly sit on the property line.”

Neighborhood Context

163. The Party Opponents asserted that the Project is out of context with the surrounding residential and small-scale commercial neighborhood. CRD specifically stated that:

[t]he oversized, six-story Valor building will be a jarring intrusion into the neighborhood of much lower 2-story homes and will destroy the attractive, open vista ... on Massachusetts Avenue ... Plus, the building, which rises to 81.5 feet and will be built on the property line, will have a wall-like appearance along both Yuma and 48th Streets.

Potential Adverse Impacts

Traffic and Pedestrian Safety

164. The Party Opponents contended that the number of vehicle and truck trips that may be generated by the Project is unacceptable and that the Project will increase danger to pedestrians due to increased traffic volume and that trucks will not be able to fit in the alleys. The CRD Traffic Study alleged that contrary to the CTR’s findings of

approximately 400 additional vehicle trips per day, that the Project would generate an additional 3,003 to 3,437 daily vehicle trips. (Ex. 124.)

165. In support of this argument, the Party Opponents submitted charts showing the potential increase in vehicles and trucks entering and exiting the alleys during peak PM period. (Ex. 124.) According to the charts in the CRD Traffic Study, approximately 13 vehicles currently enter the north-south alley leading from Yuma Street to Massachusetts Avenue per hour during the peak PM period and approximately 14 vehicles enter the east-west alley off of 48th Street. The CRD Traffic study asserted that these numbers would increase to 215 and 126 vehicles per hour during the peaking PM period after construction of the Project.
166. The Party Opponents also asserted that the Project will jeopardize pedestrian safety in the alley system due to the significant increase in cars and trucks using the alleys and the increase in the number of pedestrian-vehicle conflict points. The Party Opponents stated that the increased traffic entering the PUD Site will create more conflict with pedestrians walking along Massachusetts Avenue, 48th Street, and Yuma Street. The Party Opponents also stated that the improvements proposed along the alleys to accommodate pedestrians are not adequate and fail to meet safety standards. The Party Opponents stated that “the PUD Site does not meet industry practices recommended by the American Association of State Highway and Transportation Officials (AASHTO), the Federal Highway Administration (FHWA), the National Association of City Transportation Officials (NACTO), and the Institute of Transportation Engineers.” (Ex. 185 at 3.)

Parking

167. The Party Opponents stated that the Commission should ascertain the availability of the parking spaces being provided by the Applicant since the availability of these spaces depends upon the reallocation of spaces that must be shared with AU. The Party Opponents also stated that the agreement reallocating these spaces should be made public.

Deprivation of Sunlight

168. The Party Opponents allege that the Project, specifically the Building, will deprive adjacent neighbors of sunlight.

Loss of Privacy and Views

169. The Party Opponents claimed that the Project will cause impacts to privacy and existing views.

Accuracy of Landscaping in Project Renderings

170. In its visual impact study (Ex. 217), the Party Opponents asserted that the Applicant’s “unrealistic depiction of the height, location and maturity of the vegetation surrounding the proposed site distorts the true mass and scale of the proposed building.” (Ex. 217.) The Party Opponents’ expert in visual impact studies, Mr. Curt Westergard, testified to the same at the public hearing.

Construction Damage

171. The Party Opponents stated that “[d]amage to neighboring homes is likely” during construction of the Project. No additional information was provided to substantiate that this will actually occur, and to the extent damage does occur, what will be the nature of the damage.

Proffered Benefits

Calculation of Affordable Housing

172. The Party Opponents asserted that the Applicant is circumventing the IZ regulations and using incorrect calculations to determine the amount of square footage to be set aside.

Historic Preservation as a Public Benefit and Other Historic Preservation Issues

173. In its response to the HPO Report, the Party Opponents made several statements regarding the historic preservation benefits of the Project and the applicability of D.C. preservation law. Specifically, the Party Opponents stated that the Project does not provide “tangible” or “quantifiable” preservation benefits as required under Subtitle X § 305.5(e), and that density determination and allotment on the MAPS Site have not been addressed.
174. The Party Opponents argued that the HPO Report failed to address whether the Project provides tangible and quantifiable preservation benefits, as required under the PUD regulations, but instead only discussed indirect effects that cannot be considered PUD benefits. To support its argument, the Party Opponents provided the following quote from the HPO Report – “[t]he Project would enhance the character of the Parking Shops by improving its architectural setting through compatible design and superior execution.”
175. The Party Opponents also made several other assertions regarding the use of aggregation of density from the MAPS Site and the resulting protection afforded to the historic landmark. First, the Party Opponents stated that “[d]ensity belongs to and is an attribute of the MAPS landmark. Removing such an attribute from a landmark is beyond the purview of the Zoning Commission.” The Party Opponents also stated that “[t]he open space of the [MAPS] parking lot is as much part of the allocation and use of density as it [*sic*] the building itself. Therefore, one must consider the parking lot space as already used density.” Finally, CRD stated that “MAPS’s density cannot be done simply by subtracting the amount of density (FAR) already used by the landmark building’s footprint on Lots 802 and 803 from what would generally be available under MU-4 zone for those lots.”
176. In its response to the Applicant’s post-hearing submission, the Party Opponents asserted that the sale of density from the MAPS Site may represent an alteration of the historic landmark, and that the unused density on the MAPS Site is considered a defining feature of the landmark.

Opposition Public Hearing Testimony

177. The Commission continued the public hearing on the Application on October 10, 2019. At that time, CRD proffered the following expert witnesses: Stephen Hansen of Preservation Matters, expert in historic preservation; and Curt Westergard of Digital Design + Imaging

Service, expert in visual impact studies. The Commission accepted these witnesses as experts in their respective fields.

Opposition Post-Hearing Submissions

178. On October 24, 2019, the SVWHCA-NLC and CRD submitted their post-hearing submissions responding to the Commission's requests at the end of the second public hearing: (Ex. 236-239.)
- SVWHCA-NLC's submission addressed questions posed by the Commission regarding other solutions for addressing the lack of affordable housing units in Ward 3. SVWHCA-NLC noted the high number of rent-controlled units in Ward 3, and also stated that it was supportive of multi-unit housing on the PUD Site it did not believe that the Applicant's proffer of 12% IZ units was an "adequate or sufficient" public benefit;
 - CRD's submission also addressed the issue of affordable housing, provided a list of the contested issues of fact and law, an evaluation of the Application against the PUD requirements of Subtitle X, Chapter 3, and a response to the Applicant's proffers. CRD concluded that the Applicant had not met its burden under the PUD standards; and
 - CRD's submission also objected to the Application's requested special exception relief. CRD predicated their argument on the basis that it fundamentally believed that the Project was exceeding the matter-of-right density permitted on the Valor lot, and that fundamentally the Project was "too big for the site." As a result, CRD opposed the requested rear yard relief on the basis that it was just further evidence that the Building was too large and rather than utilizing special exception relief, the Applicant should revise the building design by "pulling back the western side of the building." CRD did note that it did not have concerns with the Applicant's decision to revise the Townhouse penthouse design to provide hatches but that it wanted to see the final designs. (Ex. 238 at 12-13.)
179. On October 29, 2019, SVWHCA-NLC submitted a letter requesting additional time to respond to the Applicant's post-hearing submission because it received the Applicant's submission by U.S. Mail and not email or hand delivery, and the request was granted by the Commission. (Ex. 242.)
180. On October 31, 2019, CRD submitted a response to the Applicant's post-hearing submission. (Ex. 244.) CRD's response largely reiterated the arguments against the Application raised in its prehearing submissions, oral testimony, and post-hearing submissions. In addition, CRD also included a shadow study analyzing the Project's potential shadow impacts that had not previously been submitted to the record. (Ex. 244 at 23-29.)
181. On November 4, 2019, SVWHCA-NLC submitted a response to the Applicant's post-hearing submission. (Ex. 247.) SVWHCA-NLC reiterated its assertion that the Applicant's IZ proffer was inadequate and should be increased. The response also stated that additional information was needed on the proposed grocery store use, the potential for roof top solar, the landscaping plans, and traffic impacts and mitigations.

182. On November 7, 2019, CRD submitted a letter opposing the Applicant's motion to strike CRD's shadow study. (Ex. 250.) CRD contended that it was merely responding to issues that the Applicant had raised in its post-hearing submissions as permitted by terms for post hearing submissions laid out by the Commission at the end of the October 10, 2019 public hearing.

Other Non-Party Responses

183. Numerous letters were submitted to the record in support of the Application. At the hearing on October 10, 2019, the Coalition for Smarter Growth testified as an organization in support of the Application, as did several individuals. The supporters of the Application generally cited to the importance of increasing housing stock in the area, including affordable units, the need for a locally serving grocery store, and the care and consideration that went into the design of the Project.
184. Numerous letters were submitted to the record in opposition to the Application and several individuals testified in opposition at the public hearing on October 10, 2019, in addition to one individual who was undeclared. The individuals in opposition contended that the Project would be out of scale with the surrounding neighborhood, and that the increased traffic would have a detrimental impact on the surrounding road network and to pedestrian safety in the alleys. The opponents also argued that the public benefits proffered by the Applicant were not sufficient given the scale of the development.

CONCLUSIONS OF LAW

1. The Commission is authorized under the Zoning Act to approve a consolidated PUD consistent with the requirements set forth in Subtitle X §§ 302, 304, and 309 and Subtitle Z § 300.
2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
 - a. *Results in a project superior to what would result from the matter-of-right standards;*
 - b. *Offers a commendable number or quality of meaningful public benefits; and*
 - c. *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
3. Pursuant to Subtitle X § 303.13:

As part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards. Any such flexibility shall

be considered the type of development flexibility against which the Zoning Commission shall weigh the benefits of the PUD.

4. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must:

Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.

and must find that the proposed development:

- a. *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - b. *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
 - c. *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
5. Pursuant to Subtitle X § 304.4(a), the Commission shall find that the proposed development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. 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;*
 - d. *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).)*
6. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals recently discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (the “McMillan PUD”). (Z.C. Order No. 13-14(6).) In its decision affirming the Commission’s approval of the McMillan PUD, the Court stated the following:

The Comprehensive Plan is a “broad framework intended to guide the future land use planning decisions for the District.” *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ... “[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.” *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous “occasionally competing policies and goals,” and, “[e]xcept where specifically provided, the Plan is not binding.” *Id.* at 1167, 1168 (internal quotation marks omitted). Thus “the Commission may balance competing priorities” in determining whether a PUD is consistent with the Comprehensive Plan as a whole.” *D.C. Library Renaissance Project/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013). ... [I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission “must recognize these policies and explain why they are outweighed by other, competing considerations.” (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).)

7. “If there is substantial evidence to support the [Commission's] finding, then the mere existence of substantial evidence contrary to that finding does not allow this court to substitute its judgment for that of the [Commission].” *Watergate E. Comm. Against Hotel Conversion to Co-op Apartments v. District of Columbia Zoning Comm'n*, 953 A.2d 1036, 1043 (D.C.2008) quoting *Brown v. District of Columbia Bd. of Zoning Adjustment*, 486 A.2d 37, 52 (D.C.1984) (en banc) (quotation omitted). See also, *St. Mary’s v DC ZC*, 174 A.3d 260, 270 (2017) “[t]he mere fact that petitioners presented contrary evidence ... is immaterial[;] [a]s the trier of fact, the [Commission] may credit the evidence upon which it relies to the detriment of conflicting evidence, and need not explain why it favored the evidence on one side over that on the other.” quoting, *Fleischman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 562 (D.C. 2011).

COMPLIANCE WITH PUD ELIGIBILITY STANDARDS

8. The PUD Site meets the PUD eligibility requirements because its approximately 160,788 square feet of land area exceeds the 15,000-square-foot minimum land area requirement for a PUD in the MU-4 zone. (Subtitle X § 301.1; FF 7.)

Not Inconsistent with the Comprehensive Plan (Subtitle X 304.4(a))

9. Based on the filings and testimony at the public hearing, as well as the OP analyses submitted to the case record, the Commission concludes that the Project is not inconsistent with the CP when read as a whole and in fact furthers numerous CP elements and policies. In particular, the Commission concludes that the Project would further policies contained in the GPM, FLUM and the Land Use, Housing, Environmental Protection, Economic Development, Urban Design, Historic Preservation, Transportation, and Rock Creek West

Area Elements. In particular, the Commission concludes that the Project constitutes compatible infill development that will not adversely affect the surrounding neighborhood as discussed in these various CP elements. With a more detailed discussion to follow. (Ex. 11 at 4-11; Ex. 53 at p. 5-7.)

GPM

10. The Commission concludes that the Project is not inconsistent with its designation on the GPM as a Neighborhood Commercial Center because the Project will not only provide a full-service grocery store that will serve the everyday needs of building residents and immediately surrounding community but will also complement and support the existing commercial node in which it is located, including the MAPS and the additional commercial establishments across Massachusetts Avenue, N.W., by introducing additional residents to the area. (FF 48; CP § 223.16.)

FLUM

11. The Commission concludes that the Project is consistent with the FLUM's low-density commercial definition, which specifically includes the MU-4 zone, because the Project will provide a mix of residential and commercial uses in a low-density area of the District, outside of the central commercial core, but that still has access to main arterial roads, including Massachusetts Avenue, and transit centers including metro bus lines and the Tenleytown Metro Station. (FF 49.)
12. The Commission notes that the CP anticipates residential uses in all of its commercial use categories, provided that the primary use remains commercial. (CP § 225.7; Oct. 7 Tr. at 108-109.) The Commission finds that the predominant use of the PUD Site is intended to remain commercial, with residential uses limited to the Valor Lot. The Commission also finds that the residential uses will be compatible with both the existing commercial character of the PUD Site and the surrounding low-density residential areas.
13. The Commission also notes that the CP directs that the FLUM should not be used as a zoning map, and does not "establish detailed requirements for setbacks, height, use, parking, and other attributes" nor "specify allowable uses or dimensional standards." (CP § 226.1(a)). Instead, the FLUM is to be "interpreted broadly":

The densities within any given area on the Future Land Use Map reflect all contiguous properties on a block-there may be individual buildings that are higher or lower than these ranges within each area. Similarly, the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. It should be noted that the granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here. (CP § 226.1(c).)

14. As discussed further below, the Commission notes that the Project is within the matter-of-right limits for the MU-4 zone and has not requested any additional height or density as

part of the PUD application. The Commission also notes that while the definition of Low Density Commercial states that development should be “**generally** low in scale and character” and notes that such zones are “comprised **primarily** of one- to three-story commercial buildings” (emphasis added), the Commission concludes that this language constitutes general guidance and not an absolute limitation on the number of stories or allowed uses⁶. Based on this the Commission concludes that the Project’s scale and character is appropriate, and the Project is not inconsistent with the FLUM’s designation.

15. The Commission is not persuaded by the Party Opponents’ arguments based on the decision in *Durant*, and instead concludes that the Project is compliant with the *Durant* holding because:
- *Durant* involved the construction of a PUD in an area designated as a “Neighborhood Conservation Area” on the GPM, and predominantly “Low Density Residential” on the FLUM, both designations imposing more restrictions on potential development; (*Durant I*, 65 A.3d at 1163.)
 - The MU-4 zone of the PUD Site is specifically identified in the Low Density Commercial designation, whereas the new zones proposed in *Durant* were not included in the FLUM designation, and were clearly beyond the scope of what the designation contemplated;
 - Further, as has been noted, the Project will comply with the MU-4 development standards; and
 - Finally, the Commission notes that while the Project must demonstrate compatibility with the surrounding uses and development, it is not required to meet the more restrictive requirement present in *Durant* to “conserve” these areas through more restricted development.

In reaching this conclusion the Commission credits the testimony of the Applicant at the October 7, 2019 public hearing. (FF 105-106, 107, 109.)

Height

16. The Commission concludes that the height and number of stories for the Building were properly measured in accordance with Subtitle B of the Zoning Regulations. The Commission also concludes that, since the BHMP was properly determined, the 43-foot, 6-inch height of the Building is substantially below the maximum height of 50 feet permitted as a matter of right in the MU-4 zone. The Commission also noted that the height is only three feet, six inches taller than the maximum height of 40 feet that is permitted in the adjacent R-1-B zone.
17. In reaching this conclusion, the Commission credits the testimony of Mr. Dettman and Mr. Glatfelter, that 48th Street does not rest upon an artificial embankment. (FF 106, 111.) The

⁶ “Except where specifically provided, the Plan is not binding; it is only an interpretative tool [that] guide[s] but do [es] not direct the Commission’s action.” (*Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161,1168 (2013)(“Durant I”).)

Commission finds that the thorough analysis of this issue conducted by Mr. Glatfelter demonstrates that the curb grade elevation of 48th Street has remained at generally the same elevation for at least the last 75 years, and that the subsequent construction of the existing grocery store building and parking structure on the Valor Lot in the 1960s did not impact the curb grade elevation of 48th Street. In fact, based on Mr. Glatfelter's historical analysis, the Commission concludes that these construction activities specifically sought to maintain the existing curb grade through the use of a sheeting and shoring program. (FF 111; Ex. 229.) Thus, because the curb grade of 48th Street has not been artificially changed, the Commission concludes that the Applicant may properly measure the height of the Building from 48th Street.

18. The Commission also concludes that measuring the height of the Building from 48th Street, N.W. also complies with the Height Act. Based on the Commission's review of the plans submitted by the Applicant, the height of the Building is measured from the elevation of the curb along 48th Street, N.W. Compared to the elevation of the curb along Yuma Street, N.W. this is the elevation that will permit the greater height. (Ex. 28A6.) Per § 7 of the Height Act, "[i]f the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit the greater height." (D.C. Code § 6-601.07.)

Density

19. The Commission concludes that the Project properly aggregated the proposed FAR across the PUD Site pursuant to Subtitle X § 303.2, "the FAR of all buildings shall not exceed the aggregate of the FARs as permitted in the zone or zones included within the PUD boundary, as that may be increased by Subtitle X § 303.3." In reaching this conclusion, the Commission credits the calculations provided by the Applicant, as confirmed by OP, that the GFA of the existing AU Building and MAPS have been properly accounted for, and that the Applicant has properly redistributed remaining available density within the PUD Site from the MAPS Site to the Valor Lot.
20. The Commission notes that this kind of density aggregation is not only permitted by the regulations but has been upheld by the Court, which stated in its opinion on the McMillan PUD:

The FLUM explicitly contemplates two ways in which more intensive development than is otherwise reflected in the FLUM may be permissible: (1) a larger development that as a whole is consistent with the FLUM designation may contain individual buildings with greater height or density; and (2) the PUD process may permit greater height or density. 10-A DCMR § 226.1 (c) (2016). Here the Commission concluded that, when the entire site is taken into account, the PUD's overall density is consistent with that permitted in moderate-density commercial zones. We do not understand FOMP to dispute that conclusion. The Commission thus reasonably determined that the PUD as a whole was not inconsistent with the FLUM. (*Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027, 1034 (D.C. 2016).)

21. The Commission also concludes that the Project's density of 2.68 residential FAR is not inconsistent with the Low Density FLUM designation because the MU-4 zone is specifically identified by the CP as compatible with the Low Density Commercial designation and the Project's FAR is well below the maximum 3.6 FAR permitted for a PUD and a maximum 3.0 FAR for all other development in the MU-4 zone.
22. The Commission therefore not only concludes that the PUD regulations specifically permit aggregation of density across the PUD Site but that the overall Project density complies with the Zoning Regulations' density limits for the MU-4 zone while remaining under the maximum the matter-of-right height limits.
23. The Commission concludes that the Allocation Agreement is a private matter between two private entities and is not intended to benefit nearby property owners.⁷ The Commission therefore concludes that the Allocation Agreement does not involve the Commission or the District because the Allocation Agreement only distributed the maximum matter-of-right square footage of GFA permitted under the Zoning Regulations on Record Lot 9 between the owners of the AU Building and Valor Lots. The Application accounted for the square footage of the AU Building in calculating the Project's FAR. The Commission therefore concludes that the Allocation Agreement is not relevant to this decision. Nonetheless, the Commission sees no basis for CRD's assertion that the Project's redistribution of density from the MAPS Site to the Valor Lot violates the Allocation Agreement.

CP District Elements

24. The Commission concludes that the Project will advance the CP's Land Use Element through the thoughtful development of an underutilized site in a way that respects the character of the surrounding neighborhood through the use of sensitive design features, public gathering spaces, extensive landscaping, and the concentration of the retail spaces away from the residential areas. (FF 50; Ex. 11.)
25. The Commission concludes that the Project will significantly advance the CP's Housing element because the Project will result in the redevelopment of an underutilized site with 219 residential units, including 20% more GFA for affordable units than would be provided as a matter of right, as well as a significant number of family sized units (approximately 53% of the total units). (FF 51; Ex. 11.)
26. The Commission concludes that the Project will advance the CP's Environmental Protection Element through its use of green building methods in order to achieve

⁷ As stated by the Applicant, the April 17, 1973, D.C. Council alley closing resolution ordered closure of the alley "subject to a deed of easement for vehicular and pedestrian access." Further, the Court's opinion in *AU Park Citizens Assoc. v. Burka* clearly states that the easement was for vehicular and pedestrian purposes, not to limit density on the Valor Lot. While the Court's opinion references a benefit to nearby property owners, it does so in the context of the purpose of the easement being for vehicular and pedestrian access: "[t]he Council, nevertheless, did not find reason to solicit the zoning authorities' views in this case; nor did it attempt to impose restrictions beyond the filing of an easement over the alley primarily for the benefit of nearby property owners."

LEED-Gold certification and extensive green roofs and landscaping which will greatly improve the PUD Site's ability to handle stormwater runoff over the existing, largely impervious condition. (FF 52; Ex. 11.)

27. The Commission concludes that the Project will advance the CP's Economic Development Element by creating an additional shopping opportunity in a neighborhood commercial area through the development of a full-service grocery store. The Commission also concludes that the new residential units would also increase traffic at other neighboring businesses, which might in turn lead to additional job creation. (FF 53; Ex. 11.)
28. The Commission concludes that the Project will advance the Urban Design Element by proposing an appropriately scaled and sensitively designed building that relates to, and complements the scale, development pattern and established character of the adjacent residential and commercial uses and provides an appropriate transition between the lower-scale residential neighborhood to the north and east and the larger-scale AU Building and commercial uses to the south and west. In particular, the Commission notes that the Project's use of setbacks, high-quality materials, and extensive landscaping allow the Project to blend with the surrounding neighborhood. (FF 54.)
29. The Commission concludes that the Project will advance the Historic Preservation Element by not only providing a building that respects the design and character of the historic MAPS, but also through the distribution of non-residential density from the MAPS Lot to the Valor Lot. As discussed further below, the Commission concludes that this will serve to protect the MAPS by limiting the future development on the MAPS Lot. (FF 55.)
30. The Commission concludes that the Project will advance the CP's Transportation Element by providing a robust TDM Plan, making extensive improvements to the surrounding pedestrian network that will improve both the safety and appearance of the network, providing bicycle facilities and encouraging transportation alternatives. The Commission also concludes that the provision of the retail grocery component will encourage residents of the Project, as well as the surrounding community, to shop locally rather than traveling to other locations in the District. (FF 56, 72, 74, 88; Ex. 11.)
31. The Commission concludes that the Project will advance several policies of the CP's Rock Creek West Area Element by providing a compatible infill development that will not only provide local serving retail in the form of the proposed grocery store, but will also help support and sustain the existing commercial uses in the surrounding neighborhood commercial center. The Commission notes that the Rock Creek West Element specifically encourages the development of mixed-use projects over single use projects. The Commission finds that the Applicant has provided sufficient design elements and mitigations where needed to ensure that the Project is compatible with the surrounding neighborhood. (FF 57.)
32. Therefore, as set forth in Exhibits 2F and 241D, and particularly when viewed together with OP's conclusions demonstrating that the Project is not inconsistent with the FLUM

and GPM, guiding principles, and other policies within the Citywide and Rock Creek West Elements of the CP, the Commission concludes that the Project is not inconsistent with the CP when read as a whole. To the extent the Project may be inconsistent with one or more individual policies, the Commission finds that any such inconsistencies are far outweighed by the Project's consistency with other competing policies and considerations, and in particular those policies relating to housing, affordable housing, and environmental sustainability. (FF 51-52, 109.)

Potential Unacceptable Impacts - How Mitigated or Outweighed (Subtitle X § 304.4(b))

33. The Commission finds that the Project will not result in any unacceptable project impacts. The Commission concludes any impacts will be favorable, capable of being mitigated, or acceptable of given the quality of public benefits provided by the Application as detailed below.

Vehicular and Alley Traffic

34. The Commission concludes that the potential impacts of the Project on vehicular and alley traffic will be minor and will be either directly mitigated by the Applicant's TDM and LMP or outweighed by the transportation benefits provided by the Project. The transportation aspects of the Project were thoroughly analyzed in the Applicant's CTR that was prepared in coordination with and approved by DDOT. The CTR found that the Project will not have a detrimental impact on the surrounding transportation network, a fact confirmed by the DDOT Report that stated that "no mitigation for traffic impacts is requested by DDOT." (FF 69.)
35. The Commission also concludes that any other potential adverse impacts resulting from vehicular traffic will be outweighed by the numerous improvements and transportation related benefits proffered by the Project, including upgrades to the alley system, the closure of large curb cuts adjacent to the Valor Lot, the installation of a HAWK signal, contributions for connections to Metrorail and performance of specified transportation studies. The Commission notes that these improvements were not required as mitigations by DDOT but were proffered by the Applicant as benefits of the Project. (FF 74, 88.)
36. The Commission credits the results of the Applicant's DDOT-approved CTR, which shows the alley systems will function at an acceptable level. The Commission finds that the various improvements to the alley network, including the consolidation of the trash enclosures, and widening the alley will result in safer and more efficient vehicular traffic in the alleys. Furthermore, the Commission finds that the alley-related elements of the Applicant's TDM Plan and LMP, as confirmed by DDOT, are sufficiently robust to mitigate any potential impacts resulting from increased traffic in the alleys. Therefore, the Commission concludes that the Project will not result in any potential adverse impacts on the alley network that cannot be suitably mitigated. (FF 69, 72-73, 95-98.)
37. The Commission does not find the traffic study and charts concerning alley traffic submitted by CRD to be persuasive. The Commission finds that CRD's baseline numbers are extremely low for a neighborhood commercial center and that they do not provide an

accurate starting point from which to measure the impacts of the Project on traffic or the alley system. The Commission credits the testimony of DDOT and the Applicant's traffic expert, that the traffic generated by the Project needs to be understood in the context of the previous large retail uses on the site. The Commission concludes that the residential elements of the Project will generate less vehicular traffic than the previously existing retail use, and the incorporation of a grocery store in the Building will also help reduce traffic by allowing residents of the Building, and the surrounding neighborhood to do shopping by foot or bicycle. (FF 112, 133-135.)

Pedestrian and Alley Safety

38. The Commission concludes that even though not required by DDOT as mitigations, the Applicant is proposing substantial improvements to pedestrian safety and circulation through and around the PUD Site over what is existing including:
- Eliminating two large curb cuts from 48th and Yuma Streets resulting in approximately 80 linear feet of new, unbroken sidewalk for pedestrians to use without the risk of conflict with a vehicle crossing the sidewalk;
 - Funding the installation of a new HAWK signal along Massachusetts Avenue between 48th and 49th Streets to address a known safety issue caused by mid-block pedestrian crossings between the Spring Valley Shopping Center and the MAPS/AU Building; and
 - Making significant upgrades to public and private spaces along the alleys within the PUD Site and along surrounding sidewalks that will create a safer and more welcoming pedestrian experience.
39. The Commission credits DDOT's testimony that the District's design standards do not require sidewalks or pedestrian paths to be provided along alleys because alleys are intended to be used by vehicles and trucks while public sidewalks are intended to be used by pedestrians. It is this hierarchy and separation of travel ways that provides the greatest degree of safety to pedestrians. (FF 135.)
40. Even through DDOT does not require pedestrian improvements in alleys, the Commission concludes that the Applicant is providing several improvements along the alley system that will improve pedestrian safety. These improvements being voluntarily provided in order to respond to the community and accommodate any pedestrian circulation that may occur in the alley. The improvements include:
- Widening the north-south alley to accommodate the new trash enclosure while maintaining a 20-foot drive aisle and a 3-foot delineated pedestrian path;
 - Providing a six-foot-wide sidewalk and delineated pavement along the east-west alley;
 - Installing protective bollards and special paving at the alley intersection;
 - Providing a sidewalk at the southern end of the north-south alley (along the west side near MAPS) from Massachusetts Avenue to the intersection of the east-west alley; and
 - Installing striping and signage, as necessary, at the alley intersection and entrance to the north-south alley at Massachusetts Avenue.

Compared to existing conditions, where there are no pedestrian facilities in the alleys, the Commission finds that these will improve the safety of pedestrian circulation in the alley to the extent that it occurs.

41. The Commission is not persuaded by SVWHC-NLC's argument that the Applicant is not complying with "industry practices" for alley improvements. (FF 166.) The Commission finds that while SVWHC-NLC referenced the "industry practices" of several agencies and entities connected with transportation safety, they did not provide any specifics as to what these specific industry practices are, or how the Project fails to meet them. Therefore, based on the Applicant's proposed alley improvements, and the testimony of both DDOT and the Applicant's transportation expert, the Commission concludes that the Project will improve the safety and efficiency of the alleys over what is currently existing and will not result in any unacceptable impacts.
42. Overall, the Commission finds that the Project will not have a detrimental effect on the surrounding transportation network. Further, the Commission finds that the Applicant has adequately addressed the concerns expressed regarding pedestrian safety in and around the PUD Site, and that pedestrian safety will likely increase as a result of the several pedestrian improvements that will be made as part of the Project.

Parking

43. The Commission concludes that the Project will not result in any unacceptable impacts to parking that are not either being mitigated or outweighed by Project benefits. The Commission credits the findings of the DDOT Report that concluded that the Project is "overparked" but concluded that any resulting adverse impacts would be sufficiently mitigated by the Applicant's commitment to pedestrian improvements at the four nearby intersections, and adoption of the Applicant's robust TDM Plan and LMP. (Ex. 52 at 2.) These mitigation measures are conditions to this Order.
44. The Commission notes that the Project is "overparked" as a result of efforts by the Applicant to reduce the potential impacts of the Project on the on-street parking supply. The Commission notes that the following measures proposed by the Applicant measures and mitigations will address concerns regarding on-street parking availability:
 - The ample parking being provided on-site within the parking garage in excess of what is required under the Zoning Regulations;
 - The Applicant's commitment to impose RPP restrictions on residents of the Building; and
 - The extensive TDM Plan and other transportation-related benefits that will reduce vehicle trips and promote the use of alternative modes of transportation.
45. In light of this "overparking," the Commission finds that it does not need the parking agreement, or any other agreement that the Applicant might have with any of the other owners within the PUD Site to be submitted to the record in order for the Commission to review and render a zoning decision on the Project. To the extent it is necessary to address parking-related issues, the Commission is well within its authority to impose specific

requirements or restrictions in the form of conditions to this Order irrespective of the terms and conditions of any separate agreement the Applicant may have or will enter into.

Sunlight

46. The Commission concludes that the Project will not result in any unacceptable impacts to sunlight. The Commission finds that the Project's impacts are likely to be less than the impacts resulting from the matter-of-right development standards. In reaching this conclusion, the Commission credits the Applicant's testimony that the MU-4 development standards would permit the building façades along 48th and Yuma Street to be built entirely on the property line to a height of 50 feet. Furthermore, the building penthouse could be constructed much closer to the property line than currently proposed. The Commission notes that at 43.5 feet, the Project is over 10% lower than the matter-of-right height and provides substantial ground- and upper-level setbacks. (Public Meeting of December 9, 2019 Transcript ["Dec. 9 Tr."] at 22-23.)
47. The Commission notes that the D.C. Court of Appeals has previously accepted the Commission's use of comparing a proposed development to a matter-of-right standards for purposes of evaluating impacts under a PUD. Specifically, in its decision upholding the Commission's approval of the first-stage PUD for the Southwest Waterfront, the Court stated: (Z.C. Order No. 11-03.)
- ...an exhibit from the record compares "by-right" development under the previous R-3 requirements with the residential building proposed as part of the PUD. It demonstrates that row houses constructed along Sixth Street without any zoning flexibility would have a substantially similar impact on petitioners' views and their light and air. (*See Randolph v. District of Columbia Com'n*, 83 A.3d 756 (D.C. 2014).)
48. Overall, the Commission finds that the Project will have minor impact on direct sunlight to the most immediate properties. As shown on the Applicant's shadow study, between spring and fall the Project has only minor to moderate impacts on sunlight that occur during the later hours of the day on homes immediately east across 48th Street. As expected, the impacts of the Project increase slightly during the winter when the sun is lower in the sky throughout the day. (Ex. 28A7 at 6-7.)
49. The Commission concluded that the shadow studies submitted by the Party Opponents were not persuasive because the studies focused on the shadow effects early in the morning and late in the afternoon when the shadows would be most extreme. The Commission concluded that given timing of the most intense shadows, they were unlikely to result in undue impacts to the nearby properties. The Commission also concluded that the Party Opponent's arguments concerning the methodology of the Applicant's studies were unfounded and that the Applicant's study had been properly prepared and was in accordance with typical studies submitted to the Commission. (Dec. 9 Tr. at 21-22.)

Impacts on Views

50. The Commission concludes that the impacts on views will not be unacceptable because the Project does not intrude upon views along defined rights-of-way, and there are no historically designated viewsheds associated with the MAPS. Further, and as has previously been acknowledged by the Commission, a property owner has no right to a view across another individual's property unless expressly granted by easement as upheld by the Court. Specifically, in *Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004)⁸, the Court stated:

[h]ere, the appellants cannot demonstrate that they have acquired an easement by prescription. In essence, they assert that they have acquired a negative easement - the right to prevent appellee from using his property in such a manner as to affect their use and enjoyment of their own property. However, it is well settled that a negative easement cannot be created by prescription. To the contrary, a negative easement can only be created by an express grant ... This rule flows from the basic principle that the actual enjoyment of the air and light by the owner of the house is upon his own land only, and that the owner of the adjoining lands has submitted to nothing which actually encroached upon his rights. Thus, one may obstruct his neighbor's windows at any time and no action can be maintained for obstructing a view...

Based on the foregoing, the Commission finds that opponents to the Project asserting adverse impacts on views are not entitled to any of the existing views that may currently exist across the PUD Site and that may be potentially obstructed by the Project.

51. The Commission also concludes that the Party Opponents appeared to be relying upon the wrong set of renderings to evaluate the Project in relation to the existing surrounding context. The plans submitted by the Applicant contained two versions of each rendering prepared for the Project taken from multiple vantage points around the PUD Site. The first was an "all virtual" version that digitally renders the existing and proposed buildings and surrounding streetscape and landscape. These "all-virtual" renderings were clearly marked as being intended to "best illustrate design intent." Thus, the Commission views these renderings as being intended for analyzing the design of the proposed buildings and nothing more. When asked by the Commission, Mr. Westergard confirmed that the proposed buildings in the "all-virtual" renderings appeared to be accurately depicted, including their relation to the surrounding buildings.
52. In the past, the Commission has requested applicants to submit images that depict a proposed project with an existing conditions photograph. The Commission has made this request specifically for purposes of being able to evaluate a proposed project relative to the existing surroundings. Accordingly, the Applicant also submitted a second set of

⁸ See also, *Randolph v. District of Columbia Com'n*, 83 A.3d 756 (D.C. 2014), in which the Court did not disturb the Commission's finding that "[t]he viewsheds and property values of the Tiber Island homeowners are not protected by any restrictive covenants or by the Zoning Regulations." (Z.C. Order No. 11-03, Finding of Fact 91.)

renderings as part of its prehearing submissions that inserted the proposed buildings into a photograph showing the existing surrounding context. (Ex. 28A3-28A5.) This second set of renderings was clearly marked as being “intended to best illustrate design intent in the current context,” and thus are the renderings that are intended to be used to evaluate the Project relative to the surroundings. These particular renderings were the ones the Commission relied upon in evaluating the impacts of the Project on the surrounding environment and they were not challenged in any way by the Party Opponents. There, the Commission finds that even if the Applicant’s first set of “all-virtual” renderings did include inaccuracies in the height, location, and maturity of vegetation surrounding the PUD Site, this did not in any way impact the Commission ability to evaluate the Project relative to the surrounding context.

Impacts on Privacy

53. The Commission concludes that the Project will not result in any unacceptable impacts to the privacy of nearby properties. To the extent that there are impacts, the Commission concludes that such impacts would not be any greater than would be permitted by the matter-of-right standards. Considering the setbacks and reduced height of the Project and the widths of 48th and Yuma Streets, the distance between the Project and existing development to the east and north will range between 96 to 137 feet. In addition, the Applicant has agreed to restrict the hours of use for the fourth-floor outdoor terrace along Yuma Street, as a condition to this Order. Therefore, the Commission finds that any potential impacts to privacy will be mitigated through setbacks and separation distances, and through restrictions on the use of the outdoor terrace. (FF 30.)

Community Services and Facilities

54. The Commission credits the thorough review of the Project carried out by District agencies and utilities, all of which found that the Project would not create any unacceptable impacts on the surrounding area or on the operation of city services and facilities that are not capable of being mitigated. In addition to OP, the Application was reviewed by DDOT, DHCD, DOEE, Urban Forestry Administration (“UFA”), DPR, HPO, FEMS, DCPL, DME and DC Water. Each of these agencies issued reports or comments to OP stating their support for or “no objection” to the Application. (Ex. 53 at 22-25.) Therefore, the Commission concludes that the Project will not create any adverse impacts that cannot be mitigated or found to be acceptable.
55. In particular, the Commission concludes that the Project will not have any adverse impacts on publicly owned land, health care facilities, educational facilities, libraries, emergency services, or community centers. The PUD Site is located in a part of the District that has numerous parks and open spaces and a variety of recently renovated schools, libraries, and community centers. (Ex. 53 at 23-24.) The Commission notes specifically, that the surrounding schools were found by DME to have adequate facilities for the additional student population created by the Project. (FF 76.)

Construction Damage

56. The Commission concludes that the Project will not result in any unacceptable construction impacts. The Commission finds that any development project has the potential to cause damage to neighboring properties, which is why the Applicant, and the contractor it selects to construct the Project, are required under District law to have specific types and amounts of liability insurance. Proof of this insurance is required to be provided at the time of building permit, and the Applicant will be required to comply with this and all other applicable laws and regulations regarding building construction to ensure that any impacts will be properly mitigated.
57. Furthermore, as part of its agreement with ANC 3E, the Applicant is required to abide by several construction mitigation measures that include vibration monitoring and corrective action should damage occur to surrounding buildings. Therefore, the Commission finds that the Applicant will properly mitigate any potential constructed-related impacts to the extent required by law and through its agreement with ANC 3E. (FF 146; Ex. 49.)

Requested Flexibility Balanced by Public Benefits (Subtitle X § 304.4(c))

58. In deciding a PUD application, the Commission shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case. A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many. (Subtitle X § 305.12.)
59. As discussed below, the Commission finds that the Project offers a high level of public benefits and project amenities, does not request any additional PUD height, density, or flexibility beyond the ability to aggregate density across the PUD Site. The Project also does not result in any unacceptable potential project impacts. As such, the Application satisfies the balancing test required in Subtitle X § 304.3. The Commission also finds that the benefits and amenities of the Project are acceptable in all proffered categories and are superior in the categories of:
- Housing and affordable housing;
 - Environmental and sustainability;
 - Urban design, architecture, and landscaping;
 - Historic preservation; and
 - Uses of special value to the surrounding neighborhood.

Housing and Affordable Housing

60. The Commission concludes that the Project will produce approximately 219 new dwelling units and will contain 20% more affordable housing GFA than would otherwise be required under matter-of-right development on the PUD Site without requesting any additional PUD-related density or height. This will result in approximately 30 dedicated affordable housing units devoted to households earning up to 50% and 60% of the MFI.

61. The Commission concludes that the new market-rate and affordable housing units will greatly help achieve the Mayor's goal of creating 36,000 new housing units by 2025, of which 12,000 units would be affordable. Based upon information contained in the Mayor's recently released Housing Equity Report, the Project will increase the number of dedicated affordable housing units in the Rock Creek West pipeline by approximately 36%, and will move the District closer to achieving its dedicated affordable unit target for the Rock Creek West Planning Area. This is a significant contribution to the District's dedicated affordable housing goal for Rock Creek West considering that the Project is below matter-of-right height and density. (Ex. 53 at 20.)
62. The Commission concludes that the Applicant has properly calculated its IZ contribution. Pursuant to Subtitle C § 1003.1(a), the Applicant is required to set aside:
- *The greater of 10% of the GFA dedicated to residential use excluding penthouse habitable space or 75% of the bonus density utilized; and*
 - *An area equal to 10% of the penthouse habitable space as described in Subtitle C § 1500.11.*
- The Applicant is also required to set aside an area equal to 10% of cellar floor area devoted to residential dwelling units and 10% of building projection area devoted to residential use.
63. The Commission concludes that based upon the proposed density of the PUD (2.68 FAR), the greater set aside amount is equal to 75% of the bonus density utilized. As required, penthouse habitable space, cellar floor area, and building projection areas are all included in the Applicant's IZ requirement calculations. Thus, the Commission finds the Applicant's IZ calculations to be fully consistent with the IZ regulations.
64. In total, under the IZ regulations, the Applicant would be required to set aside approximately 27,504 GSF to affordable housing. The Applicant is exceeding this amount through its PUD proffer to devote no less than 12% of the residential GSF in the Project to affordable housing, which amounts to approximately 5,200 GSF (or 20%) more affordable housing than would otherwise be required under IZ. The Commission finds that these calculations have been reviewed by OP and DHCD, and neither agency has raised any questions or issues. Furthermore, these calculations will be reviewed again by the Zoning Administrator's Office during the building permit application stage in order to ensure that the affordable housing provided is no less than 12% of the residential GFA (including cellar floor area dedicated to dwelling units, projections dedicated to residential use, and non-communal penthouse space in the Project).
65. The Commission notes that DHCD did suggest that the Applicant consider increasing its IZ proffer to 15%, and that the Party Opponents have claimed that this is evidence that the 12% proffer is insufficient. However, the Commission notes that DHCD's comment was merely a suggestion and they did not have any objection to the Application. The Commission further concludes that the Applicant's proffer is sufficient to qualify as a public benefit when considered against the minimal flexibility requested by the Application. In particular, the Commission notes that the Project is not utilizing any additional PUD density or height and has not requested flexibility from the special

exception standards for the requested yard and penthouse relief. The Commission credits the testimony of the Applicant that 12% was the most that could be proffered while balancing the Applicant's desire to keep the Project within the matter-of-right standards against the Project's economics. (Oct. 10 Tr. at 181, 186-187; Ex. 241.) The Commission notes that while more affordable housing is desirable, the Applicant did voluntarily increase its original proffer by an additional 10%. The Commission concluded that given the limited opportunities in this area of the District for multi-family housing including affordable units, the Applicant's proffer was sufficient.

Environmental Protection and Sustainability

66. The Commission concludes that the Project will provide meaningful environmental benefits. In reaching this conclusion, the Commission credits the favorable comments on the Project submitted to OP by DOEE and concludes that the Project will provide a number of environmental benefits. The Commission finds that the Project will redevelop an underutilized, impervious property with a new mixed-use development that will be certified LEED Gold v.4. The significant reduction in impervious surface is likely to have favorable impacts on urban heat island effect, and the new landscaping and green roof elements will provide new habitat. In addition, the Project will also provide electric vehicle charging stations and the infrastructure for future rooftop solar facilities. The Project is not expected to have any impacts on water quality or hydrology. (Ex. 53 at 23.)

Urban Design, Architecture, and Landscaping

67. The Commission concludes that the Project's superior urban design, architecture, and landscaping are public benefits. The Commission credits the Applicant's testimony that the matter-of-right standards would permit a maximum height of 50 feet entirely at the property line (no setbacks) along 48th and Yuma Streets, N.W. Instead:

- The building is six feet, six inches (over 10%) below the maximum permitted height;
- 50% of the façade along Yuma Street, N.W. is set back from the property line;
- 64% of the façade along 48th Street, N.W. is set back from the property line;
- Upper level setbacks are also provided along Yuma Street, N.W.; and
- There will be setbacks along the north-south alley. (Ex. 28A, 241D at 7.)

68. While under the matter-of-right limits for height and density, the Commission concludes that the Project provides various design elements that result in a project that is superior to matter-of-right development and that are effectively the Project to the surroundings. (Ex. 28A) These include:

- The use of a tripartite/banded façade composition; and
- Varied, high-quality materials.

69. The Commission concludes that the contributions of the Project to parks, recreation, and open space will constitute a benefit. The Commission finds that the Project will provide:

- New publicly accessible open spaces in the form of the Northwest Plaza and Windom Park, which are integrated through their design into the surrounding neighborhood and street grid;

- Significant landscaping improvements to adjacent public spaces to further incorporate the Project into the surrounding area;
- The provision of public and private landscaped courtyards and open spaces; and
- The provision of abundant foundation level landscaping.

In reaching this conclusion, the Commission also credits the favorable comments on the Project submitted to OP by DPR. (Ex. 53 at 23.)

70. Due to the Project’s inherent compliance with both the FLUM and the zone requirements, the Commission concludes that the setbacks along 48th and Yuma Streets, N.W., along with the other design features of the Project listed above, are not necessary for the Applicant to make its case under the current FLUM. Rather, they are voluntarily provided by the Applicant as superior design features of the Project. The Commission also concludes that any potential adverse impacts on the surrounding area resulting from the Project’s height, massing, scale, and density are acceptable given the quality of public benefits proffered by the Applicant, particularly with respect to housing and affordable housing.
71. The Commission finds that all of these design features have been voluntarily provided by the Applicant as part of the PUD process and that all of them will benefit the surrounding neighborhood to a significantly greater extent than would likely result from matter-of-right development. As such, the Commission concludes that the above described urban design, architectural, and landscape features are correctly considered benefits of the Project.
72. The Commission is not persuaded by CRD’s assertion that the Project’s massing and height reductions, large courtyards, façade articulation, upper-level setbacks, and high-quality, context-sensitive materials cannot be proffered as benefits because per Subtitle X § 305.9 “[e]lements or items required as mitigation of potential adverse impacts of the PUD shall not also be considered as benefits.” As discussed above, the Commission finds that the Project is under the matter-of-right height and density limits, and not inconsistent with the CP, and therefore concludes that these design elements are not required as mitigation measures.

Historic Preservation

73. The Commission concludes that the Project will result in a public benefit by helping to protect the historic MAPS by permanently reducing the amount of future development that could take place on the MAPS Site. The Commission finds this benefit to be both “tangible and quantifiable” based on the diagram presented by the Applicant at the public hearing demonstrated that approximately 50,115 GFA will be permanently applied to the Valor Lot to construct the Project, a fact not contested by the Party Opponents. (Oct. 7 Tr. at 84-85; Ex. 194, 229.) The Commission considers this a significant reduction in the MAPS future development potential and notes that Regency, the owners of the MAPS, supported the density redistribution, stating that the Project “will greatly assist [Regency] in maintaining the historic integrity and long-term viability of the [MAPS].” (Ex. 227.)

74. The Commission also credits the findings of the HPO Report which stated that the Project will “enhance the character of the [MAPS] by improving its architectural setting through compatible design and superior execution as ensured through the PUD process” (Ex. 187.) The Commission notes that the Applicant never proffered the proposed design of the Project as a historic preservation benefit under Subtitle X § 305.5(e), nor does the Commission read the HPO Report as making such a claim. In fact, the HPO Report does not opine on the Applicant’s proffered set of PUD benefits and amenities as this is the sole jurisdiction of the Commission. As such, the Commission considers the favorable design comments in the HPO Report as being more appropriately read within the context of the Project’s consistency with the Historic Preservation Element of the Comprehensive Plan, and as additional benefits provided by the Project in the category of superior Urban Design and Architecture under Subtitle X § 305.5(a).
75. The Commission notes that it not only has purview over the aggregation of density on properties, but zoning review is an effective means of preserving historic landmarks. Indeed, in upholding the Commission’s decision in the Heurich Mansion PUD, the Court specifically addressed the issue and found that the Commission has jurisdiction to accomplish historic preservation under the broad general authority granted to the Commission under the Zoning Act to, in relevant part, “promote the general welfare of the District of Columbia and its planning and orderly development as the national capital.” (*Dupont Circle Citizens Ass’n v. District of Columbia Zoning Comm’n*, 355A.2d 550, 557 (1976).)
76. The Commission has previously found that the permanent reduction of development potential on the PUD Site of a historic landmark can be considered a PUD benefit. Specifically, in the PUD involving the Heurich Mansion site, the Commission found that “[t]he most significant feature of this [PUD] is the proposal to transfer unused density from [the Heurich Mansion]...to the proposed 12 story office building to be built in the center of the PUD Site.” (Z.C. Order No. 101, FF 7.) The Commission further found that:
- The transfer of development rights concept is a recognized means of preserving urban landmarks ... The sale of development rights will assure preservation of the Heurich Mansion for two reasons: (1) it will provide the necessary funds to operate and repair the property and (2) it will reduce the economic feasibility of ever selling the property because the development on said property will be permanently reduced to that permitted under the existing zoning minus the development rights sold...Historic preservation ordinances are limited in their ability to preserve historic landmarks because of constitutional restrictions on the taking of property. The transfer of development rights is an effective means of preserving the Heurich Mansion as an historic landmark. (*Id.*)
77. The Commission is not persuaded by CRD’s assertion that “[t]angible benefits for a landmark included in a PUD would be ... monies specifically earmarked for preservation and maintenance” because the Commission concludes that while this is one example of a

“tangible and quantifiable” benefit, it is not the only one. The Commission concludes that because a set amount of density (50,115 GFA) will be permanently redistributed from the MAPS Lot to the Valor Lot, prior to the completion of the Project, this satisfies the requirements of Subtitle X § 305.3(a) and (b) that benefits be “tangible and quantifiable” and “measurable and able to be completed or arranged prior to the issuance of a certificate of occupancy.”.

78. The Commission is not persuaded by the Party Opponents’ assertion that the distribution within the PUD Site of unused density from the MAPS Site to the Valor Lot will result in an alteration of the historic landmark or that the unused density is a “defining feature” of the landmark. As stated by the Applicant, a “character-defining feature” is defined under the District historic preservation regulations as “[t]he form and detailing of those architectural materials and features that are important in defining a building’s historic character and whose retention will preserve that character.” (Ex. 241D.) Based on this definition, the Commission agrees with the Applicant that the unused density on the MAPS Site is not a defining feature of the landmark.
79. The Commission also concludes that the MAPS parking lot does not constitute “used density” regardless of whether it is considered part of the designated landmark. The parking lot does not constitute “gross floor area,” as that term is defined in the Zoning Regulations. In addition, historic designation of a building or structure does not automatically zero out the development potential of a property. If that were the case, then the Heurich Mansion site would have had no density to transfer. Rather, historic designation merely makes future development on the PUD Site of the historic landmark subject to review by the HPRB, which may or may not reduce the amount of development that can be constructed on the historic property.

SPECIAL EXCEPTION RELIEF

80. Pursuant to Subtitle G § 1200.4,⁹ relief from the development standards of the MU-4 zone may be granted as a special exception if it is found that the special exception:
- a. *Will be in harmony with the general purpose and intent of the MU zone, the Zoning Regulations, and Zoning Maps;*
 - b. *Will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps; and*
 - c. *Will meet any other applicable conditions.*
81. The Commission concludes that the Applicant’s request for five feet of rear yard relief is de minimis as it is limited to two upper portions of the Building (Northwest and Southwest corners) due to the change in the rear yard measuring point. (FF 44.)

⁹ The general special exception standards for the MU-4 zone under Subtitle G § 1200.4 are the same as the general special exception standards of Subtitle X § 901.2.

Rear Yard Relief

82. The Commission finds that the requested rear yard relief meets the general special exception standards of Subtitle G § 1200.4 and Subtitle X § 901.2 because the rear yard will be in harmony with the general purpose and intent of the Zoning Regulations, Zoning Map, and specifically, the MU-4 zone.
83. In addition to the general special exception standards, the Commission finds that the rear yard relief meets the following specific criteria listed in Subtitle G § 1201.1, as follows:
- Subtitle G § 1201.1(a): *No apartment window shall be located within forty feet (40 ft.) directly in front of another building* – Consistent with this section, there are no residential dwelling unit windows along the rear of the Building that are located within 40 feet directly in front of another building. The only building directly opposite the rear of the Building is the MAPS, which does not have any windows along the façade that faces the Building, and the height of the MAPS is below the height of the first level of dwelling units that face the alley in the Building;
 - Subtitle G § 1201.1(b): *No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall* – This section is not applicable because office use is not proposed;
 - Subtitle G § 1201.1(c): *In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards* – Consistent with this section, the rear yard relief will not result in the Building being not parallel to the MAPS. In addition, there are no windows along the eastern façade of the MAPS that faces the Building. Thus, the distance of penetration of sightlines into habitable rooms did not need to be evaluated;
 - Subtitle G § 1201.1(d): *Provision shall be included for service functions, including parking and loading access and adequate loading areas* – The Project will satisfy all minimum parking and loading requirements and the rear yard relief will not impact access to these facilities because the Project will provide the required rear yard at the lower level and the parking and loading facilities are not located along the north-south alley where the rear yard relief is requested. The Applicant will reduce the number of trash containers in the north-south alley, place trash containers in a new enclosure(s) and ensure that safe and adequate vehicular and pedestrian circulation is provided along the alley by setting the Building back from the west property line of the Valor Lot; and
 - Subtitle G § 1201.1(e): *Upon receiving an application to waive rear yard requirements in the subject zone, the Board of Zoning Adjustment shall submit the application to the Office of Planning for coordination, review, report, and impact assessment, along with reviews in writing from all relevant District of Columbia departments and agencies, including the Department of Transportation, the District of Columbia Housing Authority and, if a historic district or historic landmark is involved, the Historic Preservation Office* – Consistent with this section, all applicable District agencies had

full authority to review and comment on the rear yard relief identified in the application and none of the agencies objected to the Project.

84. Based on the foregoing, the Commission finds that the Applicant has satisfied all applicable criteria for special exception relief from the rear yard requirement for the Building under Subtitle G § 405.2. The Commission is not persuaded by the arguments advanced by the Party Opponents regarding the rear yard relief, as the Commission has concluded that the Building complies with the matter-of-right height and density development standards for the MU-4 zone. (FF 178.) Therefore, the Commission grants the requested rear yard relief.

Penthouse Special Exception for the Townhomes (Subtitle C § 1500.4)

85. Pursuant to Subtitle C § 1500.4:

[A] penthouse, other than screening for mechanical equipment or a guard-rail required by the D.C. Construction Code for a roof deck, shall not be permitted on the roof of a detached dwelling, semi-detached dwelling, rowhouse or flat in any zone; however, the Board of Zoning Adjustment may approve a penthouse as a special exception under Subtitle X, Chapter 9, provided the penthouse:

- (a) Is no more than ten feet (10 ft.) in height and contains no more than one (1) story; and*
- (b) Contains only stair or elevator access to the roof, and a maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck.*

86. The penthouse is also required to meet the general special exception standards of Subtitle X § 901.2:

- a. Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; and*
- b. Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.*

87. Based on the plans submitted by the Applicant, the Commission concludes that the requested penthouse relief will meet the requirements of Subtitle C § 1500.4 as the proposed hatches will be less than 10 feet in height and will only provide access to the proposed roof decks on the Townhomes. (Ex. 241A.)

88. The Commission also concludes that the hatches will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Commission notes that the Applicant, at the Commission's request, revised the design of the roof access and selected hatches in order to reduce the impacts on the neighboring properties. Given their modest size and compliant setbacks, the proposed hatches will not negatively impact the general welfare of the neighboring properties. The properties and buildings that are immediately adjacent to the proposed hatches on the Townhomes include the Building and

the AU Building, both of which will not be adversely affected by the hatches, even if they are five feet in height. The closest existing residential uses are located over 110 feet away from the proposed hatches. Given this substantial distance, and the small size of the proposed hatched the Commission concludes that the proposed hatches will not adversely affect the use of neighboring properties in accordance with the Zoning Regulations and Zoning Maps.

89. For the reasons stated above, the Commission finds that the Applicant has satisfied all applicable criteria for special exception relief under Subtitle C § 1500.4; and therefore, grants the request special exception to allow penthouses hatches on the Townhomes provided the penthouses hatches do not exceed five feet above the roof upon which they are located.

Conclusion

90. The Commission concludes that approval of the Application is appropriate because the Project is superior to a matter-of-right development, compatible with the character and development pattern of the surrounding area and is not inconsistent with the Comprehensive Plan. In addition, the Project, complies with the applicable matter-of-right height, bulk, and density standards of the Zoning Regulations, as measured in accordance with the PUD regulations. The proposed mix of uses is appropriate for the PUD Site, and the potential impacts of the Project on the surrounding area will not be unacceptable given the Applications proposed mitigation measures and the high level of proffered public benefits and project amenities.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

91. The Commission is required to give “great weight” to the recommendation 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).)
92. The Commission carefully considered the OP reports and testimony in this case and concludes that OP’s analysis of the Project’s consistency with the CP, potential impacts, and proffered benefits is persuasive. In particular, the Commission finds OP’s analysis of the Project’s housing, and affordable housing contribution in connection with the relevant CP and District policies, including the Mayor’s initiative, compelling. As such, the Commission concurs with OP’s recommendation to grant the Application.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

93. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances.

(*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

94. ANC 3D and 3E both filed letters in support of the Application meeting the requirements of Subtitle Z § 406.2 and testified in support at the public hearing. (Ex. 26, 48.) ANC 3E also filed a signed Memorandum of Understanding, the terms of which have been included as conditions in this Order, to the extent appropriate. (Ex. 49.)
95. The Commission notes that the ANC 3D Report did raise two primary concerns regarding the Project’s impacts on the District’s Education and Transportation systems. However, the ANC 3D Report ultimately concluded that the Project would not result in adverse impacts to either and would in fact provide numerous benefits to the surrounding community in terms of new housing and affordable housing, transportation improvements, and the new grocery store use. The ANC 3D Report did also request that the Commission memorialize these benefits as well as some additional concerns as conditions of the Order (FF 138), and the Commission has done so with regards to the dedicated square footage for the grocery store use, the parking requirements, and the use of high-quality design materials.
96. The Commission also credits the conclusions of the ANC 3E Report, and its MOU with the Applicant, particularly with regards to its discussion of the various transportation improvements that the Applicant proposed in consultation with ANC 3E. The Commission also notes that the ANC 3E Report had detailed the Applicant’s efforts to respond to community feedback by revising the design to be more compatible with the surrounding residential area.
97. Based on the foregoing and having considered the issues and concerns raised in both ANC Reports, the Commission agrees with the ANCs’ recommendations to approve the Application.

DECISION

In consideration of the case record, and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission **ORDERS APPROVAL** of the application for a consolidated PUD for property located at Square 1499, Lots 802, 803, 806, and 807. 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 in accordance with:
 - The architectural and landscape plans prepared by Torti Gallas Urban (Ex. 28A), dated September 17, 2019;
 - As modified by the revised drawings (Ex. 151C) dated October 3, 2019; and

- As modified by the revised drawings (Ex. 241A) dated October 24, 2019 (collectively, the “Approved Plans”), except that the Applicant shall have design flexibility from the Approved Plans as follows:
 - a. Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, mechanical rooms, and elevators, provided that the variations do not change the exterior configuration of the buildings as shown on the plans approved by the order;
 - b. Exterior Materials – Color: To vary the final selection of the colors of the exterior building materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the order;
 - c. Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the buildings or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - d. Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus 10%, except that:
 - i. The total square footage of residential dwelling units shall not be reduced; and
 - ii. The total square footage reserved for affordable dwelling units shall not be reduced;
 - e. Affordable Units: To vary the number and location of affordable dwelling units, except that
 - i. The number of three-bedroom affordable dwelling units shall not be reduced;
 - ii. No affordable dwelling unit shall be located within a cellar, and
 - iii. No more than two affordable units shall be located directly above and below each other on any immediately successive floors;
 - f. Retail Uses: To vary the types of uses designated as “retail” use in plans approved by the Order to include the following use categories:
 - i. Retail (Subtitle B § 200.2(cc));
 - ii. Services, General (Subtitle B § 200.2(dd));
 - iii. Services, Financial (Subtitle B § 200.2(ee)); and
 - iv. Eating and Drinking Establishments (Subtitle B § 200.2(j));
 - g. Parking Layout: To make refinements to the approved parking configuration, including layout and number of parking spaces, provided the

minimum number of spaces provided is not less than the number of spaces shown on the plans approved by the Order;

- h. Streetscape Design: To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
 - i. Signage: To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage shown on the plans approved by the Order and are compliant with the DC signage regulations, except that:
 - i. The content of the blade sign at the northwest corner of The Building shall be limited to directional signage only; and
 - ii. No more than two retail tenant signs are permitted along Yuma Street at the northwest corner of the Building; and
 - j. Sustainable Features: To vary the approved sustainable features of the project, provided the total number of LEED points achieved by the project does not decrease below the minimum required for the LEED standard required under the Order.
- And as modified by the guidelines, conditions, and standards herein.

2. In accordance with the Approved Plans, the approved overall PUD (including the mixed-use building [the “Building”] and the five townhomes [the “Townhomes”], the “Overall PUD”) shall have:
- a. A maximum building height of 43.5 feet (not including penthouse) as measured from 48th Street, N.W;
 - b. Approximately 214,094 square feet of GFA devoted to residential use, approximately 18,000 square feet devoted to retail use, of which a minimum of 13,000 shall be devoted to a full-service grocery store, and additional GFA devoted to parking, loading, and building service areas;
 - c. A residential FAR of 2.68;
 - d. Approximately 219 residential units in the Building, in addition to the five townhomes; and
 - e. Approximately 370 on-site parking spaces in the Building and individual “tuck-in” garages for each of the Townhomes.

3. The Applicant shall be granted a special exception pursuant to Subtitle G § 1200.4 from the rear yard requirement of Subtitle G § 405.2 to allow a 10-foot rear yard for the Building as shown on the Approved Plans.
4. The Applicant shall be granted a special exception pursuant to Subtitle C § 1500.4 to allow a penthouse (roof hatch) on Townhomes 1-5, provided the penthouse (roof hatch) does not exceed a height of five feet above the roof.

B. PUBLIC BENEFITS

1. **Prior to the issuance of the first building permit for the Project**, the Applicant shall demonstrate that the roof of the Building has been designed to include conduit that will permit the installation of roof-mounted PV panels in the future.
2. **Prior to the issuance of the first building permit for the Project**, the Applicant shall demonstrate that it has registered the Project with the United States Green Building Council (“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.
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:
 - a. Worked with ANC 3E to identify specific improvements to be installed within Windom Park, the Northwest Plaza, and/or other open spaces surrounding the PUD Site that are intended to activate these spaces;
 - b. Considered options for installing playable and interactive elements into the design of Windom Park, the Northwest Plaza, and/or other open spaces surrounding the PUD Site, and either committed to providing such playable elements or provided a reasonable justification for why they will not be provided; and
 - c. Dedicated \$15,000 for the purchase, installation, or permitting of the improvements identified under items (a) and (b) above. Evidence of the Applicant’s incurred costs of \$15,000 shall be demonstrated through the direct purchase of improvements (e.g., landscape materials, equipment, benches) or through contracts with third party(s) to purchase the improvements and/or undertake landscaping, installation, design, or permitting work.
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 executed and

recorded a covenant in the Land Records of the District of Columbia demonstrating the amount of density that has been permanently transferred from the MAPS Site (Lots 802 and 803) to the Valor Lot, and the amount of density that remains on the MAPS Site following said transfer.

5. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with the updated status of its LEED Certification, including all credits obtained, and demonstrating that it is reasonably likely to achieve certification within two years.
6. **Prior to the issuance of the first certificate of occupancy and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has provided the following:
 - a. At least four electric vehicle charging stations (each capable of simultaneously charging two vehicles) in the parking garage that are Level 2 chargers or greater;
 - b. The capacity to increase the number of Level 2 electric vehicle charging stations in the garage in the future; and
 - c. At least five electrical outlets in each long-term bicycle storage room.
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 provided the following transportation-related benefits that are not needed to mitigate any potential adverse transportation impacts created by the Project:
 - a. Funded a new “HAWK” signal on Massachusetts Avenue, between 48th and 49th Streets, subject to DDOT approval. If approved by DDOT, evidence of funding may be in the form of a check to DDOT and/or to a third party responsible for installing the HAWK signal;
 - b. Committed \$100,000 to provide a means for connecting residents of the Project to the Tenleytown Metro station. The Applicant may satisfy this condition through either of the following options:
 - i. Provide the Zoning Administrator with a copy of an executed contract with a private shuttle service in the amount of at least \$100,000; or
 - ii. Provide the Zoning Administrator the following documentation:
 - A. Documentation that the Applicant or legal entity has established an account and/or contracted with a ride hailing company(s) that will allow Project residents to travel to/from the Tenleytown

- Metro station at no cost, up until the \$100,000 fund is depleted. Such documentation shall include a description of the steps required for residents to access the ride hailing account;
- B. An executed agreement between the Applicant and the above-mentioned legal entity requiring that the \$100,000 commitment made pursuant to this condition shall be used solely for the purpose of paying a ride hailing company(s) to connect residents of the Project to the Tenleytown Metro station; and
 - C. A copy of a check in the amount of \$100,000 made payable to the proper legal entity responsible for managing the residential component of the Project.
- c. Restricted residents of the Building from obtaining an RPP by placing a clause in emphasized type in all residential leases that prohibits residents from applying for or obtaining RPPs, upon penalty of mandatory lease termination to the full extent permitted by law;
 - d. Consolidated the trash receptacles associated with the MAPS Site located in the north-south alley and in public space along Yuma Street to a new enclosure along the north-south alley, consistent with DDOT public space approval;
 - e. Improved the existing alley system by:
 - i. Widening the north-south public alley by seven feet onto private property along the west side of the Building, between Yuma Street and the intersection with the east-west public alley to maintain a 20-foot vehicle travel way and provide a new three-foot pedestrian path;
 - ii. Providing a new six-foot sidewalk on private property along the east-west alley on the south side of the Building, between 48th Street and the intersection with the north-south public alley;
 - iii. Constructing a five- to six-foot sidewalk along the western side of the north-south public alley at the entrance from Massachusetts Avenue; and
 - iv. Constructing improvements to the alley intersection to increase pedestrian safety and visibility;
 - f. The improvements shall be consistent with those shown on the Approved Plans, as modified to obtain DDOT's approval during public space permitting;
 - g. Donated \$15,000 to DDOT and/or a third-party transportation consultant toward studying the potential to open the median on Massachusetts Avenue to improve porosity and turning movements at the MAPS Site and/or studying the installation of a "pork chop" near Massachusetts Avenue and 49th Street;

- h. Established the building entrance on Yuma Street as the preferred pick-up and drop-off location for ride-hailing services; and
 - i. Submitted an application to DDOT for a public space permit to dedicate an area along the west side of 48th Street between Yuma Street and Warren Street as an “alternative transportation block” where alternative transportation options such as electric scooters, bikes, and mopeds; bike shares; and/or car shares can be co-located as approved by DDOT, this “alternative transportation block” shall be demarcated with striping and/or signage.
8. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has planted a tree in any vacant tree box located along the east side of 48th Street between Yuma Street and Massachusetts Avenue, and along the north side of Yuma Street between 48th and 49th Streets.
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 dedicated a minimum of 13,000 square feet of retail space to a full-service grocery store as defined by the alcoholic beverage statutes. (D.C. Code § 25-101.)
10. **For the first 10 years after the certificate of occupancy for the grocery store**, the Applicant shall dedicate a minimum of 13,000 square feet of retail space to a full-service grocery store that meets the definition of a “Full-service grocery store” under D.C. Code §25-101. The 10-year time period required under this condition shall commence upon the date of issuance of the first certificate of occupancy for the full-service grocery store.
11. **For the life of the Project**, the Applicant shall provide the housing and affordable housing set forth in Sheet G09 of Ex 241A, dated October 24, 2019, and the following chart, subject to flexibility granted by the Commission; provided that the affordable housing provided shall be no less than 12% of the residential GFA (including cellar floor area dedicated to dwelling units, projections dedicated to residential use, and non-communal penthouse space in the Project), as determined by the Zoning Administrator to be compliant with the Inclusionary Zoning requirements at permit issuance.

Residential Unit Type	Residential GSF ¹⁰ / Percentage of Total	Units	Reserved for Household Earning Equal to or Less Than	Affordable Control Period	Tenure Type
Total	272,057/100%	219			
Market Rate	239,410/88.0%	189	Market Rate		
IZ¹¹	29,008/10.7%	26	60%	Life of the Project	Rental
	3,639/1.3%	4	50%		
Affordable/ Non-IZ	0 / 0%	0	N/A	N/A	N/A

C. TRANSPORTATION DEMAND MANAGEMENT MEASURES

1. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has upgraded substandard curb ramps, striped missing crosswalks, and installed curb extensions at the following intersections, as modified and approved by DDOT during public space permitting:
 - a. 49th Street and Yuma Street, N.W.;
 - b. 48th Street and Yuma Street, N.W.;
 - c. 48th Street and Windom Place, N.W.; and
 - d. 48th Street and Warren Street, NW.

2. **Prior to the issuance of the first certificate of occupancy and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has implemented the following TDM measures:
 - a. Installed more than the minimum number of bicycle parking/storage facilities required by the Zoning Regulations, which include secure long-term bicycle storage rooms located within the Building and short-term bicycle parking located around the perimeter of the PUD Site;
 - b. Installed a bicycle repair station in each of the long-term bicycle storage rooms located within the Building;

¹⁰ Square footages shown represent gross square feet (“GSF”) of residential use within the project. GSF is inclusive of building area devoted to residential use that meets the definition of “gross floor area” as defined in Subtitle B §§ 100.2 and 304, including building area devoted to residential dwelling units within a penthouse, and to dwelling units located within a cellar, and to areas devoted to residential use within building projections into public space as required by Subtitle C § 1003.

¹¹ The number of IZ units is approximate based on the current dwelling unit count and layout. The number, location, and mix of IZ units may change if the total number of dwelling units changes in accordance with flexibility granted by the Commission (Decision A1). However, a minimum of four, three-bedroom IZ units shall be provided.

- c. Unbundled the cost of residential parking from the cost of lease or purchase of each residential unit in the Building. The Applicant shall demonstrate that the unbundled cost of parking is at a minimum equal to the average market rate for a parking space within a quarter mile of the PUD Site;
- d. Offered parking rates only for daily, weekly, and/or monthly subscriptions for purchase only, with no free parking offered to residents, employees, students, or otherwise;
- e. Identified TDM leaders (for planning, construction, and operations) who will work with residents and grocery/retail employees to distribute and market various transportation alternatives and options;
- f. Worked with DDOT and goDCgo to implement TDM measures;
- g. Shared the full contact information of the TDM leaders with DDOT and goDCgo;
- h. Posted all TDM commitments online for easy reference;
- i. Created a Resident Welcome Package that includes TDM materials;
- j. Provided residents and grocery/retail employees who wish to carpool with detailed carpooling information, including a reference to other carpool matching services sponsored by MWCOG;
- k. Installed a Transportation Information Center Display (electronic screen) within the residential lobby of the Building containing information related to local transportation alternatives;
- l. Purchased or secured either a one-year membership to Capital Bikeshare and/or to a car-sharing service to be provided to each residential unit during the initial lease of each unit;
- m. Dedicated four vehicle parking spaces in the parking garage for car-sharing services to use with right of first refusal. If an agreement has not been reached with a carsharing service to occupy all of the four spaces prior to issuance of the first certificate of occupancy, then the Applicant shall demonstrate that it has purchased a one-year membership to Capital Bikeshare for each residential unit; and
- n. Purchased and provided one shopping cart for grocery shopping and running errands for every 30 residential units in the Building.

D. LOADING MANAGEMENT PLAN

1. **For the life of the Project**, the Applicant shall implement the LMP, as set forth in the Comprehensive Transportation Review at Ex. 25A.

E. ADDITIONAL COMMITMENTS TO ANC 3E

1. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has:
 - a. Offered, on a right of first refusal basis, any retail space not leased to the full-service grocery store to tenants in operation on the PUD Site as of September 25, 2019 (date of Applicant's MOU with ANC 3E);
 - b. Retained the Heritage Tree along the west side of 48th Street;
 - c. Worked with DDOT to install a Capital Bikeshare station in the vicinity of the Project;
 - d. Worked with DDOT and JUMP, or another provider of electric bicycles and/or scooters, to include electric bicycles and/or scooters either in the pursued Capital Bikeshare station or in close proximity to the PUD Site;
 - e. Developed a written RPP-exclusion enforcement plan in concert with residents of SMD 3E01, 3E02, 3E05, and DDOT, and presented the plan to ANC 3E **at least two months prior to the first certificate of occupancy for the Project**;
 - f. Run any kitchen exhaust venting from the grocery store and any eating and drinking establishments in the Project to the highest roof of the Project; and
 - g. Restricted events on the outdoor rooftop terrace of the Building to between the hours of 8:00 a.m. and 10:00 p.m. Sunday through Thursday, and 8:00 a.m. to 12:00 a.m. Friday and Saturday. Amplified music shall not be permitted on the outdoor rooftop terrace **for the life of the Project**.
2. **During and prior to construction of the Project, as applicable**, the Applicant shall abide by the terms of the "Mitigation Efforts: Construction Agreement" section of its MOU with ANC 3E. (Ex. 49 at 6-7.)
3. **For the life of the Project**, the Applicant shall not negotiate a master lease with American University for student housing within the Project. This condition is not intended to limit students from independently renting units at the Project, but instead to preclude negotiations with AU.

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 PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of two years from the effective date of 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 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.

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

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 July 3, 2020.



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.