

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 14-07B**  
**Z.C. Case No. 14-07B**  
**GG Union LP, 1250 4<sup>th</sup> St., LLC, and 4<sup>th</sup> St., NE, LLC**  
**(Second-Stage Planned Unit Development @ Square 3587, Lot 822)**  
**September 11, 2017**

Pursuant to proper notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on July 27, 2017 to consider an application by GG Union LP, 1250 4<sup>th</sup> St., LLC, and 4<sup>th</sup> St., NE, LLC (collectively, “Applicant”) for second-stage review and approval of a planned unit development (“PUD”). The Commission considered the application pursuant to Chapter 24 of the District of Columbia Zoning Regulations (1958), Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of Subtitle X, Chapter 3 and Subtitle Z, Title 11 of the DCMR (2016). The Commission approves the application, subject to the conditions below.

**FINDINGS OF FACT**

**Application, Parties, and Hearing**

1. The project site consists of Lot 822 in Square 3587, also known as 1300 4<sup>th</sup> Street N.E., in the Northeast quadrant of the District of Columbia (“Property”).
2. On November 14, 2016, the Applicant filed an application for second-stage review and approval of a PUD (“Application”). (Exhibits [“Ex.”] 1, 1A-1E2.)
3. On January 23, 2017, the Office of Planning (“OP”) filed a report recommending that the Application be set down for a public hearing. In this setdown report, OP stated that it would continue to work with the Applicant to resolve issues related to streetscape improvements, building elevations, retail square footage, LEED and green area ratio (“GAR”) calculations, affordable housing, bicycle parking, and the color and materials board. (Ex. 12.)
4. During its public meeting on January 30, 2017, the Commission voted to set down the Application for a public hearing. At the meeting, the Commission requested that the Applicant provide more information on the following: an increase in the number of bicycle spaces; an elevation drawing for the west side of the building; the incorporation of the draft Union Market Streetscape Guidelines into the design of Neal Place; confirmation of the amount of retail floor area; more information about compliance with inclusionary zoning (“IZ”); consideration of LEED-Gold design; GAR calculations; and

more information about the proffered benefits and amenities. (1/30/2017 Transcript (“Tr.”) at 91-93.)

5. Notice of the public hearing was published in the *D.C. Register* on June 9, 2017 and was mailed to Advisory Neighborhood Commission (“ANC”) 5D, the ANC in which the property is located, and to owners of property within 200 feet of the Property. (Ex. 15.)
6. The Application was further updated by pre-hearing submissions that the Applicant filed on May 16, 2017 and July 7, 2017. In its May 16, 2017 submission, in addition to the changes responsive to comments from both the Commission and OP, the Applicant updated the design with new massing along 4<sup>th</sup> Street, new massing along the alley, a reduction in the overall width of the building in the east-west dimension, revising the penthouse plan, removal of the balconies, adjusting the unit count range, and adding “twinkle” lights over Neal Place. (Ex. 14, 14A1-14A4, 19.) In its July 7, 2017 submission, the Applicant further updated the Application by redesigning the windows, recoloring the brick of the building, modernizing the ground-floor retail façades, and recomposing the ground floor canopy with steel and glass. (Ex. 22, 22A, 22B1-22B2.)
7. The Commission held a public hearing on the Application on July 27, 2017. On behalf of the Applicant, the Commission accepted Joseph Bailey as an expert in architecture and Robert Schiesel as an expert in traffic engineering. (Ex. 20, 22A.) The Applicant provided testimony from these experts as well as from others.
8. In addition to the Applicant, ANC 5D was automatically a party in this proceeding and submitted a report in support of the Application.
9. At the public hearing, OP testified in support of the Application, including the proposed building’s design. The testimony also noted areas where more information was requested, all of which is described in OP’s final report. (7/27/17 Tr. at 35-36.)
10. At the public hearing, the District Department of Transportation (“DDOT”) testified in support of the Application. The testimony acknowledged the Applicant’s acceptance of DDOT’s conditions set forth in their final report. (7/27/17 Tr. at 37.)
11. A complete discussion of the OP and DDOT reports is provided in the portion of this Order entitled “Agency and ANC Reports.”
12. No individuals or organizations testified in support or opposition at the public hearing.
13. At the close of the public hearing, the Commission requested that the Applicant respond to some outstanding comments and questions from the Commission and OP. The Commission asked OP and DDOT to respond to the Applicant’s submission. (7/27/17 Tr. at 54-55.) The ANC was also given an opportunity to respond to the Applicant’s post-hearing submission by September 8, 2017. (7/27/17 Tr. at 54.) Because a PUD-related map amendment had already been approved for the site, the Application was not referred to the National Capital Planning Commission, but was instead scheduled for deliberation on September 11, 2017. (See 11-Z DCMR § 604.3.)

14. The Applicant provided its responses to the Commission's comments and questions in a post-hearing filing that it submitted on August 10, 2017. The Applicant's post-hearing submission included information about retail signage, trust fund payment for penthouse habitable space, sustainable design and solar panels, consistency with the Ward 5 Works Industrial Land Transformation Study and PDR designation, parking, and responses to a submission in opposition from Mr. Chris Otten. (Ex. 31.)
15. Through a supplemental report dated August 24, 2017, OP indicated that overall it did "not find the Applicant's filing fully responsive to the Commission's concern." OP stated that the Applicant should provide information requested by the Commission regarding the sign design guidelines, aim to achieve a deeper level of affordability or a greater amount of square footage with respect to affordable units, commit to incorporate solar panels, clarify the parking benefits of the project, and provide the Florida Avenue Market parking data that had been previously requested by OP and DDOT. (Ex. 36.)
16. On August 29, 2017, the Applicant moved the Commission to reopen the record in order to respond to OP's supplemental report. The Chairman granted the Applicant's motion. (Ex. 35.)
17. On September 5, 2017, the Applicant filed its response to OP's supplemental submission dated August 24, 2017. (Ex. 36, 36A.) The Applicant stated that:
  - a. It would provide solar panels on the building to achieve at least one percent of the building's energy from them;
  - b. The Commission did not seek further information as to the heights of the retail signage;
  - c. The affordable housing commitment had been approved as part of the first-stage application and it relied on that level of affordability in developing the project. Therefore, no greater affordability could be offered;
  - d. Surplus parking was unlikely because the amount of parking to be provided in the North Building will be commensurate with the demand. Any surplus parking would be re-purposed for a use ancillary to the residential use in the building, such as storage or additional bicycle parking. Surplus parking would not be used for retail or to serve other buildings;
  - e. OP's request for information as to how the retail parking in the South Building would serve the Union Market District and for parking data for the general Union Market District concern issues that were discussed and decided during the consolidated and first-stage PUD proceedings, and which would also pertain to the South Building, that is now under construction; and
  - f. Similarly, the issues of the project's advancement of the Ward 5 Works Industrial Land Transformation Study and its consistency with the site's partial PDR

designation on the Future Land Use Map were reviewed and settled in the predecessor Z.C. Case No. 14-07.

18. The ANC did not respond to any post-hearing submission by the September 8<sup>th</sup> deadline that was established by the Commission at the close of the public hearing.
19. At a regular public meeting on September 11, 2017, the Commission deliberated on the merits of the Application and the material contested issues, and it took final action to approve the Application. (9/11/17 Tr. at 22-24.)

## **THE MERITS OF THE APPLICATION**

### **Overview of the Property**

20. The Property is part of a larger single record lot that also contains a consolidated PUD that is not part of this application. The record lot is located in the Union Market District (also known as the Florida Avenue Market) in the Northeast quadrant of the District of Columbia. The record lot has a land area of approximately 67,200 square feet. (Ex. 1.)
21. The north side of the record lot is the parcel that comprises the Property in this Application, which contains approximately 16,200 square feet of land area. The consolidated PUD and this second-stage PUD building will be connected below the extension of Neal Place that will separate them. (Ex. 1.)
22. The Property fronts on 4<sup>th</sup> Street N.E., which bounds its east side, and is currently a vacant lot. The Property is located mid-block and is bounded to the west by a 48-foot-wide strip of property that is privately owned by the District of Columbia, and, pursuant to an easement agreement, functions as an alley for surrounding property owners. The Property is bounded to the north by a small retail building. The Property is bounded to the south by the eventual extension of Neal Place, across which will be the consolidated PUD building on the same record lot. (Ex. 1.)
23. The surrounding area is a mix of uses. Some nearby properties are improved with low-scale industrial warehouse buildings with retail and wholesale uses in the Union Market District. Additional nearby properties are being redeveloped or have been approved for redevelopment into mixed-use buildings with ground-floor commercial uses. (Ex. 1, 14A1-14A4.)
24. The Property is zoned C-3-C as a result of the first-stage PUD approval. Surrounding properties are zoned C-3-C as part of PUD approvals or are zoned PDR-1.
25. The Future Land Use Map (“FLUM”) of the Comprehensive Plan designates the Property for mixed-use High-Density Commercial/High-Density Residential/Production, Distribution and Repair use. The Generalized Policy Map (“GPM”) includes the Property in the Multi-Neighborhood Centers category. (Ex. 1.)

## The Project

26. In 2015, as reflected in Z.C. Order No. 14-07, the Commission reviewed and approved an application for a first-stage PUD and related Zoning Map amendment for the Property that was part of a larger application. That larger application included a consolidated PUD (“South Building”), a first-stage PUD (“North Building”), and a related Zoning Map amendment. The Zoning Map amendment changed the zone for both the consolidated and first-stage PUD sites from the C-M-1 Zone District to the C-3-C Zone District. The combined PUD (both the consolidated and the first-stage) will be a mixed-use residential and ground-floor retail development consisting of two buildings and containing approximately 41,042 square feet of retail and 545-680 residential units, with underground parking spanning both buildings, all on one record lot. The density of the combined PUD will be a floor area ratio (“FAR”) of 8.0. The Commission granted flexibility to allow two buildings on a single lot of record. Z.C. Order No. 14-07 also included requirements for public space improvements, such as to the alley to the west. Z.C. Order No. 14-07 further required that Neal Place will be extended and improved for public access across the record lot, separating the North and South Buildings, but it will remain private property. (Ex. 1.)
27. Because the first-stage PUD was approved before September 6, 2016, this second-stage PUD is vested under and subject to the substantive area and use requirement of the 1958 Zoning Regulations. (*See* 11-A DCMR § 102.3(a).)
28. The first-stage PUD approved a mixed-use building with residential and ground-floor retail uses on the Property. The first stage approved approximately 165 ( $\pm 20\%$ ) residential units; 12,000 square feet of retail use; 80-200 underground parking spaces; 48-71 bicycle parking spaces; a building height of 110 feet; and a density of 153,249 gross square feet. The first-stage PUD also required a GAR of 0.22.
29. The FAR for the combined North and South Buildings was properly calculated, reviewed, and approved in Z.C. Order No. 14-07 under the 1958 Zoning Regulations based on the entire area of the record lot, including the Neal Place extension. Nothing in the 1958 Zoning Regulations prevented the inclusion of the private Neal Place land area in the FAR calculation. The Commission reviewed and accepted this method of calculating the FAR in the first-stage PUD since the Neal Place extension through the project site was later added as an accommodation at the urging of OP and other stakeholders. The Commission agreed that the overall project should not lose density by accommodating Neal Place. Because of the Neal Place extension, the overall project’s density was pushed to the North and South Buildings, so Neal Place’s inclusion in the FAR calculation did not change the amount of density on the record lot. (7/27/17 Tr. at 28-32.)
30. The proposed second-stage PUD (“Project”) will be consistent with the first-stage approvals and flexibility. The Project will have a height of 110 feet (10 stories) plus penthouse rising an additional 20 feet (11.5 feet for habitable and 8.5 feet for mechanical). The Project will contain approximately 153,249 square feet of gross floor

area, of which 141,249 gross square feet will be for residential use. The ground floor will contain approximately 12,000 square feet of retail in a space with approximately 18-foot clear ceilings. The upper floors will contain 132-138 apartments. The apartment types will range from studios to two-bedrooms on typical floors. The penthouse will contain a building amenity space and some apartments with two or more bedrooms. (Ex. 14A1-14A4, 22B1-22B2.)

31. The Project will include parking and loading consistent with the first-stage approval. The underground parking will contain 115-135 spaces in three levels, and this parking will be only for residents of the Project. The Project's parking will be connected to the parking for the South Building. Access for the Project's parking will be from the alley and through the parking area for the South Building. Bicycle parking will be located in a dedicated and secured room on the first below-grade parking level; this room will contain 61-66 bicycle parking spaces. Loading for the Project will be from the private alley to the west, and the Project will provide a 30-foot loading berth. (7/27/17 Tr. at 12; Ex. 14A, 22B.)
32. In the first-stage PUD, the Commission granted flexibility from the IZ requirements so that 20% of the second-stage PUD's IZ floor area, which is equivalent to 2,260 square feet, will be located in the South Building in order to advance the production of housing reserved for households earning up to 50% of the area median income ("AMI"). All of the relocated IZ units in the South Building will be reserved for households earning up to 50% of the AMI. Consistent with the first-stage approval, the balance of the Project's IZ units, which will be equivalent to approximately 9,040 square feet, will be located in the Project and will be reserved for households earning up to 80% of the AMI. (Ex. 26.)
33. The public space surrounding the Property will include additional improvements, including sidewalk and streetscape improvements consistent with the Union Market Streetscape Guidelines. The private alley to the west of the Property will be improved in accordance with the requirements in Z.C. Order No. 14-07 for the consolidated PUD; these alley improvements will be for 35 feet of the alley's width. The alley will be further improved thereafter in accordance with the development of the PUD across the alley to the west approved in Z.C. Order No. 15-27. (Ex. 26.)
34. The Project will be designed to achieve LEED-Gold certification. (7/27/17 Tr. at 20-21.)

### **PUD Flexibility**

35. **Rear Yard.** The Applicant requested flexibility from the rear yard requirement in § 774.1. The siting and orientation of the building on the site – including construction of the building to all four of its lot lines, three of which abut alleys or streets – was generally reviewed and approved in the first-stage PUD. In addition, the rear yard flexibility is justified for the Project. The rear of the Property is bordered by a 48-foot-wide private alley that will function as the Project's rear yard. This alley will allow for ample open space at the building's rear, and it will provide access to the Project's loading facilities. This alley will be preserved as open space and reserved as an alley by an easement and by multiple PUD Orders for projects that will border and use it. If the alley were public,

then the Project could be constructed to rear property line anyway since the rear yard could be measured to the center of the alley. Further, 4<sup>th</sup> Street, Neal Place, and the wide alley will provide ample access for emergency response vehicles on three sides of the project. Also, there will be no light and air impacts since the Project will be removed from the south property line to maintain the 50-foot width for Neal Place. Accordingly, the Commission finds that the rear yard flexibility is justified because there will be no adverse impact on the light, air, or open space available to nearby properties from the granting of this rear yard flexibility. (Ex. 1, 14A1-14A4, 22B1-22B2, 26.)

36. **Loading.** The Applicant requested flexibility from the loading requirements in § 2201.1. The Project will include one 30-foot loading berth and the required 200-square-foot platform accessed from rear private alley, but it will not include the service delivery space, a 30-foot berth for retail use, a platform for retail use, or the full depth berth (55 feet) for residential use. The first-stage PUD included only one 30-foot berth, and all loading activity can be successfully accommodated with one 30-foot berth. The service delivery space cannot be accommodated without removing valuable core and retail space, but the loading for the building can be adequately accommodated with the berth and platform. Furthermore, the Applicant will implement a loading management plan to accommodate the loading demand. Accordingly, the Commission finds that the loading flexibility is justified since there will be no adverse impact on the adjacent streets from granting this relief. (Ex. 1, 14A1-14A4, 19, 22B1-22B2; 7/27/17 Tr. at 12.)
37. **Court Width and Area.** The Applicant requested flexibility from the court width and area requirements in §§ 776.3 & 776.4. The Project will include four courts: one open court on each of the east and south façades and one closed court on each of the west and north façades, but they will not all have conforming widths and areas. These courts are necessary to allow more light to penetrate the interior of the building for the benefit of the residential units and will not have an adverse impact. Conforming court areas and widths would consume so much of the floor plate that they would render an impractical layout for the residential units. Accordingly, the Commission finds that the court width and area flexibility is justified since there will be no adverse impacts from it. (Ex. 1, 14A1-14A4, 22B1-22B2.)
38. **Design.** With respect to the design of the Project, the Applicant requested the following flexibility:
  - a. To include windows within the notches on the north and south elevations to accommodate final unit layout;
  - b. To remove a canopy above the ground-floor retail space on the south elevation to accommodate final retail layout;
  - c. To vary the exterior design materials of the ground-floor retail space to accommodate the preferences of the individual retailer(s), subject to the guidelines included in the project plans, provided that the retailer does not modify

the building footprint or reduce the quality of the materials used on the exterior of the ground floor;

- d. To add solar panels; and
- e. To either provide an inclusionary unit or pay into the affordable housing trust fund for the affordable housing requirement derived from the penthouse habitable space. (Ex. 14, 31.)

### **Project Amenities and Public Benefits**

39. As detailed in the Applicant's testimony and written submissions, the proposed Project will generate the following project amenities and public benefits:

- a. The Project will include exemplary urban design, architecture, and landscaping. The Project's design will have a contemporary, unique identity that will be compatible with the surrounding existing and planned buildings. Furthermore, the Project will incorporate significant ground-floor retail with high ceilings to activate the streetscape, and the Project will include public realm improvements, such as the extension of Neal Place, to further enhance pedestrian accessibility and the pedestrian experience. The architecture of the Project is an innovative approach to allowing more light deeper inside the building, and the architecture evolved to embrace this feature; (Ex. 1, 14A1-14A4, 22B1-22B2.)
- b. The Project will demonstrate exceptional site planning and efficient land utilization. The Project will capitalize on the opportunity to create a new mixed-use building on an underutilized site in a transit-oriented location specifically targeted by the District for such uses. The Project and the neighborhood will benefit from the Project's location within one-third mile of a Metrorail station and in the Union Market District to provide a mix of retail uses and housing with the appropriate higher levels of height and density that the District has identified as goals for this neighborhood. The Project will efficiently use the land to provide appropriate residential and retail density; (Ex. 1, 14A1-14A4, 22B1-22B2.)
- c. The Project will provide environmental benefits in excess of the required sustainable features. The Project will be designed and certified to meet at least LEED-Gold requirements under the 2009 rating system. In addition, the Project will attain a GAR of at least 0.22, which is greater than the minimum required. The Project will include additional environmentally-sustainable features such as a large (approximately 1,000 square feet) dedicated bike storage room, landscaping, and other green features that will significantly increase the water retention on the site. The Applicant also acknowledged that it will explore the inclusion of solar panels on the Project to achieve at least one percent energy savings; (Ex. 1, 14A1-14A4, 22B1-22B2, 31, 32.)



- d. The Project will provide effective and safe vehicular and pedestrian access and transportation management measures as benefits and amenities. Specific features include:
- i. A transportation demand management (“TDM”) plan as set forth in the Applicant’s Comprehensive Transportation Review, including various means to encourage the use of non-automobile means of transportation; (Ex. 19, 32).
  - ii. A loading management plan; (Ex. 19.)
  - iii. The provision of 61-66 long-term bicycle parking spaces for residents in a secure below-grade room. The Project will include a dedicated entrance and corridor to access the secure bicycle parking room; and (Ex. 22B1-22B2, 32.)
  - iv. All vehicular entrances and exits for the underground parking will be at the rear private alley via the South Building so that one point of entry will serve both buildings. The at-grade loading for the Project also will be via the rear private alley. These locations for vehicle access will minimize potential pedestrian-automobile conflicts by funneling most traffic to the alley; (Ex. 1, 22B1-22B2.)
- e. The Project will provide employment and training opportunities. The Applicant will enter into a First Source Agreement with the Department of Employment Services to achieve the goal of at least 51% of the new construction jobs for the Project being filled by District of Columbia residents. The Applicant will also provide notice of new jobs to ANC 5D; and (Ex. 32.)
- f. The Project will provide new market-rate and affordable housing. The Project will create 132-138 new residential units in a neighborhood that lacks much housing but in a location where new housing is a considerable priority for the District. Furthermore, the Project will provide more affordable housing (in terms of depth of affordability) than required. As approved in the first-stage PUD, eight percent of the Project’s residential gross floor area, less 2,260 square feet, shall be devoted to IZ units reserved for families earning up to 80% of the AMI. The 2,260 square feet of affordable housing is provided in the South Building and reserved for families earning up to 50% of the AMI. (Ex. 1, 26, 32.) Finally, because IZ does not apply to the CM zone, all the affordable housing being provided is considered a public benefit because it “exceeds what would have been required through matter-of-right development under existing zoning,” (11 DCMR 2403.9 (F).)

## Compliance with the Comprehensive Plan and Other Planning Guidance

40. The Project is not inconsistent with the Comprehensive Plan (“Plan”), including the Future Land Use Map (“FLUM”), Generalized Policy Map (“GPM”), and multiple written policies as further discussed below.
41. In the first-stage approval in Z.C. Order No. 14-07, the Commission found that the Project is not inconsistent with the FLUM. Specifically, the mixed-use retail and residential Project, with a FAR of 2.32 (8.0 for the entire record lot) and a maximum height of 110 feet, is not inconsistent with the mixed-use High-Density Commercial/High-Density Residential/Production, Distribution and Repair FLUM designation for the Property. Nothing in the Comprehensive Plan requires the Property to accommodate all uses indicated on the FLUM. The striping on the FLUM indicates that all such uses are permitted but are not required. Furthermore, with regard to the partial PDR designation, the Project is not inconsistent because commercial use, which includes retail, is identified as an appropriate use for PDR designation in the Framework Element of the Comprehensive Plan, and retail is a matter-of-right use in all C-M zones. In addition, the Project will advance the goals of the Ward 5 Works Industrial Land Transformation Study. (Ex. 1, 12, 24, 31.)
42. The Project is not inconsistent with the GPM’s depiction of the Property as a Multi-Neighborhood Center. The Project will promote the policy behind this depiction of providing new retail and service uses, and additional housing and job opportunities to serve a multi-neighborhood area. (Ex. 1, 12, 24.)
43. The Land Use Element of the Comprehensive Plan (“Plan”) includes the following policies advanced by the Project:
  - a. **Policy LU-1.3.1: Station Areas as Neighborhood Centers** – Encourage the development of Metro stations as anchors for economic and civic development in locations that currently lack adequate neighborhood shopping opportunities and employment. The establishment and growth of mixed-use centers at Metrorail stations should be supported as a way to reduce automobile congestion, improve air quality, increase jobs, provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide. This policy should not be interpreted to outweigh other land use policies which call for neighborhood conservation. Each Metro station area is unique and must be treated as such in planning and development decisions. The Future Land Use Map expresses the desired intensity and mix of uses around each station, and the Area Elements (and in some cases Small Area Plans) provide more detailed direction for each station area;
  - b. **Policy LU-1.3.2: Development Around Metrorail Stations** – Concentrate redevelopment efforts on those Metrorail station areas which offer the greatest

opportunities for infill development and growth, particularly stations in areas with weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. Ensure that development above and around such stations emphasizes land uses and building forms which minimize the necessity of automobile use and maximize transit ridership while reflecting the design capacity of each station and respecting the character and needs of the surrounding areas;

- c. **Policy LU-1.3.3: Housing Around Metrorail Stations** – Recognize the opportunity to build senior housing and more affordable “starter” housing for first-time homebuyers adjacent to Metrorail stations, given the reduced necessity of auto ownership (and related reduction in household expenses) in such locations;
- d. **Policy LU-1.4.1: Infill Development** – Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create “gaps” in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern;
- e. **Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods** – Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to “create successful neighborhoods” in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others;
- f. **Policy LU-2.2.4: Neighborhood Beautification** – Encourage projects which improve the visual quality of the District’s neighborhoods, including landscaping and tree planting, façade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements;
- g. **Policy LU-2.4.1: Promotion of Commercial Centers** – Promote the vitality of the District’s commercial centers and provide for the continued growth of commercial land uses to meet the needs of District residents, expand employment opportunities for District residents, and sustain the city’s role as the center of the metropolitan area. Commercial centers should be inviting and attractive places, and should support social interaction and ease of access for nearby residents; and
- h. **Policy LU-2.4.5: Encouraging Nodal Development** – Discourage auto-oriented commercial “strip” development and instead encourage pedestrian-oriented “nodes” of commercial development at key locations along major corridors. Zoning and design standards should ensure that the height, mass, and scale of

development within nodes respects the integrity and character of surrounding residential areas and does not unreasonably impact them.

The Project will implement policies that promote future growth and infill development in a location identified for such changes. It will capitalize on the project site's proximity to several transit options and will help address the District's housing demand. The Land Use Element recognizes the area around the NOMA-Gallaudet Metrorail station as an area of future growth outside of the traditional downtown. The Project will support transit-oriented development and provide more housing near a Metrorail station and will provide housing in an area that where there are currently no housing options. The Project will promote nodal commercial development, and revitalization and beautification of the Union Market District. Finally, the redevelopment of the Property will not displace any industrial uses. (Ex. 1, 12.)

44. The Project will advance the following policies of the Transportation Element of the Plan:
  - a. **Policy T-1.1.4: Transit-Oriented Development** – Support transit-oriented development by investing in pedestrian-oriented transportation improvements at or around transit stations, major bus corridors, and transfer points;
  - b. **Policy T-1.2.3: Discouraging Auto-Oriented Uses** – Discourage certain uses, like “drive-through” businesses or stores with large surface parking lots, along key boulevards and pedestrian streets, and minimize the number of curb cuts in new developments. Curb cuts and multiple vehicle access points break-up the sidewalk, reduce pedestrian safety, and detract from pedestrian-oriented retail and residential areas;
  - c. **Policy T-2.4.1: Pedestrian Network** – Develop, maintain, and improve pedestrian facilities. Improve the city's sidewalk system to form a network that links residents across the city;
  - d. **Policy T-2.4.B: Sidewalks** – Install sidewalks on streets throughout the District to improve pedestrian safety, access and connectivity. Continue to monitor the sidewalk network for needed improvements. Consult with ANCs and community organizations as plans for sidewalk construction are developed. All sidewalks shall be constructed in conformance with the American with Disabilities Act Accessibility Guidelines; and
  - e. **Policy T-2.4.C: Innovative Technologies for Pedestrian Movement** – Explore the use of innovative technology to improve pedestrian movement, such as personal transportation systems and enhanced sidewalk materials.

The Project will advance transit-oriented development since it will contribute multiple new housing units in a central part of the city close to the NOMA-Gallaudet Metrorail station. The Property's central location and proximity to transit and bicycle facilities make it a prime

location for additional density. In addition, the Project will incorporate many features, embodied in its transportation demand management plan, to discourage automobile use. Further, the construction of new sidewalks and other public space improvements around the Property will promote better pedestrian accessibility in the Union Market District. The Project will provide a significantly enhanced streetscape that includes landscape planters and pedestrian amenities. (Ex. 1, 12.)

45. The Project will advance the following policies of the Economic Development Element:

- a. **Policy ED-2.2.3: Neighborhood Shopping** – Create additional shopping opportunities in Washington’s neighborhood commercial districts to better meet the demand for basic goods and services. Reuse of vacant buildings in these districts should be encouraged, along with appropriately-scaled retail infill development on vacant and underutilized sites. Promote the creation of locally-owned, non-chain establishments because of their role in creating unique shopping experiences; and
- b. **Policy ED-2.2.5: Business Mix** – Reinforce existing and encourage new retail districts by attracting a mix of nationally-recognized chains as well as locally-based chains and smaller specialty stores to the city’s shopping districts.

The Project will be an infill development on a vacant and underutilized site. The Project will include ground-floor retail which will help the Union Market District area to better meet the demand for basic goods and services and reinforce the emerging retail district. (Ex. 12.)

46. The Project will advance the following policies of the Housing Element of the Plan:

- a. **Policy H-1.1: Expanding Housing Supply** – Expanding the housing supply is a key part of the District’s vision to create successful neighborhoods;
- b. **Policy H-1.1.1: Private Sector Support** – Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives;
- c. **Policy H-1.1.4: Mixed Use Development** – Promote mixed use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed-use corridors, and around appropriate Metrorail stations;
- d. **Policy H-1.1.3: Balanced Growth** – Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing; and

- e. **Policy H-1.2.1: Affordable Housing Production as a Civic Priority** – Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city.

The Project will expand the District’s high-quality housing supply in a neighborhood well-suited to accommodate significantly more housing. The Project will similarly implement the policy of mixed-use development and will support the retail uses in the Union Market District. The Project will add 132-138 residential units in a mixed-use neighborhood consistent with these policies, and it will comply with Inclusionary Zoning requirements. (Ex. 1, 12.)

47. The Urban Design Element of the Plan includes the following policies that the Project will advance:

- a. **Policy UD-2.2.1: Neighborhood Character and Identity** – Strengthen the defining visual qualities of Washington’s neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context;
- b. **Policy UD-2.2.3: Neighborhood Centers** – Undertake strategic and coordinated efforts to create neighborhood centers, civic buildings, and shopping places that reinforce community identity;
- c. **Policy UD-2.2.5: Creating Attractive Façades** – Create visual interest through well-designed building façades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street;
- d. **Policy UD-3.1.1: Improving Streetscape Design** – Improve the appearance and identity of the District’s streets through the design of street lights, paved surfaces, landscaped areas, bus shelters, street “furniture,” and adjacent building façades; and
- e. **Policy UD-3.1.7: Improving the Street Environment** – Create attractive and interesting commercial streetscapes by promoting ground level retail and desirable street activities, making walking more comfortable and convenient, ensuring that sidewalks are wide enough to accommodate pedestrian traffic, minimizing curb cuts and driveways, and avoiding windowless façades and gaps in the street wall.

The Project will implement policies to strengthen the Union Market District character and identity through exemplary architecture and public space improvements. The Project will enhance the appearance of a key site in the Union Market area and will be a prominent piece of its future character that will help foster additional development. The

streetscape will be improved significantly from its current state to accommodate multimodal activities, while providing amenities for pedestrians that include street furniture. (Ex. 1, 12.)

48. The Project will implement the following policies of the Upper Northeast Area Element:

- a. **Policy UNE-1.1.6: Neighborhood Shopping** – Improve neighborhood shopping areas throughout Upper Northeast. Continue to enhance 12<sup>th</sup> Street, N.E. in Brookland as a walkable neighborhood shopping street and encourage similar pedestrian-oriented retail development along Rhode Island Avenue, Bladensburg Road, South Dakota Avenue, West Virginia Avenue, Florida Avenue, and Benning Road. New pedestrian-oriented retail activity also should be encouraged around the area’s Metro stations;
- b. **Policy UNE-1.1.9: Production, Distribution, and Repair Uses** – Retain the existing concentration of production, distribution, and repair (PDR) uses in Upper Northeast, but encourage the upgrading of these uses through higher design standards, landscaping, and improved screening and buffering. Emphasize new uses, including retail and office space, that create jobs for Upper Northeast area residents, and that minimize off-site impacts on the surrounding residential areas;
- c. **Policy UNE-1.2.1: Streetscape Improvements** – Improve the visual quality of streets in Upper Northeast, especially along North Capitol Street, Rhode Island Avenue, Bladensburg Road, Eastern Avenue, Michigan Avenue, Maryland Avenue, Florida Avenue, and Benning Road. Landscaping, street tree planting, street lighting, and other improvements should make these streets more attractive community gateways;
- d. **Policy UNE-2.1.2: Capital City Market** – Redevelop the Capital City Market into a regional destination that may include residential, dining, entertainment, office, hotel, and wholesale food uses. The wholesale market and the adjacent DC Farmers Market are important but undervalued amenities that should be preserved, upgraded, and more effectively marketed;
- e. **Action UNE-2.1.B Capital City Market** – Develop and implement plans for the revitalization and development of the Capital City Market into a mixed use residential and commercial destination. Redevelopment plans for the site shall be achieved through a collaborative process that involves the landowners and tenants, the project developers, the District government, and the community; and
- f. **Policy UNE-2.1.4: Northeast Gateway Urban Design Improvements** – Improve the image and appearance of the Northeast Gateway area by creating landscaped gateways into the community, creating new parks and open spaces, upgrading key streets as specified in the Northeast Gateway Revitalization Strategy, and improving conditions for pedestrians along Florida Avenue and other neighborhood streets.

The Project will create a mixed-use building with new housing and retail in a high-quality design. In particular, the Project will support the policy of redeveloping the Union Market District with new uses, including retail and housing. The Project's design will complement the industrial character of the area and will contribute new retail options. The Project will further these policies and contribute to the area's transformation into a regional destination that will include housing and commerce.

49. The Project will be in accordance with the Florida Avenue Market Small Area Plan ("SAP"). The SAP envisions 4<sup>th</sup> Street as the commercial center of the Market, with wide streets to accommodate high volumes of traffic and wide sidewalks for ample pedestrian circulation. The Project's density and contemporary architecture with multiple streetscape improvements will promote policies for high density, design compatibility, and an active public realm. Significantly, the Project will demonstrate further compliance with the SAP with the extension of Neal Place, an important piece of the grid network. The Project will create a mix of uses that will be street-activating and likely will be food-related, consistent with the current market. (Ex. 1, 12, 24.)
50. The Project will advance numerous goals and policies of the Ward 5 Works Industrial Land Transformation Study ("Study"). For the first-stage PUD in Z.C. Order No. 14-07, the Commission found that the Project will be consistent with and advance the goals of the Study. Further, Ward 5 Councilmember McDuffie, who commissioned the Study, submitted a letter to the record in Z.C. Case No. 14-07 stating that the Project will advance the goals and recommendations of the Study. More specifically, the Project will promote and advance the Study's goals by creating "great spaces" within Ward 5; by providing community amenities that will improve the quality of life in the area and support local businesses and residents; by helping the former Florida Avenue Market become a creative hub; by providing retail outlets within an industrial area; and by providing green development in a previous industrial area. (Ex. 1, 31.)

### **Agency and ANC Reports**

51. By report dated July 17, 2017 and by testimony at the public hearing, OP recommended approval of the second-stage PUD, with a recommendation that additional information regarding FAR calculations for the individual buildings and the entire record lot with and without the area of Neal Place, information about the Project's parking in the context of Union Market District, and information about the Project's consistency with the partial PDR FLUM designation and Ward 5 Works Industrial Land Use Study be provided. The Applicant provided information regarding the FAR calculation at the public hearing, and it provide more information about the parking for the Project and the Union Market District. OP also requested additional information and/or confirmation on various topics to which the Applicant responded at either the public hearing or in its post-hearing submission. OP further acknowledged the relief and flexibility that the Application requested. OP concluded that the second-stage PUD is consistent with the first-stage approval and that it is not inconsistent with the Comprehensive Plan, including the FLUM and GPM, and would further the objectives of the Land Use, Economic Development, Transportation, Urban Design, Housing, and Upper Northeast Area



elements. Also, OP concluded that the Project is consistent with the Florida Avenue Market Small Area Plan. OP evaluated the PUD under the standards set forth in Chapter 24 of the Zoning Regulations and concluded that the Project satisfies the standards. OP acknowledged that the benefits and amenities for the Project were accepted by the Commission as part of the First-Stage approval. OP also concluded that the Project will offer benefits and amenities with respect to urban design, site planning, effective and safe vehicular and pedestrian access, employment and training opportunities, housing and affordable housing, and environmental sustainability. (Ex. 24; 7/27/17 Tr. at 35-36.)

52. OP requested comments on the Application from District Department of Housing and Community Development ("DHCD"); District Department of Energy and Environment ("DOEE"); DC Fire and Emergency Management Services ("FEMS"); DC Water; and District Department of Public Works. OP held an interagency meeting on March 9, 2017, at which DDOT, DHCD, OSSE, and DC Water provided comment. Written comments were received from DOEE and incorporated into OP's report. (Ex. 24.)
53. As noted in Finding of Fact No. 15, OP filed a supplemental report dated August 24, 2017 that responded to the Applicant's post-hearing submission. Based upon the analysis provided OP stated that it did "not find the Applicant's filing fully responsive to the Commission's concern." OP recommended that the Applicant provide the additional information requested by the Commission on the following issues: (1) sign design guidelines; (2) whether the Applicant can provide deeper level of affordability or greater amount of units for its affordable housing proffer; (3) a commitment to including solar panels; (4) the Union Market area parking need that would be served by the South Building, whether North Building's parking would be only for residents, and how excess parking spaces in the North Building would be used; (5) parking data for the entire Florida Avenue Market area; and (6) how the Project would advance the partial PDR designation on the FLUM. (Ex. 32.)
54. On September 5, 2017, the Applicant filed a response to OP's supplemental report that is fully described in Finding of Fact No. 15. (Ex. 36.)
55. The Commission finds that the Applicant's response, which is described in Finding of Fact No. 17, sufficiently addressed all of OP's comments and concerns raised in OP's Supplemental Report dated August 24, 2017.
56. At a regularly-scheduled and duly-noted public meeting on December 13, 2016, with a quorum present, ANC 5D voted to support the Application, but stated no issues or concerns with. (Ex. 11.)

### **Written Opposition**

57. The Commission received one letter in opposition to the Application from Chris Otten. (Ex. 27.) The Applicant responded to the issues raised its August 10, 2017 post hearing submission, and the Commission's determination of these issues is stated in Finding of Fact Nos 59-68 below.

## Contested Issues

58. Parking. The Commission and OP requested additional information about the parking for the Project and its context in the Union Market District:
- a. For the South Building, the Commission approved a range of 400–550 parking spaces, and the parking garage for the South Building contains 405 parking spaces, which is consistent. Half of the parking will be for the residential use. The remainder of the parking will accommodate parking demand for the retail within both the South Building and the North Building as well as meet other public parking demand within the Union Market Area. This includes accommodating the parking needs for existing and future uses in the historic spine of the Market between 4<sup>th</sup> and 5<sup>th</sup> Streets, N.E. as well as offsetting the reduction of existing on-street parking due to street reconfigurations. This parking garage is under construction pursuant to the approved PUD for the South Building;
  - b. For the North Building, the Commission approved a range of 80-200 parking spaces for the building in the first-stage PUD. As described above, the North Building will contain approximately 115-135 parking spaces, which is consistent with the first-stage approval. The Applicant explained that the North Building parking is intended for residents only. The North Building’s residential component may be for-sale condominium units, and as such, market demand associated with parking for condominium units dictated this parking ratio;
  - c. The overall parking ratio for the residential component of the South Building is approximately 0.47 spaces per unit, which is appropriate given the rental apartments. The North Building will have a higher parking ratio, which is appropriate given the potential for condominium units. The overall residential parking ratio for the combined North and South Buildings will be 0.57 spaces per unit. This ratio is commensurate with or below estimated parking use ratios for similar large residential buildings throughout the District of Columbia; and
  - d. Accordingly, the Commission finds that the amount and type of parking provided in the Project is appropriate and consistent with the Commission’s prior approval in the first-stage PUD as well as with market expectations. The Commission disagrees with OP that a further study of the amount of parking in the context of the Union Market as a whole is appropriate at this stage. The parking for the South Building is already under construction pursuant to an approved consolidated PUD, and the amount of parking in this second-stage PUD is consistent with what was approved in the first-stage PUD. The information provided by the Applicant sufficiently responded to the requests of OP and the Commission. (Ex. 31.)
59. Written Submission in Opposition. As noted, no person testified in opposition to the Application. However, a submission, self-characterized as an “expert report,” was submitted by Mr. Christopher Otten for “the benefit of Union Market Neighbors (UMN).” Since Mr. Otten did not appear so as to be cross-examined by the Applicant,

the correspondence, to the extent it purports to be accepted as expert opinion, could have been struck from the record.

60. To the extent that Mr. Otten claims that he is acting in a representation capacity, that UMN even exists, or that he is authorized to act on its behalf. The submission includes an email from one person who allegedly authorizes Otten to represent UMN. However, the email does not include an address, any information about the group of which they are allegedly a part, or any other identifying information to verify either their or UMN's identity and legitimacy. Accordingly, the Commission finds that Mr. Otten's letter is expressing his own individual thoughts and viewpoints. This of course would not discount the validity of those views.
61. Otten alleges that he is a "zoning and planning expert." However, only a party can proffer an expert, who must be qualified by that party, may be challenged by a party in opposition, must be accepted by the Commission, and made subject to cross-examination.
62. Even if Mr. Otten could self-qualify himself, he would not meet the accepted standard for qualification.
63. Although the Federal Rules of Evidence are not binding upon the Commission, the Advisory Committees notes to Rule 702, which governs the use of expert testimony states:

The rule is broadly phrased. The fields of knowledge which may be drawn upon are not limited merely to the "scientific" and "technical" but extend to all "specialized" knowledge. Similarly, the expert is viewed, not in a narrow sense, but as a person qualified by "knowledge, skill, experience, training or education." Thus within the scope of the rule are not only experts in the strictest sense of the word, e.g., physicians, physicists, and architects, but also the large group sometimes called "skilled" witnesses, such as bankers or landowners testifying to land values.
64. Rule 702 was just recently adopted by the DC Court of Appeals in *Motorola Inc. v. Murray*, 147 A.3d 757 (D.C. 2016), which noted that "the Advisory Committee Notes to Rule 702 provide helpful guidance for applying the rule." (147 A.3d at (D.C. 2016))
65. Applying these principles to Mr. Otten's credential, the Commission notes that he has no formal education, training, or degree in planning or a related field. Further, Mr. Otten has no professional experience in planning. Although Mr. Otten has frequently (and effectively) appeared before the Commission and served as ANC commissioner for one term, this experience does not alone demonstrate subject matter expertise. Accordingly, the Commission finds that Otten is not an expert in planning and zoning.
66. Nevertheless, opinion testimony is allowed in contested cases, and the only difference between lay and expert testimony is that the Commission must explain the basis for rejecting the latter. *Comm. for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1193 (D.C. 1982).

67. Turning to the substance of Mr. Otten's submission, the Commission concludes that it represents a collateral attack on the first-stage PUD, which was approved two years ago and is now final and unchallengeable:
- a. Mr. Otten alleges adverse impacts from the amount of parking. The number of parking spaces was reviewed and settled in the first-stage PUD, and the Project is consistent with that number. The first-stage PUD comprehensively addressed the traffic and parking impacts of the project, and both DDOT and the affected ANC supported the amount of parking. Moreover, as set forth in the Applicant's Comprehensive Transportation Review, and confirmed by DDOT, the amount of parking will not result in adverse impacts and will be mitigated by the Applicant's transportation demand management plan. Accordingly, the Commission found as described above in Findings that the amount of parking provided in the Project will be appropriate to meet market demand for the anticipated use and will not have an adverse impact;
  - b. Mr. Otten alleges that the transition of the Project is not appropriate. However, the building's massing, height, density, and relationship to the surrounding context were thoroughly reviewed and approved in the first-stage PUD as appropriate. Since the massing, height, and density of the second-stage PUD are consistent with the first-stage PUD, the Commission finds that the issue is settled and not relevant in this proceeding;
  - c. Mr. Otten alleges that the Project is inconsistent with the FLUM. However, the rezoning of the project site to C-3-C and the use mix of the Project were properly reviewed and approved in the first-stage PUD. The Commission concluded that the project, including its rezoning, was not inconsistent with the FLUM and the Comprehensive Plan. This conclusion was supported by OP. Since the Second-Stage PUD will maintain the already approved first-stage rezoning to C-3-C and will have a use mix consistent with the first-stage PUD, the issue is settled and not relevant in this proceeding. In addition, in this case, as described above in Findings of Fact Nos. 40-50, the Commission finds that the Project is not inconsistent with the Comprehensive Plan, including the partial PDR FLUM designation for the Property; and (Ex. 31)
  - d. Mr. Otten alleges that the Project's IZ and affordable housing is unacceptable. However, the Project's affordable housing proffer and distribution were reviewed and approved in the first-stage PUD. Also, as noted above, because the property was rezoned from C-M-1 to C-3-C, all of the IZ provided must be considered a public benefit. Also, the affordable housing in the Project will exceed the minimum required. The applicable IZ standard is eight percent of residential gross floor area at 80% AMI. The Comprehensive Plan policy that Mr. Otten cites (H-1.2.2) sets a District-wide production target for affordable housing, which is aspirational and not a requirement. This target includes District-financed all-affordable projects and other market-rate projects that will contribute

eight to 10% of their units under IZ. Thus, this Project is not inconsistent with this or other housing provisions in the Comprehensive Plan. Moreover, all of the housing in this Project will be new housing that will not displace existing residents; rather, it will create a new supply of both market-rate and affordable housing with a variety of unit types (studios to two-bedrooms) that will satisfy many demands. Therefore, the issue is settled and not relevant in this proceeding; the Commission finds that the IZ and affordable housing in the Project is a public benefit under its regulations and must be accepted as such.

68. With respect to issues relevant to this second-stage PUD, Mr. Otten alleges that the Project's impacts on city services were not properly reviewed. as noted in the OP report in this case and described above in the Findings of Fact, multiple agencies, including OP, DDOT, DHCD, OSSE, DC Water, and DOEE participated in the review of the Project. Since the height, density, use mix, and benefits and amenities in the second-stage PUD will be consistent with the first-stage PUD, the issue is settled and not relevant in this proceeding. Accordingly, the Commission finds that the impact of the Project on city services was adequately reviewed and will not be unacceptable, but will be capable of being mitigated.
69. Mr. Otten alleges that the requested flexibility from the rear yard requirement would have adverse effects on life and safety. However, for the reasons identified in Findings of Fact No. 35, the Commission finds that the rear yard flexibility will not have adverse impacts.

### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promise "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offer a commendable number of quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.)
2. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a building type with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, uses, and design of the proposed PUD are appropriate, and the proposed construction of a new mixed-use residential and retail building in a transit-oriented and redevelopment targeted location is compatible with the citywide and area plans of the District of Columbia. The Project will be consistent with the applicable height, bulk, use, and other development standards established by the first-stage PUD.

3. The Applicant has the burden of showing that the PUD standards are met. There are three principal standards that apply:
  - § 2403.3 The impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project;
  - § 2403.4 The Commission shall find that the proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; and
  - § 2403.5 In the context of the Comprehensive Plan, the Commission shall also evaluate the specific public benefits and project amenities of the proposed development, which features may in some instances overlap.
4. Finally, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” (11 DCMR § 2403.8.)

#### *The Impact of the Project*

5. Based on the Applicant’s expert testimony, TDM, DDOT’s reports and testimony, and the Findings of Fact, the Commission finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area will not be unacceptable and are capable of being mitigated through the measures proposed by the Applicant and DDOT and are acceptable given the quality of the public benefits of the PUD. The proposed rear yard, loading, and court width and area will not cause an adverse effect on nearby properties. The Commission finds that the Applicant will sufficiently mitigate potentially adverse traffic and loading impacts resulting from the Project so that traffic and other transportation-related conditions resulting from the Project will not be unacceptable.
6. The Commission finds that the Project will not result in unacceptable impacts on land density, compatibility of massing, affordable housing, community and emergency services, or health and safety.

#### *Comprehensive Plan*

7. The Commission concludes that approval of the PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. The Commission credits the testimony of the Applicant that the Project is not inconsistent with the Plan and promotes multiple policies and goals in the citywide and area elements of the Plan as well as goals in the Ward 5 Works Industrial Land Use Study. The Commission agrees with OP and the Applicant that the Project will advance many polices of the Plan and the Study as discussed above in the Findings

of Fact. Specifically, and as found in the Findings of Fact above, the Commission concludes that the Project is not inconsistent with the Property's designation on the FLUM, including the partial PDR designation, and with the Property's designation as a Multi-Neighborhood Center category on the GPM.

*Evaluation of Public Benefits and Amenities*

8. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and includes superior public benefits and project amenities relating to site planning, safe vehicular and pedestrian access, environmentally sustainable features, employment opportunities, and housing and affordable housing.

*The Degree of Development Incentives Requested*

9. The Applicant requested flexibility from rear yard, loading requirements, and court area and width. The flexibility requested is relatively modest, further the development of the project and the public benefits it features, and will cause no adverse impacts.

*Judging, balancing, and reconciling*

10. The Project will provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the architecture, site planning, efficient and safe vehicular and pedestrian access, environmental sustainability, employment and training opportunities, and housing and affordable housing all are significant public benefits. The impact of the Project will be acceptable given the quality of the public benefits of the Project. As noted, the PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.
11. The Commission therefore judges that the PUD will promote orderly development of the Property in conformance with the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map of the District of Columbia and therefore grants the application.
12. With respect to the issues present in the submission made by Mr. Otten, the Commission finds that for the most part Mr. Otten is re-arguing issues settled as part of the first-stage PUD that cannot be revisited here, and to the extent he raised new issues, none have merit. (*See* Findings of Fact 67 through 69.)

*Great Weight*

13. The Commission is required under D.C. Official Code § 6-623.04 to give great weight to OP's recommendations. In its final report, OP recommended approval with recommendations to which the Applicant sufficiently responded. Accordingly, the Commission concludes that approval of the Second-Stage PUD should be granted in accordance with OP's recommendation, except, for the reasons stated in Findings of Fact

the Commission disagrees with the recommendation that the Applicant should conduct a further parking study relating to the greater Union Market District.

14. In accordance with D.C. Official Code § 1-309.10(d), the Commission must give great weight to the written issues and concerns of the affected ANC. As noted ANC 5D's report expressed no issues and concerns with the Project, and therefore there is nothing to which the Commission must give great weight. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia **ORDERS APPROVAL** of the Application for a second-stage PUD for the Property. This approval is subject to the following guidelines, conditions, and standards of this Order:

#### **A. Project Development**

1. The Project shall be developed in accordance with the architectural drawings submitted into the record on May 16, 2017 as Exhibits 14A1-14A4, as modified by the drawings submitted on July 7, 2017 as Exhibits 22B1-22B2, and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").
2. The Project shall include a mixed-use building containing approximately 12,000 square feet of gross floor area of retail use, 132-138 residential units comprising approximately 141,249 square feet of gross floor area, and a parking garage containing 115-135 parking spaces for residential parking, as shown on the Plans.
3. The Applicant shall have flexibility with the design of the Project in the following areas:
  - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
  - b. To vary final selection of the exterior materials within the color ranges of the materials types as proposed based on availability at the time of construction;
  - c. To vary the final streetscape design and materials for improvements in the public space in response to direction received from District public space permitting authorities such as DDOT and the Public Space Committee;
  - d. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, trim,



louvers, or any other changes that are necessary to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems that do not significantly alter the exterior design;

- e. To modify the exterior design as shown on the Plans;
- f. To include windows within the notches on the north and south elevations to accommodate final unit layout;
- g. To remove a canopy above the ground-floor retail space on the south elevation to accommodate final retail layout;
- h. To vary the exterior design materials of the ground-floor retail space to accommodate the preferences of the individual retailer(s), subject to the guidelines included in the Plans, provided that the retailer does not modify the building footprint or reduce the quality of the materials used on the exterior of the ground floor;
- i. To add solar panels; and
- j. To either provide an inclusionary unit or pay into the affordable housing trust fund for the affordable housing requirement derived from the penthouse habitable space.

**B. Public Benefits**

1. The Commission approves a maximum residential gross floor area for the North Parcel Building of approximately 141,249 square feet. The North Parcel Building shall comply with the Inclusionary Zoning set-aside requirement presently stated at 11 DCMR § 2603 (that is, eight percent of the residential gross floor area of the North Parcel Building), less 2,260 square feet, which represents the “North Parcel Building’s 50% AMI Component” that is being accounted for in the South Parcel Building. The actual affordable housing requirement associated with the North Parcel Building shall be determined and calculated based on the residential gross floor area for the North Parcel Building as approved in the second-stage PUD. (Condition C(18)(a) in Order No. 14-07).
2. **Prior to issuance of a Certificate of Occupancy (“C of O”)**, the Applicant shall provide the Zoning Administrator with evidence that the Project has been designed to a minimum of Gold certification under the LEED NC-2009 rating system. Within 12 months after the issuance of the C of O for the building, the Applicant shall provide evidence to the Zoning Administrator that it has secured such Gold certification.

3. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall provide evidence to the Zoning Administrator that it has designed the building to a minimum GAR of 0.22.
4. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall provide evidence to the Zoning Administrator that it has installed solar panels on the building that will provide at least one percent of the building's energy;
5. **Prior to issuance of a Certificate of Occupancy**, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services ("DOES") in the form submitted into the record for Case No. 14-07 to achieve the goal of utilizing District of Columbia residents for at least 51% of the new construction jobs created by the project.
6. In accordance with the time frames set forth in the First Source Employment Agreement, the Applicant shall provide ANC 5D with notice of new job needs and job vacancies after providing DOES with notice of such opportunities under the First Source Employment Agreement. To the extent that the Applicant and DOES agree to develop skills or on-the-job training programs, the Applicant shall provide ANC 5D with notice of such training program. This requirement shall expire when the First Source Employment Agreement ends.

C. **Mitigation**

1. **The Project shall provide a minimum of 61-66 long-term bicycle parking spaces for residents of the building for the life of the project** and in accordance with the plans in Exhibit 22B1 in the record.
2. **For the life of the Project, the Applicant shall provide the following transportation demand management ("TDM") measures:**
  - a. Designate a TDM coordinator responsible for organizing and marketing the TDM plan;
  - b. Provide information and website links to [commuterconnections.com](http://commuterconnections.com), [goDCgo.com](http://goDCgo.com), and other transportation services on developer and property management websites;
  - c. Provide a transportation information screen within the residential lobby;
  - d. The Applicant will unbundle parking costs from a unit's purchase price or monthly rental payment;
  - e. All parking on site will be priced at market rates at minimum, defined as the average cost for parking in a 0.25 mile radius from the site, and unbundled from the costs of leasing or purchasing apartments;

- f. The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials. Depending on availability at the time, the materials will include transportation information such as brochures (e.g., timetables and guides) and maps of the surrounding area with transportation features and amenities highlighted;
- g. The Applicant will offer a one-year carsharing or Capital Bikeshare membership to each new resident (first time sale or lease of a unit) until a cap of \$20,000 is spent on the program; and
- h. The Applicant will provide 11 short-term bicycle parking spaces for building visitors in the public space adjacent to the project site at a final location to be determined with DDOT consultation and approval.

**D. Miscellaneous**


1. The Application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction must commence no later than three years after the effective date of this Order.
2. 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.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

On September 11, 2017, upon the motion of Commissioner Hood, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Commissioner Shapiro, not having participated, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on December 22, 2017.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
\_\_\_\_\_  
**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**