

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-14D
Z.C. Case No. 06-14D
MidAtlantic Realty Partners, LLC
(PUD Modification of Significance @ Square 3584)
May 22, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on February 9, 2017, to consider an application of MidAtlantic Realty Partners, LLC (“Applicant”) for approval of modifications to a previously approved consolidated planned unit development (“PUD”) for property located at Square 3584, Lots 814, 815, 820, 821, and 822 (“Property”). The Commission considered the application pursuant to Subtitle X, Chapter 3 and Subtitle Z of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 4. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The Property has a land area of approximately 134,665 square feet and is bounded by New York Avenue, N.E. to the northwest, Florida Avenue, N.E. to the southwest, and the Metrorail tracks to the east. The Property is designated mixed-use High-Density Residential and High-Density Commercial on the Comprehensive Plan Future Land Use Map, and is located in the MU-9 zone¹ on the District of Columbia Zoning Map.
2. Pursuant to Z.C. Order No. 06-14, dated February 12, 2007 and effective on June 29, 2007, the Commission approved a mixed-use PUD for the Property. As previously modified by Z.C. Order No. 06-14B², the PUD consists of two buildings – a residential building on the western part of the site (“Phase 1 Building”), and an office building with

¹ The MU-9 zone was known as the C-3-C Zone District under the 1958 Zoning Regulations, which were in place at the time that Z.C. Order No. 06-14 was approved.

² Pursuant to Z.C. Order No. 06-14B, dated April 25, 2011 and effective on July 20, 2011, the Commission granted modifications to the Approved PUD, namely granting the Applicant the option of: (i) constructing and operating the Phase I Building with the previously-approved residential and hotel uses; or (ii) eliminating the hotel component of the Phase I Building and operating it with residential use only.

a North Tower and South Tower. The existing residential building, named Elevation, contains 400 units and 5,000 square feet of retail space.

3. The PUD also includes a landscaped central plaza (“Plaza”) with access from Florida and New York Avenues, and a two-story lobby in the South Tower that connects to the Metropolitan Branch Trail (“MBT”) to the east (“Trail Connection Lobby”).
4. Through Z.C. Order No. 06-14C, the Commission granted a time extension for the PUD. Condition No. 2, of that order stated:

The PUD shall be valid until June 29, 2013, within which time an application must be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than June 29, 2014. Failure to take these actions shall result in the expiration of the PUD approval as of the applicable date.

5. The Applicant met these deadlines as to the Phase One building, but never filed for a building permit for the Office Building. The Applicant believed that the satisfaction of Condition No. 2 as to the Phase I building vested the entire project, such that no deadline existed for it to file a building permit for the Office Building. This issue, which will hereinafter be referred to as the “Phasing Issue” was subsequently resolved to the Commission’s satisfaction with the Applicant’s agreement to the imposition of separate vesting deadlines for each tower as set forth in Condition No. E.1 of this Order. This modification is deemed to replace the original PUD as to the North and South Towers. Therefore, should the Applicant fail to meet the permit filing or construction commencement deadlines for one or both towers, the approval for the unconstructed portion of the PUD will expire, and the zoning shall revert to the pre-existing regulations and map.
6. On July 18, 2016, the Applicant filed an application with the Commission for a modification to the PUD. (Exhibit [“Ex.”] 1-2L.) Under the modification, the Applicant seeks to: (i) convert the North Tower of the office building to residential use; (ii) reconfigure and redesign the South Tower of the office building; and (iii) have the option to convert the South Tower to residential use (“PUD Modification”).
7. Under the PUD Modification, the North Tower will have approximately 339,543 square feet of gross floor area and approximately 372 residential units. Approximately two percent of the residential gross floor area of the North Tower will be dedicated to households earning up to 60% of the area medium income (“AMI”) and approximately six percent of the residential gross floor area of the North Tower will be dedicated to households earning up to 80% of the AMI. The South Tower will have approximately 223,262 square feet of gross floor area devoted to office use and approximately 11,132 square feet of gross floor area devoted to retail use. Based on the Applicant’s testimony at the public hearing, the retail space may include restaurants, stores, food shops, financial and general service uses, or other non-residential uses permitted in the MU-9 zone and appropriate for the configuration and size of the retail area approved for the PUD.

8. The proposed PUD Modification reduces the overall density for the Property from 7.08 to 6.78 floor area ratio (“FAR”), and maintains the maximum building height at 130 feet, measured from New York Avenue, N.E.
9. On October 7, 2016, the Office of Planning (“OP”) submitted a report recommending that the Commission set down the application for a public hearing (“OP Setdown Report”). (Ex. 13.)
10. At its public meeting held on October 17, 2016, the Commission voted to schedule a public hearing on the application.
11. On October 27, 2016, the Applicant submitted a Prehearing Statement, which supplemented the original application statement, addressed comments raised by the Commission at the public meeting, and addressed comments in the OP Setdown Report. (Ex. 15, 13.) The Prehearing Statement also included additional information from the Applicant required under Subtitle Z § 401 of the Zoning Regulations.
12. A Notice of Public Hearing for the application was published in the *D.C. Register* on December 2, 2016. The Notice of Public Hearing was mailed to all property owners within 200 feet of the Property, as well as to Advisory Neighborhood Commissions (“ANC”) 5D, 5E, and 6C. The three ANCs were affected by the project.
13. On December 27, 2016, the Applicant filed a Transportation Assessment prepared by Wells + Associates, transportation consultants for the PUD Modification.³
14. On December 29, 2016, the Applicant filed a Supplemental Statement, which further addressed comments raised by the Commission at the setdown meeting, comments raised by OP in the OP Setdown Report, and additional comments raised by OP and the District Department of Transportation (“DDOT”) during subsequent meetings with the Applicant. (Ex. 30.) The Supplemental Statement also included updated Architectural Plans and Elevations for the PUD Modification and an addendum to the Transportation Assessment.
15. On January 9, 2017, OP submitted a Hearing Report that will be discussed later in this Order. (Ex. 32.)
16. On January 9, 2017, DDOT submitted a Hearing Report that will be discussed later in this Order. (Ex. 31.)
17. On February 8, 2017, the Applicant submitted a memorandum to DDOT agreeing to implement the conditions listed in the DDOT Hearing Report. (Ex. 40.)

³ The Applicant also filed a request for a waiver of the time requirements under Subsection Z § 401.8, in order for the Commission to accept the report less than 30 days prior to the public hearing on the application, which the Commission granted.

18. On February 8, 2017, the Applicant submitted revised architectural drawings responding to comments in OP's Hearing Report. (Ex. 38-39.) The revised drawings included: (i) details on the landscaping, railings, and outdoor private spaces proposed for the rear yard of the North Tower facing the MBT; (ii) penthouse plans for the South Tower indicating a corrected section cut and a 1:1 setback in all required locations; (iii) a revised roof plan for the North Tower showing the locations, setbacks, and approximate dimensions of the proposed solar panels; and (iv) updated drawings of the Trail Connection Lobby showing a revised stair slope, bicycle trough, and bicycle storage layout. The Applicant submitted a cover letter with the revised drawings indicating its commitment to achieve LEED-Silver v4 for the North Tower and to install solar panels atop the North Tower that will generate a minimum of one percent of the North Tower's power.
19. The Commission held a public hearing on the Application on February 9, 2017. The parties to the case were the Applicant and ANC 5E, the ANC within which the Property is located; and ANC 6C and ANC 6E, also affected ANCs.
20. Four witnesses testified at the public hearing on behalf of the Applicant: Matthew Robinson of MidAtlantic Realty Partners, LLC; Marius Radulescu of SK+I Architectural Design Group; Jeff Barber of Gensler; and Lauren Brandes of Oculus. Based upon her professional experience, as evidenced by the resume submitted for the record, the Commission qualified Ms. Brandes as an expert in landscape architecture. Mr. Radulescu and Mr. Barber were previously qualified by the Commission as experts in architecture.
21. OP testified in support of the PUD Modification at the public hearing. On behalf of OP, Stephen Mordfin stated that the additional drawings and information submitted by the Applicant prior to the public hearing addressed each of the issues raised in the OP Hearing Report.
22. DDOT also testified in support of the PUD modification at the public hearing. On behalf of DDOT, Jonathan Rogers testified that the modified project had strong Transportation Demand Management ("TDM") measures and that the Applicant made significant improvements to the MBT design and the Trail Connection Lobby, in response to comments raised in the DDOT Hearing Report.
23. Commissioner Hannah Powell, the Single Member District ("SMD") representative for ANC 5E03, the single member district in which the Property is located, read a letter from ANC 5E into the record. (*See* Transcript ["Tr."] 2/9/2017, pp. 59-60.) The letter stated that at the ANC's regularly scheduled, duly noticed public meeting of January 17, 2017, with a quorum of Commissioners present, ANC 5E voted against a motion in support of the PUD Modification. Commissioner Powell testified that the ANC did not take any subsequent action related to the application for the PUD Modification, and that the primary concern of the ANC was that the PUD did not provide a deeper level of affordability greater than what is required by the Inclusionary Zoning ("IZ") Regulations.

24. Commissioner Powell testified that, as the SMD for the Property, she was supportive of the PUD Modification.
25. At the close of Commissioner Powell's testimony, the Commission suggested that ANC 5E submit a letter to the record in order for the Commission to give great weight to its concerns. The ANC submitted a written report on March 13, 2017, which will be discussed in the portion of this order entitled "ANC 5E Report."
26. At the public hearing, the Applicant testified that the PUD Modification was presented to the Eckington Civic Association and the NoMa Business Improvement District, both of which submitted letters of recommendation to the record. (Ex. 35, 36.)
27. No individuals testified in support of or in opposition to the PUD Modification.
28. Mr. Mike Aiello testified as a person undeclared with respect to the application. He asserted that there were more pros than cons to the project, but raised concerns about the height of the building in relationship to the PUD benefits and amenities, noting that it contained 16 stories, and questioned the height of the South Tower given that "it has no relationship to New York Avenue." (*See* Tr. 2/9/2017, p. 68.) Mr. Aiello also expressed his desire for the building to have a "softer look from New York Avenue," noting that the design was "too dramatic." (*Id.* at 69.) Mr. Aiello also suggested that the project include IZ units at 60% AMI.
29. Following Mr. Aiello's testimony, Jennifer Steingasser on behalf of OP testified that the height of building was measured from New York Avenue, as required by the Height Act.⁴ Under the Height Act, where a proposed building fronts on two or more streets, avenues or highways, the limit of the height of the building shall be determined from the width of the widest street, avenue, or highway. The Applicant's counsel also referred to electronic communications with the Zoning Administrator confirming that the shared vestibule between the North Tower and South Tower establishes a meaningful connection between the towers such that they constitute a single building. (*See* discussion at Tr. 2/9/2017, pp. 73-78.) In its approval of the PUD under Z.C. Order No. 06-14, the Commission determined the project benefits are reasonable for the development proposed, including the building height, on the Property.
30. By letter dated January 19, 2017, Richard Layman submitted comments concerning the bicycle facilities in the Trail Connection Lobby. (Ex. 34.) The letter stated that "in general the proposed accommodations are superlative and go far beyond that which are provided in any other DC building thus far." (*See* Ex. 34, p. 1.) However, the letter recommended that the Commission encourage the Applicant to provide the following additional amenities in and regarding the Trail Connection Lobby: (i) extend the operating hours of the Trail Connection Lobby to "complement and support use of the Metrorail Station"; (ii) install a general DC bicycle map and an area bicycle facilities map overlaid with bus transit information; (iii) install an electric-compressor based air pump;

⁴ Act to Regulate the Height of Buildings in the District of Columbia, 36 Stat. 452, approved June 1, 1910, as amended; D.C. Code § 6-601.01, *et. seq.*

(iv) provide a bicycle repair station; and (v) provide “sustainable mobility” related public art. (*Id* at 2.)

31. The Commission found that the Applicant, in its pleadings and testimony, adequately addressed the comments raised in Mr. Layman’s letter. As it relates to the hours for the Trail Lobby Connection, the Applicant explained why extending the lobby hours was not practically beneficial to the larger community. In addition, the proposed TDM measures and design of the Trail Lobby Connection, as reflected on Sheets A-201, A-202, A-207 through A-212 of the architectural drawings, are, overall, adequately comparable to or exceed the features and amenities recommended in Mr. Layman’s letter.
32. At the conclusion of the public hearing, the Commission requested that the Applicant submit the following additional information and materials to the record, which the Applicant filed on March 6, 2017: (i) an update on the inclusionary zoning proffer and language clarifying the flexibility relating to the layout and mix of inclusionary zoning units; (ii) an estimated contribution to the Housing Production Trust Fund resulting from the penthouse habitable space atop the South Tower; (iii) an updated LEED proffer; (iv) language clarifying the flexibility requested for building signage and exterior materials; and (v) revised architectural drawings showing technical updates to the Trail Connection Lobby and the interim trail. (Ex. 45-46A8.)
33. As to IZ, the Applicant agreed to provide a greater level of affordable housing than what is required under the Inclusionary Zoning regulations. Specifically, for the North Tower, of the eight percent of residential gross floor area devoted to inclusionary units, two percent will be reserved for households with incomes not exceeding 60% of AMI. The remaining six percent will be reserved for households with incomes not exceeding 80% of the AMI
34. Because this modification application did not involve a map amendment, it was not necessary for the Commission to refer the application to the National Capital Planning Commission, but instead could proceed to final action.
35. At its public meeting on May 22, 2017, the Commission took final action and approved the PUD Modification.

PUD Modification

36. The Applicant requested approval to modify the approved PUD by: (i) converting the North Tower to residential use; (ii) reconfiguring and redesigning the South Tower; and (iii) reserving the option to convert the South Tower to residential use. If the Applicant proceeds with the residential option, the Applicant shall file an application for a Modification of Consequence in order for the Commission to review and approve the architectural plans and the other zoning requirements for a residential building, including IZ.

37. Under the PUD Modification, the North Tower has approximately 339,543 square feet of gross floor area, consisting of approximately 372 residential units, and the South Tower has approximately 223,262 square feet of gross floor area devoted to office use and approximately 11,132 square feet of gross floor area devoted to retail use. Based on the Applicant's testimony at the public hearing, the retail space may include restaurants, stores, food shops, financial and general service uses, or other non-residential uses permitted in the MU-9 zone and appropriate for the configuration and size of the retail area approved for the PUD.
38. The PUD Modification reduces the overall density for the project from 7.08 to 6.78 FAR. The maximum building height remains at 130 feet, measured from New York Avenue.

Development Flexibility

39. For the PUD Modification, the Applicant requested flexibility from the following requirements:
 - a. Loading. The Zoning Regulations require one loading berth at 55 feet deep; three loading berths at 30 feet deep; and two loading platforms at 20 feet deep for the PUD Modification. The Applicant requested flexibility to provide one loading berth at 55 feet deep and two loading berths at 30 feet deep. The Commission is supportive of the flexibility requested because it improves efficiency and utilization of the Property by consolidating the loading facilities for the North and South Towers into a single loading area. Moreover, shared loading is directly in accordance with the Comprehensive Plan's recommendations to consolidate loading areas within new developments, minimize curb cuts, and provide shared loading spaces in mixed-use projects. Finally, as noted in the DDOT Hearing Report, loading facilities are provided from the private driveway and Plaza, with no back-in maneuvers proposed from public space, which is consistent with DDOT standards. Therefore, the Commission approves the requested flexibility from the loading requirements; and
 - b. Additional Areas of Flexibility. The Applicant requested flexibility in the following areas:
 - a. To provide a range in the number of units in the North Tower of 372 plus or minus 10%;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, elevators, escalators, and toilet rooms provided that the variations do not change the exterior configuration of the building;
 - c. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, so long as the number of

parking spaces does not decrease below the minimum level required by the Zoning Regulations;

- d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes necessary to comply with all applicable District of Columbia laws and regulations or that are otherwise necessary to obtain a final building permit;
- e. To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved plans; and
- f. To vary the number and mix of inclusionary units if the total number of dwelling units changes within the range of flexibility requested, provided that the location and proportionate mix of the inclusionary units will substantially conform to the layout shown on Sheet A-310 of the plans.

Public Benefits and Amenities

- 40. The PUD, as originally approved, included a number of significant public benefits and project amenities, the majority of which were delivered with the construction of the Phase 1 Building. The project benefits and amenities that have already been delivered are listed on pages six through eight of the Applicant's Supplemental Filing. (Ex. 30.) The project benefits and amenities that were previously accepted, but have not yet been delivered by the Applicant are listed on pages eight and nine of the Supplemental Filing. (Ex. 30.)
- 41. The previously accepted proffers that have not yet been delivered by the Applicant, as modified by the PUD Modification application, and the additional project benefits and amenities proffered with the PUD Modification are as follows:
 - a. **Housing and Affordable Housing.** In order to expand the affordable housing opportunities throughout the PUD, the Applicant proposes to provide a greater level of affordable housing than what is required under the Inclusionary Zoning regulations. Specifically, for the North Tower, of the eight percent of residential gross floor area devoted to inclusionary units, two percent will be reserved for households with incomes not exceeding 60% of the AMI. The remaining six percent will be reserved for households with incomes not exceeding 80% of the AMI;

| Residential Unit Type | GFA/Percentage of Total | Units | Income Type | Affordable Control Period | Affordable Unit Type |
|-----------------------|--------------------------|-------|---------------|---------------------------|----------------------|
| Total | 339,543 sf of GFA (100%) | 372 | NA | NA | NA |
| Market Rate | 312,379 sf of GFA (92%) | 342 | Market Rate | NA | NA |
| IZ | 6,791 sf of GFA (2%) | 8 | Up to 60% AMI | Life of the project | Rental |
| IZ | 20,373 sf of GFA (6%) | 22 | Up to 80% AMI | Life of the project | Rental |

- b. **Trail Connection Lobby.** The PUD integrates the Metropolitan Branch Trail (“MBT”) by creating an open-air, two-story bicycle/pedestrian connection through the South Tower into the Plaza. The Trail Connection Lobby is accessed from the MBT on the second floor of the South Tower. Inside the Trail Connection Lobby, a grand stair with four bike troughs will mediate the grade difference allowing cyclists to easily access the Plaza located on the ground floor. An elevator that can accommodate a minimum of two bicycles will also be located in the Trail Connection Lobby to provide access from the MBT to the Plaza. The Trail Connection Lobby will provide bicycle storage for approximately 32 short-term bicycle spaces, information about the MBT and surrounding neighborhoods, station maps, bicycle tire pumps and repair areas, a drinking fountain, an emergency call box, free public WiFi, and a restroom open to the public during normal retail hours. The Trail Connection Lobby will be open to the public from 6:00 a.m. to 12:00 a.m. (midnight); and
- c. **Improvements to the Metropolitan Branch Trail.** The Applicant will improve the paving, landscaping, and lighting along the MBT adjacent to the North and South Towers, and will maintain the MBT improvements and landscaping adjacent to the North and South Towers for the life of the Project. Specifically, the Applicant will install pole lighting along the North Tower adjacent to the MBT, which will be connected to DDOT’s planned electrical power service and maintained by DDOT. Light fixtures will be installed on the South Tower adjacent to the MBT, which will be connected to the South Tower’s electrical service and will be maintained by the Applicant. The Applicant will also install a thermoplastic decorative design on the MBT directly in front of the Trail Connection Lobby. The Applicant will ensure that construction work on the MBT is undertaken in a safe and efficient manner that avoids closures during peak periods and maintains the MBT trail width in all locations. The Applicant will enter into a Maintenance of Traffic (“MOT”) plan with DDOT to ensure minimal trail closures and determine detour routing, supporting signage, and public outreach. The MOT will include the following elements:

- i. The Applicant will provide no less than 30 days' notice of any MBT closures by posting notices at the intersection of the MBT and R Street, and at the MBT adjacent to the Marriott Hotel next to the NOMA Metrorail station;
 - ii. During the permitting process, the Applicant will work with DDOT to develop a detour routing path that will be utilized during any MBT closures; and
 - iii. The Applicant will present the approved MOT plan to ANC 5E and the Eckington Civic Association prior to its implementation.
42. **Sidewalks on Florida and New York Avenues.** The Applicant will extend the widened sidewalks and enhanced streetscapes along Florida Avenue to the Property's southeast corner (to the south of the South Tower), and along New York Avenue to the Property's northwest corner (to the west of the North Tower), consistent with Finding of Fact Nos. 26(c) and (e) of Z.C. Order No. 06-14.
43. **LEED Certification.** The North Tower will achieve LEED-Silver certification under the USGBC LEED v.4, and will also include rooftop solar panels that will generate approximately one percent of the North Tower's power requirements. The solar panels will meet DOEE's goal of having projects incorporate renewable energy technology into their development plans. The South Tower, if occupied as an office use, will achieve LEED-Gold certification. If the South Tower is constructed for a residential use, the South Tower will achieve LEED-Silver certification under the USGBC LEED v.4.

OP Reports

44. By report dated October 7, 2017, OP recommended that the Commission set down the PUD Modification for a public hearing. (Ex. 13.) The OP Setdown Report indicated that the PUD Modification would have a revised design with more varied massing, materials, finishes, and façade elements; would slightly reduce the PUD's FAR and lot occupancy; and would meet the Green Area Ratio requirements. The OP Setdown Report also requested that the Applicant submit additional information to the case record prior to the public hearing. (See Ex. 13, p. 3.)
45. By report dated January 9, 2017, OP recommended approval of the PUD Modification, subject to the following conditions:
- a. Should the Applicant propose to develop the South Tower as a residential building, the Applicant returns to the Commission for a Modification of Significance, including a residential redesign of the building's façade and details of how the residential tower conforms with the requirements for residential buildings, including IZ;
 - b. Document the elevator between the lobby and Level 2 is of sufficient size to accommodate bicycles;

- c. Submit to DDOT for their approval:
 - a. How much, if any, the Metropolitan Branch Trail would be narrowed as a result of the new towers; and
 - b. A plan on how construction would impact the use and operation of the trail; and
 - d. Provide additional information on landscaping proposed for the rear yard of the apartment building facing the Metropolitan Branch Trail, including refinement of the exterior railings separating outdoor private space from the trail. (Ex. 32, p. 1.)
- 46. OP also encouraged the Applicant to increase the affordable housing proffer beyond the minimum required by either increasing the amount of square footage set aside for affordable housing and/or providing a deeper median income limit. (Ex. 32, pp. 1-2.)
- 47. On February 8, 2017, the Applicant submitted a letter and revised architectural drawings addressing items (b) and (d), above. (Ex. 38-39.) The Applicant responded to item (c) above at the public hearing. Finally, the Applicant responded to OP's suggestion to increase the affordable housing by proffering devoting two percent of the eight percent of the residential gross floor area devoted to inclusionary units to households with incomes not exceeding 60% of the AMI.

DDOT Report

- 48. On January 9, 2017, DDOT submitted a report on the application indicating that it had no objection to the PUD Modification, subject to the following conditions: (Ex. 31.)
 - a. Revise the bicycle lobby design to include the following elements:
 - a. Stair slope: Install a staircase with a slope of 34% or less subject to DDOT approval;
 - b. Bicycle ramp design: Select a design that reflects best practices for accommodating bicycles on staircases subject to DDOT approval;
 - c. Elevator design: Install an "oversized" elevator to satisfy the Z.C. Case No. 06-14 conditions to easily accommodate at least two bicycles with both wheels on the ground at a time; and
 - d. Internal walkway widths: Design the internal walkways to be at least eight feet wide to facilitate circulation;
 - b. Provide at least an eight-foot-wide temporary bicycle connection between the MBT and Florida Avenue if the North and South buildings are not constructed at the same time;

- c. Commit to securing DDOT permits for any construction-related closures to the MBT. Closures should be limited to no more than two consecutive days and work should be during off-peak periods whenever feasible. If a covered walkway is required to support continued trail operations during construction it must be constructed such that it maintains as wide of a trail as possible. Develop a maintenance of traffic (MOT) plan subject to DDOT permit to ensure minimal closures and determine detour routing, supportive signage, and public outreach; and
- d. Enhance the TDM plan to include the following elements:
 - a. Install a Transit Screen in the lobbies of the North and South buildings. Transit screens should be installed in lieu of the Electronic Transportation Kiosk identified in the approved TDM plan;
 - b. Provide the minimum ZR16 bicycle parking requirements (Option 1: 156 long-term spaces and 26 short-term spaces; Option 2: 155 long-term spaces and 34 short-term spaces);
 - c. Provide the minimum ZR16 showers and locker requirements in the office building (six showers and 41 lockers);
 - d. Offer an annual carsharing and Capital Bikeshare membership to each residential unit for a period of three years;
 - e. Unbundle parking costs from leasing apartments or purchasing condos; and
 - f. Provide five rolling shopping carts.

(Ex. 31, pp. 2-3.)

- 49. By memorandum dated February 9, 2017, the Applicant responded to the DDOT Hearing Report by indicating that it would comply with all of the conditions listed above. At the public hearing, DDOT testified that it was satisfied with the Applicant's responses to its concerns and conditions.

ANC 5E Report

- 50. On March 13, 2017, ANC 5E submitted a report, in which it stated “[t]he ANC recommends the approval of the modification if the developer increased the affordable housing component to eight percent at 80% of AMI and 2% at 60% of AMI.” As noted above, the Applicant had already agreed to do this in its March 6, 2017 submission.

ANC 6C Report

51. On March 13, 2017, ANC 6C filed a written report in which it stated that “[t]he commissioners voted unanimously, 6:0:0, to send a letter to the Zoning Commission indicating that ANC 6C has no objection to the requested modifications to the PUD.” ANC 6C expressed no issues or concerns in its written report. As discussed later in this Order, the Commission afforded the views of ANC 6C the “great weight” to which it is entitled.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to provide for higher quality development through flexibility in building controls, including building height and density, provided that the PUD results in a project superior to what would result from the matter-of-right standards, offers a commendable number or quality of meaningful public benefits, protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan. (Subtitle X § 300.1.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider and approve this application for a modification to the approved Consolidated PUD. Any modifications proposed to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission pursuant to Subtitle Z, Chapter 7. Pursuant to Subtitle X § 704.3, the application shall meet the requirements for, and be processed as, a second-stage PUD application. In this case, the Commission treated the PUD Modification as a second-stage PUD application.
3. The Commission may establish general standards and, in individual cases, set standards and conditions for height and bulk lesser or greater than the standards established for the affected districts in the Zoning Regulations. (Subtitle X § 300.6.)
4. Development of the Property, as modified, carries out the purposes of Subtitle X, Chapter 3 to provide high quality development that is superior to what would result from the matter-of-right standards.
5. The PUD Modification meets the minimum area requirements of Subtitle X § 301.
6. The PUD Modification, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses for the PUD Modification are appropriate for the Property. The impact of the project on the surrounding area and the operation of city services and facilities are acceptable given the quality of the public benefits in the project.
7. The Applicant’s request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan.

8. The project benefits and amenities are reasonable tradeoffs for the requested development flexibility.
9. Approval of the PUD Modification is appropriate because the proposed development is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975 effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC, or, in this instance, the affected ANCs. In this instance, ANC 5D did not submit a written report.
11. ANC 6D submitted a written report stating that it did not object to the PUD Modification, and did not articulate any issues or concerns with the PUD Modification. As such, there is nothing to which the Commission can give great weight.
12. ANC 5E submitted a written report in which it recommended approval, subject to the developer agreeing to reserve two percent of the residential gross floor area to households earning 60% of the average median income, apparently unaware that the Applicant had already agreed to do so. In any event, this requirement has been made a condition of this Order.
13. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP’s recommendations. For the reasons stated above, the Commission concurs with OP’s recommendation for approval of the PUD Modification and has given the OP recommendation the great weight it is entitled.
14. The PUD Modification application is subject to compliance with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended.

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 modifications to a previously approved consolidated PUD for the Property located at Square 3584, Lots 814, 815, 820, 821, and 822, originally approved in Z.C. Order No. 06-14, as amended by Z.C. Order No. 06-14B, subject to the conditions listed below. The conditions of Z.C. Order No. 06-14B continue to apply to the Phase I Building, located at Square 3584, Lots 23, 801, 802, and 813.

A. PROJECT DEVELOPMENT

1. The PUD, as modified herein, shall be developed in accordance with the plans titled “Washington Gateway – Modification to Approved Consolidated PUD,” prepared by SK+I and Gensler, and dated March 6, 2017, marked as Exhibits 46A1-46A8 (“Plans”), as modified by the guidelines, conditions, and standards herein.

B. PUBLIC BENEFITS

1. North Tower

- a. **Prior to the issuance of a Certificate of Occupancy for the North Tower and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator the following:

- i. **For the life of the Project**, the Applicant shall:

- A. Provide a total of approximately 339,543 square feet of residential gross floor area (“GFA”) of housing;
 - B. Devote no less than eight percent of the residential GFA equaling not less than 27,164 square feet of GFA as inclusionary units pursuant to 11-C DCMR Chapter 10;
 - C. Of the GFA devoted to inclusionary units, no less than two percent equaling not less than 6,791 square feet of GFA shall be reserved for households earning equal to or less than 60% of the AMI; and
 - D. Of the not less than 20,373 square feet of GFA shall be reserved for households earning equal to or less than 80% of the AMI;
- b. The affordable housing units shall be distributed in accordance with Sheet A-310 of the Plans marked as Exhibit 46A6 of the record, and shall be provided in accordance with the chart below; and
 - c. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition.

| Residential Unit Type | GFA/Percentage of Total | Units | Income Type | Affordable Control Period | Affordable Unit Type |
|-----------------------|--------------------------|-------|---------------|---------------------------|----------------------|
| Total | 339,543 sf of GFA (100%) | 372 | NA | NA | NA |
| Market Rate | 312,379 sf of GFA (92%) | 342 | Market Rate | NA | NA |
| IZ | 6,791sf of GFA (2%) | 8 | Up to 60% AMI | Life of the project | Rental |
| IZ | 20,373 sf of GFA (6%) | 22 | Up to 80% AMI | Life of the project | Rental |

2. **South Tower/Office Use**

- a. If the South Tower is devoted to office use, the Applicant shall comply with the provisions of 11-C DCMR § 1505, requiring a contribution to the Housing Production Trust Fund for the penthouse habitable space.

3. **South Tower/Residential Use**

- a. If the South Tower is devoted to residential use, no building permit shall be issued for the South Tower unless the Commission has approved the revised project as a Modification of Consequence. The Commission shall not approve a Modification of Consequence unless the Applicant has provided:
- i. A residential redesign of the building’s façade; and
 - ii. An explanation of how the South Tower satisfies all requirements for residential buildings, including Inclusionary Zoning.

4. **Prior to the issuance of a Certificate of Occupancy for the South Tower**, the Applicant shall provide evidence to the Zoning Administrator that it has constructed the Trail Connection Lobby in substantial accordance with Sheets A-201A, A-202, and A207 through A-212 of the Plans (Ex. 46A4-46A5), and has incorporated the following elements into the lobby design: (i) a grand stair with risers of approximately 5.5 inches, treads approximately 15 inches long, and four bike troughs; (ii) an elevator that can accommodate a minimum of two bicycles; (iii) bicycle storage that is accessed by wide internal walkways and can accommodate a minimum of 32 short-term bicycle spaces; (iv) information about the MBT and surrounding neighborhoods; (v) station maps; (vi) bicycle tire pumps and repair areas; (vii) a drinking fountain; (viii) an emergency call box; (ix) free public Wi-Fi; and (x) a restroom open to the public for use during normal retail hours.

5. **For the life of the Project**, the Applicant shall provide public access from New York Avenue and the Metropolitan Branch Trail in accordance with the following daily schedule:
 - a. The New York Avenue staircase shall be open from 7:00 a.m. to 7:00 p.m.; and
 - b. The Trail Connection Lobby, including the stairs and elevator to the Plaza, shall be open from 6:00 a.m. to 12:00 a.m. (midnight).

6. The Applicant shall construct or install at its sole expense, the following improvements for the MBT:
 - a. **Prior to the issuance of a Certificate of Occupancy for the North Tower**, the Applicant shall demonstrate to the Zoning Administrator that it has installed the paving, landscaping, and lighting along the MBT adjacent to the North Tower, consistent with Sheets L-102, L-104, L-201, and L-301 of the Plans; (Ex. 46A2.)
 - b. **Prior to the issuance of a Certificate of Occupancy for the North Tower**, the Applicant shall demonstrate to the Zoning Administrator that it has installed pole lighting along the North Tower adjacent to the MBT that is designed to connect to DDOT's electrical power service;
 - c. **Prior to the issuance of a Certificate of Occupancy for the South Tower**, the Applicant shall demonstrate to the Zoning Administrator that it has installed the paving, landscaping, and lighting along the MBT adjacent to the South Tower, consistent with Sheets L-102, L-104, L-201, and L-301 of the Plans; (*Id.*)
 - d. **Prior to the issuance of a Certificate of Occupancy for the South Tower**, the Applicant shall demonstrate to the Zoning Administrator that it has mounted light fixtures to the South Tower adjacent to the MBT that are designed to connect to the South Tower's electrical service;
 - e. **Prior to the issuance of a Certificate of Occupancy for the South Tower**, the Applicant shall install a thermoplastic decorative design on the MBT directly in front of the Bike Lobby. The Applicant shall maintain the thermoplastic decorative design **for the life of the Project**; and
 - f. The Applicant shall maintain the MBT improvements and landscaping adjacent to the North and South Towers **for the life of the project**.

7. **Prior to the issuance of a Certificate of Occupancy for the North or South Tower, whichever is first**, the Applicant shall include landscaping, streetscape, and open space treatment for the Project as shown on the Plans. The Applicant or its successors shall maintain all landscaping, streetscape, and open space treatments in good growing condition.
8. **Prior to the issuance of a building permit for the North or South Tower, whichever is first**, the Applicant shall enter into a MOT plan with DDOT to ensure minimal closures of the MBT and determine detour routing, supporting signage, and public outreach. The MOT shall include the following elements:
 - a. **The Applicant shall provide no less than 30 days' notice** of any MBT closures, and shall post notices at the intersection of the MBT and R Street, and at the MBT adjacent to the Marriott Hotel next to the NOMA Metrorail station;
 - b. During the permitting process, the Applicant shall work with DDOT to develop a detour routing path that will be utilized during any MBT closures; and
 - c. The Applicant shall present the approved MOT plan to ANC 5E and the Eckington Civic Association prior to its implementation.
9. **Prior to the issuance of a Certificate of Occupancy for the North Tower**, the Applicant shall extend the widened sidewalks and enhanced the streetscapes along New York Avenue to the Property's northwest corner, as shown on Sheets L-102 through L-104, L-201, L-301, and L-302 of the Plans, and consistent with Finding of Fact Nos. 26(c) and (e) of Z.C. Order No. 06-14. (Ex. 46A2.)
10. **Prior to the issuance of a Certificate of Occupancy for the South Tower**, the Applicant shall extend the widened sidewalks and enhanced the streetscapes along Florida Avenue to the Property's southeast corner, as shown on Sheets L-102 through L-104, L-201, L-301, and L-302 of the Plans, and consistent with Finding of Fact Nos. 26(c) and (e) of Z.C. Order No. 06-14. (Ex. 46A2.)
11. **Prior to the issuance of a Certificate of Occupancy for the North Tower**, the Applicant shall:
 - a. Furnish a copy of the associated LEED certification application submitted to the USGBC, which shall indicate that the North Tower has been designed to include at least the minimum number of points necessary to achieve LEED- Silver certification under LEED v.4; and
 - b. Install rooftop solar panels in accordance with Sheet A-308 of the Plans. (Ex. 46A6.)

12. **Prior to the issuance of a Certificate of Occupancy for the South Tower, if constructed for office use**, the Applicant shall furnish a copy of the associated LEED certification application submitted to the USGBC, which shall indicate that the South Tower has been designed to include at least the minimum number of points necessary to achieve LEED-Gold certification.
13. **Prior to the issuance of a Certificate of Occupancy for the South Tower, if constructed for residential use**, The Applicant shall furnish a copy of the associated LEED certification application submitted to the USGBC, which shall indicate that the South Tower has been designed to include at least the minimum number of points necessary to achieve LEED-Silver under the USGBC LEED v.4.
14. The Applicant shall provide evidence to the Zoning Administrator that it has achieved the following LEED Certifications:
 - a. North Tower: LEED Silver certification under LEED v.4;
 - b. South Tower if constructed for office use: LEED Gold; and
 - c. South Tower if constructed for residential use: LEED-Silver under the USGBC LEED v.4.

The Applicant shall provide this evidence **within one year from the date of issuance of the first Certificate of Occupancy for occupiable space in a story above grade plane for the North and South Towers, respectively**. The Zoning Administrator may, for good cause and upon written request, extend the time period to submit the evidence of certification.

C. TRANSPORTATION MITIGATION MEASURES

1. The Applicant shall implement the following TDM measures for the North and South Towers **for the life of the Project, unless stated otherwise**:
 - a. North Tower
 - i. Install one TransitScreen in the lobby of the North Tower instead of the Electronic Transportation Kiosk identified in the Transportation Impact Study included as Exhibit 29 of Z.C. Case No. 06-14;
 - ii. Install the minimum number of long- and short-term bicycle parking spaces required for the North Tower under the 2016 Zoning Regulations;

- iii. **For a period of three years following the issuance of a certificate of occupancy for any new residential building**, the Applicant shall offer to each residential unit the option of either a one-time annual carshare membership or a one-time annual Capital Bikeshare membership, up to a maximum amount of \$85.00 per unit, for a maximum total benefit of \$94,350.00;
- iv. Unbundle the parking costs from the lease or purchase of residential units;
- v. Purchase five rolling shopping carts for use by residents of the North Tower; and
- vi. Install two EV-charging stations in the North Tower; and

b. **South Tower**

- i. Install one TransitScreen in the lobby of the South Tower instead of the Electronic Transportation Kiosk identified in the Transportation Impact Study included as Exhibit 29 of Z.C. Case No. 06-14;
- ii. Install the minimum number of long- and short-term bicycle parking spaces required for the South Tower under the 2016 Zoning Regulations;
- iii. If the South Tower is developed as office use, install the minimum number of showers and lockers in the South Tower, as required under the 2016 Zoning Regulations;
- iv. If the South Tower is developed as residential use, then for a period of three years following the issuance of a Certificate of Occupancy for the South Tower, the Applicant shall offer each residential unit the option of either a one-time annual carshare membership or a one-time annual Capital Bikeshare membership, up to a maximum amount of \$85.00 per unit;
- v. If the South Tower is developed as residential use, unbundle the parking costs from the lease or purchase of residential units; and
- vi. Install two EV-charging stations in the South Tower.

D. FLEXIBILITY

1. The Applicant shall have flexibility from the loading requirements of the Zoning Regulations and shall also have flexibility in the following areas:
 - a. To provide a range in the number of units in the North Tower of 372 plus or minus 10%;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, elevators, escalators, and toilet rooms provided that the variations do not change the exterior configuration of the building;
 - c. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, so long as the number of parking spaces does not decrease below the minimum level required by the Zoning Regulations;
 - d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes necessary to comply with all applicable District of Columbia laws and regulations or that are otherwise necessary to obtain a final building permit;
 - e. To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved Plans; and
 - f. To vary the number and mix of inclusionary units if the total number of dwelling units changes within the range of flexibility requested, provided that the location and proportionate mix of the inclusionary units will substantially conform to the layout shown on Sheet A-310 of the Plans. (Ex. 46A6.)

E. MISCELLANEOUS

1. The timing requirements for both the North Tower and the South Tower will be bifurcated, with each tower separately subject to the requirements of 11 DCMR X § 702.2, as follows:
 - a. The approval of the PUD Modification for the North Tower 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, with construction to commence within three years of the effective date of this Order;

- b. The approval of the PUD Modification for the South Tower 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, with construction to commence within three years of the effective date of this Order; and
 - c. The Applicant may seek extensions of the time for each tower, respectively, in accordance with 11 DCMR Z § 705. If, no application for a permit is filed, construction has not started within the period specified, or no extension is granted, the approval for the unconstructed portion of the PUD shall expire, and the zoning shall revert to the pre-existing regulations and map.
2. No building permit shall be issued for the PUD Modification until the Applicant has recorded in the land records of the District of Columbia a modification to the recorded covenant required by Z.C. Order No. 06-14. The modified covenant shall be between the Applicant and the District of Columbia, satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs, and shall bind the Applicant and all successors in title to construct and use the Property in accordance with Z.C. Order Nos. 06-14 and 06-14B, as modified by this Order or any subsequent amendment thereof by the Commission. The Applicant shall file a certified copy of the modified covenant with the records of the Office of Zoning.
 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.
 4. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”). 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 prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the


Act will not be tolerated. Violators will be subject to disciplinary action.

On May 22, 2017, upon the motion of Commissioner Shapiro, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

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 May 4, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING