


GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



MEMORANDUM

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**To:** Office of Documents and Administrative Issuance (via-email)  
**From:** Sharon S. Schellin   
Secretary to the Zoning Commission  
**Date:** March 24, 2009  
**Re:** Publication for the Office of Zoning

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Please publish the following in the *D.C. Register* on March 27, 2009:

1. Z.C. Order No. 08-13.

Attachment

ZONING COMMISSION  
District of Columbia  
CASE NO. 08-13  
EXHIBIT NO. 64

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 08-13**

**Z.C. Case No. 08-13**

**Consolidated Planned Unit Development and Related Zoning Map Amendment  
Marriott International, Inc. – Square 370, Lot 26 (formerly, Lots 18, 21, 22, 24, 801  
through 806, 830 through 839, 843, 845 and private alley)**

**February 23, 2009**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on November 24, 2008, to consider an application from Marriott International, Inc., on behalf of the Washington Convention Center Authority and the District of Columbia, the owners of Square 370, Lot 26 (formerly Lots 18, 21, 22, 24, 801 through 806, 830 through 839, 843 and 845 and a private alley), for consolidated review and approval of a planned unit development ("PUD"), related map amendment, and air space development in order to construct a hotel on the subject property. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

**FINDINGS OF FACT**

**The Application, Parties, and Hearing**

1. On May 1, 2008, Marriott International, Inc. ("Marriott"), on behalf of the Washington Convention Center Authority and the District of Columbia (collectively, the "Applicant"), filed an application with the Commission for the consolidated review and approval of a PUD, related map amendment, and air space development for Square 370, Lot 26 (the "Property").
2. By letter dated July 22, 2008, the Applicant amended its application to request the concurrent consideration of an air space development pursuant to the District of Columbia Public Space Utilization Act, approved October 17, 1968 (82 Stat. 1166; D.C. Official Code § 10-1121.01 *et seq.*) and § 3010.2(c) of the Zoning Regulations for approval of improvements in the public space below Massachusetts Avenue, L Street, and 9<sup>th</sup> Street. The Commission consolidated the PUD, map amendment, and air space development applications so that they were heard together at a single hearing.
3. The Property is located in the northwest quadrant of Washington, D.C. and is adjacent to Mount Vernon Square. The Property consists of approximately 82,887 square feet of land area and is bounded by L Street on the north, 9<sup>th</sup> Street on the east, Massachusetts Avenue on the south, and 10<sup>th</sup> Street on the west. The western portion of the Property is zoned DD/C-2-C and the eastern portion of the Property is zoned DD/C-3-C. With the map amendment requested as part of the application, the entire Property would be in the DD/C-3-C Zone District.

4. The Applicant proposes to construct the Marriott Marquis Washington Convention Center Headquarters Hotel (the "Hotel") on the Property, which will consist of approximately 751,832 square feet of gross floor area and approximately 1,166 guest units. The Hotel will have a maximum density of approximately 9.3 FAR and a maximum building height of 130 feet. An underground parking garage will occupy the two lowest levels of the Hotel and accommodate approximately 400 valet-parked vehicles.
5. At its public meeting held on July 14, 2008, the Commission voted to schedule a public hearing on the PUD and map amendment applications. On July 28, 2008, the Commission voted to include the air space development application as part of the proceedings.
6. On August 8, 2008, the Applicant submitted a Prehearing Statement, along with revised architectural plans and elevations (respectively Exhibits 17 and 18). The Prehearing Statement provided additional information requested by the Office of Planning ("OP") and the Commission, including more information regarding use of public space; details of the proposed landscaping and streetscape improvements; refined elevations; clarification of the project's sustainable features; and a summary of the Applicant's community outreach efforts, which included meeting with Advisory Neighborhood Commission ("ANC") 2C in September, 2008. The Prehearing Statement also discussed the approval sought under the Public Space Utilization Act and the Historic Preservation Review Board's review of the application.
7. Notice of the public hearing was published in the *D.C. Register* on September 12, 2008 at 55 DCR 9730. At least 40 days before the hearing, the Commission mailed notice of the public hearing to all property owners within 200 feet of the project, ANC 2F, the single-member district representative of ANC 2F06, and forwarded notice of the public hearing to the D.C. Public Library. At least 40 days before the public hearing, the Applicant posted notice of the public hearing on the Property.
8. On September 24, 2008, the Applicant submitted a supplement to the traffic report filed with the original application and a traffic management plan for the project, both of which are marked as Exhibit 24 of the record in this case.
9. On October 31, 2008, Gregory A. O'Dell, on behalf of the Washington Convention Center Authority, submitted a letter to the Commission, urging the Commission's support of the PUD application (Exhibit 26).
10. On November 3, 2008, the Applicant submitted supplemental prehearing materials (Exhibits 27, 28, and 29). The supplemental prehearing materials included revised plans, information regarding the Public Space Utilization Act along with a copy of the Applicant's application to the Building and Land Regulation Administration, and an updated list of the Applicant's community outreach meetings.

11. On November 4, 2008, the Applicant filed with the Commission a letter from Neil Albert, the Deputy Mayor for Planning and Economic Development, in support of the PUD application (Exhibit 30).
12. The Washington Convention Center Authority Advisory Committee ("WCCAAC") submitted a letter in support of the application on November 18, 2008. WCCAAC's letter (Exhibit 32) states that the Applicant has participated in several briefings and presentations to the community (including representatives of ANC 2C) providing details of the proposed development, and that the WCCAAC supports and recommends that the Commission approve the project.
13. On November 20, 2008, ANC 2F submitted a letter in support of the application (Exhibit 34). The letter, dated November 18, 2008, indicates that at a duly noticed public meeting on June 4, 2008, and with a quorum present, ANC 2F unanimously approved the concept, design and massing of the hotel project and the PUD application. ANC 2F recommended that the Commission approve the PUD application.
14. The Commission held a public hearing on the application on November 24, 2008. The parties to the case were the Applicant and ANC 2F, the ANC within which the Property is located.
15. Four principal witnesses testified on behalf of the Applicant at the public hearing: Steven Siegel from the Office of the District of Columbia Deputy Mayor for Planning and Economic Development; Marlene L. Johnson, Esq., for the Washington Convention Center Authority; Norman Jenkins of Marriott; and Robert Neal of Cooper Carry architects. Louis Slade of Gorove/Slade Associates, Inc. and Randolph Peterson of A. Morton Thomas & Associates, Inc. also testified on behalf of the Applicant. Based upon their professional experience, as evidenced by the resumes submitted for the record, Mr. Neal, Mr. Peterson, Mr. Slade were qualified by the Commission as experts in their respective fields. Craig Atkins of Lee & Papa and Associates, Inc. was also qualified as an expert, but did not testify at the hearing.
16. OP testified in support of the project.
17. Alexander M. Padro, as the Executive Director of Shaw Main Streets and single-member district Commissioner for ANC 2C01, testified that the community was supportive of the project, but dissatisfied with the community benefits and amenities package proffered in connection with the PUD. A letter from Shaw Main Streets representing the same was submitted to the Commission at the public hearing (Exhibit 38). Mr. Padro further testified that ANC 2C had taken no position on the application.
18. Deanna Brown and Virginia Lee of ONE DC Community Development Corporation testified in opposition of the application based on their belief that the project did not provide a sufficient level of public benefits and amenities.

19. At the public hearing, a letter from Emmaus Services for the Aging was filed. The letter (Exhibit 39) expresses dissatisfaction with the community benefits and amenities package proffered in connection with the PUD.
20. At the public hearing on the application, the Applicant submitted a PowerPoint presentation (Exhibit 40) and a booklet (Exhibit 41). The booklet contains a revised traffic management plan for the project, an addendum to the traffic impact statement filed September 24, 2008, and a list of the PUD community benefits and amenities.
21. On December 22, 2008, the Applicant filed a post-hearing submission (Exhibit 45), which included revised architectural drawings and elevations (Exhibit 45A), a discussion a discussion on the atrium skylight enclosure, including photographic examples (Exhibits 46-53); the construction management plan for the project (Exhibit 54); a summary of the monetary contribution to neighborhood organizations (Exhibit 55); and an estimate of Marriott's in-kind contribution to a job training program that will be implemented in connection with the PUD (Exhibit 45).
22. At its public meeting held on January 12, 2009, the Commission took proposed action to approve, with conditions, the application and plans that were submitted into the record. The Commission also requested the Applicant enlarge the drawings on some of the sheets in the revised architectural drawings filed on December 22, 2008 and to clarify the building materials depicted on the sheets.
23. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by action dated February 5, 2009, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.
24. On February 13, 2009, the Applicant filed with the Office of Zoning a consolidated set of all of the architectural drawings and elevations that were reviewed and approved by the Commission, which include the enlarged drawings requested by the Commission at the January 12, 2009 public meeting (the "Plans"). The Plans are marked as Exhibit 60A of the record of this case.
25. At a public meeting held on February 23, 2009, the Commission noted that, after the record was closed, it received letters dated February 19, 2009, from the East Central Civic Association and February 23, 2009 from the Applicant. The Commission instructed Office of Zoning staff to return the letters.
26. Nevertheless, as a result of the receipt of the letters, the Commission became aware that it had not mailed notice of the public hearing to ANC 2C, whose boundaries end less than 200 feet and across the street from the Property. Such notice is required by 11 DCMR § 3015.3 (c). For the reasons stated in the following two paragraphs, the Commission

decided to waive this requirement, finding that, “the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.” (11 DCMR § 3000.8.)

27. First, as to prejudice, ANC 2C was privy to other forms of notice of the hearing, including notice in the *D.C. Register* and notice posted on the Property, which is located just across the street from its boundary. The Commission concludes such notice was received by virtue of the appearance of Alexander Padro, single-member district Commissioner for ANC 2C01, at the hearing and his testimony that the ANC was aware of the hearing and had decided not to take a position on the application.
28. Second, as to whether the waiver is prohibited by law, the Commission is required to give 30 days written notice, excluding Saturdays, Sundays, and legal holidays of the requested zoning changes by first-class mail to each affected ANC. (D.C. Official Code Sec. 1-309.10(b).) The D.C. Court of Appeals has held that the affected ANC is not just the one in which project is located, but is also any ANC with boundaries that end across the street from a property subject to a zoning action. *Neighbors United for a Safer Community v. District of Columbia Bd. Of Zoning Adjustment*, 647 A.2d 793, 797 (D.C. 1994). However, as just noted, it is clear that ANC 2C, though not having received notice of the zoning change by mail, received such notice by other means, and decided to take no position. In this precarious economic environment, it would serve neither the ANC 2C or its constituents to delay the final consideration of a project of this size and importance just to inform the ANC about something it already knew about and considered.
29. Therefore, the Commission proceeded with final action to approve the application at its public meeting held on February 23, 2009.

### **The PUD Project**

30. In 2006, the Council of the District of Columbia enacted the New Convention Center Hotel Omnibus Financing and Development Act of 2006, effective September 19, 2006 (D.C. Law 16-163; D.C. Official Code § 10-1221.01 *et seq*). The legislation authorized, among other things, bond financing for the proposed Convention Center Hotel project, leasing of land in Square 370 by the District and the Washington Convention Center Authority to a private development team led by Marriott and tax increment financing to support the development of the Hotel.
31. Square 370 is an irregularly shaped parcel adjacent to Mount Vernon Square, N.W., and is bounded by 9<sup>th</sup> Street on the east, 10<sup>th</sup> Street on the west, L Street on the north and Massachusetts Avenue on the south. A Pepco substation is located at the northwest section of Square 370, at the intersection of 10<sup>th</sup> and L Streets. An abandoned building is located on the northeast corner of the square, at the intersection of 9<sup>th</sup> and L Streets. The American Federation of Labor Building, a landmark designated on the District of Columbia Inventory of Historic Sites and the National Register of Historic Places, is

situated on the southeast corner of Square 370 at Massachusetts Avenue and 9<sup>th</sup> Street. The balance of Square 370 is improved as a paved parking lot. A 20-foot wide private alley extends from 9th Street into the square. The Property consists of approximately 82,887 square feet, and includes all of Square 370, except Lot 8-6, where the Pepco substation is located.

32. The Property is designated in the mixed-use High-Density Residential and High-Density Commercial land use category on the District of Columbia Comprehensive Plan Future Land Use Map, and is designated in a Land Use Change area on the District of Columbia Comprehensive Plan Generalized Policy Map.
33. The Applicant proposes to construct the Marriott Marquis Washington Convention Center Headquarters Hotel on the Property, which will consist of between 1,150 to 1,182 guest units. The Hotel will have a maximum density of approximately 9.3 FAR and a maximum building height of 130 feet. An underground parking garage will occupy the two lowest levels of the Hotel and accommodate approximately 400 valet-parked vehicles. The PUD includes subsurface improvements within the public space, including, but not limited to, an underground pedestrian tunnel that connects to the Washington Convention Center on the east side of 9<sup>th</sup> Street, an underground loading dock area below 9<sup>th</sup> Street, and parking, meeting space, mechanical equipment, and other hotel uses (including, but not limited to, stairs, escalators, and kitchen space) below Massachusetts Avenue and L Street.

#### **Matter-of-Right Development under Existing and Proposed Zoning**

34. The Property is currently split-zoned DD/C-2-C and DD/C-3-C. It is also located in the housing priority area of the Downtown Development (“DD”) Overlay. As part of the application, the Applicant seeks to rezone the entire Property to the DD/C-3-C Zone District. Thus, the development of the Property would be subject to the DD Overlay District, C-3-C Zone District, and PUD regulations.
35. The project will comply with all area requirements for properties mapped in a C-3-C Zone District not modified by the provisions of the DD Overlay.
36. The proposed density of 9.3 FAR does not exceed the matter-of-right 9.5 FAR limit applicable to DD/C-3-C properties located in the housing priority area, 11 DCMR §§ 1706.2 and 1706.5. Such properties are also subject to a requirement to provide a minimum 3.5 FAR of residential uses, either located on-site or accounted for off-site through a combined lot development, 11 DCMR § 1706.5 (b). This project will not be required to do either as a result a text amendment recently approved by the Commission in Z.C. Case No. 08-05.
37. The proposed height of 130 feet is also within the matter-of-right limits of the DD District, which for DD/C-3-C properties is, “that permitted by the Act to Regulate the

Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6.601.09 (2001).”

### **Development Incentives and Flexibility**

38. Other than the PUD-related map amendment, the Applicant seeks no development incentives nor does it seek flexibility to deviate from the requirements of the Zoning Regulations.

### **Public Benefits and Amenities**

39. The following benefits and amenities will be created as a result of the PUD:
- a. Urban Design, Architecture, Landscaping and Open Space - 11 DCMR § 2403.9(a). The construction of the Hotel will provide a formal presence on Massachusetts Avenue, a community presence on 9<sup>th</sup> Street, and a neighborhood/residential presence on L Street. The architectural design and elements of the Hotel will reflect an appropriate level of modernity while respecting the traditional Washington architecture and the L'Enfant planning parameters. The building façades will have articulations that break up the massing, similar to the Washington Convention Center, so as to not overwhelm the existing urban scale and fabric. The urban building fabric will be enhanced with high quality exterior materials such as stone and glass, while high quality hardscape materials and patterns will enhance the streetscape. Finally, substantial glass exposure at the street level, coupled with sumptuous interior finishes and high level of activity will animate the street from within the Hotel.
  - b. Site Planning and Efficient and Economical Land Utilization - 11 DCMR § 2403.9(b). The design of the proposed PUD includes a number of site planning and efficient and economical land utilization features. First, an internal underground concourse is planned to connect the Hotel to the Washington Convention Center, which will reduce excessive on-street pedestrian movement at high traffic periods. Second, traffic impacts will be mitigated because truck deliveries for the Hotel dock are planned to occur from a loading area below 9<sup>th</sup> Street, and buses and taxis will queue on L Street rather than 9<sup>th</sup> Street or Massachusetts Avenue. Third, the design and layout of the PUD will visually enhance the experience on Massachusetts Avenue by masking the Pepco substation at 10<sup>th</sup> and L Streets.
  - c. Effective and Safe Vehicular and Pedestrian Access, Transportation Management Measures, Connections to Public Transit Service, and Other Measures to Mitigate Adverse Traffic Impacts - 11 DCMR § 2403.9(c). An underground pedestrian concourse is planned to connect the Hotel to the Washington Convention Center, which will reduce excessive on-street pedestrian movement at high traffic periods.

Traffic impacts will be mitigated because truck deliveries for the Hotel will occur at a below-grade loading dock; and buses and taxis will queue on L Street rather than 9<sup>th</sup> Street or Massachusetts Avenue. The Applicant had requested DDOT to change L and 10<sup>th</sup> Streets from one-way to two-way operations in order to provide more efficient traffic circulation around the perimeter of the site. The Hotel will have two main entries - one on Massachusetts Avenue and one on L Street with a bus lay-by. This allows passenger vehicles to be segregated from charter buses and commercial buses dropping off hotel guests. The Hotel will implement the Traffic Management Plan prepared by Gorove Slade Associates, dated November 17, 2008, included as part of Exhibit 41 of the record in this case, which includes provisions for taxi management and valet parking operations.

- d. Historic Preservation of Private or Public Structures, Places, or Parks - 11 DCMR § 2403(d). The PUD incorporates the historic American Federation of Labor Building. The exterior of the building will be restored, and the interior will be completely renovated to house 42 distinctive guestrooms and a public restaurant/bar at the street level.
  
- e. Employment and Training Opportunities - 11 DCMR § 2403.9(e). Marriott will facilitate the D.C. Citizens' Job Program at an estimated in-kind cost of \$90,000. The "New Convention Center Hotel Omnibus Financing and Development Act of 2006" earmarks \$2 million in bond financing for the job training program provided that, among other things, (a) the job program begins no later than two years before the completion of the construction of the New Convention Center Hotel; (b) the program provides for the hiring and training of citizens of the District for permanent employment positions in the Washington Convention Center Hotel; and (c) the program is designed to provide job-specific training that meets the specifications of positions to be filled at the Washington Convention Center Hotel, and provides that District citizens who successfully complete the training be given first consideration for the jobs for which they have been trained. The Hotel is expected to generate 1,000 to 2,000 permanent new jobs and 1,500 to 1,800 construction related temporary jobs. Of the permanent new jobs generated, approximately 10% are classified as management positions. The Hotel workforce will include associates focused on guest services, sales, engineering, finance, housekeeping, banquets, and various attendants and servers. Additionally, the Applicant will voluntarily enter into an agreement to participate in the Department of Employment Services ("DOES") First Source Employment Program to promote and encourage the hiring of District of Columbia residents in the construction and operation of the project, and the Applicant has entered into a Certified Business Enterprise Agreement with the Office of Local Business Development ("OLBD") to use the resources of the OLBD to utilize local business enterprises in the development of the project.

- f. Environmental Benefits - 11 DCMR § 2403.9(h). The Hotel will achieve LEED Silver status by incorporating protocols in the five categories of the USGB LEED certification process: (i) sustainable sites, (ii) water efficiency, (iii) energy and atmosphere, (iv) materials and resources, and (v) indoor air quality. The project will include landscape elements to promote the following green building objectives: (i) stormwater design/quantity control through the use of low impact development ("LID") tree pits and pervious paving; (ii) heat island effect, non-roof through planting a double row of trees along Massachusetts Avenue; and (iii) water efficient landscaping through the use of a stormwater management cistern, drip irrigation system, and native or adapted plan species.
  
- g. Uses of Special Value to the Neighborhood or the District as a Whole - 11 DCMR § 2403.9(i). The PUD would be of special value to the District, generally, by (i) providing lodging and conference facilities that support the Washington Convention Center, (ii) providing additional lodging options that further the City's hospitality and tourism industry, and (iii) preserving the landmark American Federation of Labor Building. The proposed PUD also has special value to the Mount Vernon Square neighborhood because it will replace an underutilized site and abandoned building with an exemplary, well-designed convention headquarters hotel that promotes the continued redevelopment of this section of the City. Also, the retail and restaurants at the perimeter of the ground floor of the Hotel will provide additional services to the neighborhood and enliven the streetscape.
  
- h. Additional Contribution to Shaw Community. The Applicant will contribute \$50,000 to various non-profit organizations in the Shaw community. The funds will be used to support senior citizens' nutritional programs, employment training in the healthcare industry, medical screenings for low-income Shaw residents, meals for the homeless and low-income families, and similar services provided by the non-profit organizations.

**Consistency with the District Elements of the Comprehensive Plan**

- 40. The Property is designated in the mixed-use High-Density Residential and High-Density Commercial land use category on the District of Columbia Comprehensive Plan Future Land Use Map. The High-Density Residential designation is used to define neighborhoods and corridors where high-rise apartment buildings are the predominant use, and the corresponding zones districts are generally R-5-D and R-5-E (although other zones may apply). The High-Density Commercial designation is used to define the central employment district of the City and other major office employment centers on the downtown perimeter. It is characterized by office and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings (including

historic buildings) are interspersed. The corresponding zone districts are generally C-2-C, C-3-C, C-4, and C-5, although other districts may apply.

41. The Commission finds that the Applicant's proposal to construct a hotel on the Property is consistent with the Future Land Use Map's designation of the Property. The western portion of the Property is zoned DD/C-2-C and the eastern portion of the Property is zoned DD/C-3-C. Under the application, the entire property would be in the DD/C-3-C Zone District. One of the purposes of the C-3-C Zone District is to encourage a diversity of compatible land uses that may include both residential and commercial uses, which is also consistent with the stated principle of the mixed-use designation of the Property.
42. The Property is designated in a Land Use Change Area on the District of Columbia Comprehensive Plan Generalized Policy Map. The guiding philosophy in these areas is to encourage and facilitate new development and to promote the adaptive reuse of existing structures. As Land Use Change Areas are redeveloped, the District aspires to create high quality environments that include exemplary site and architectural design and that are compatible with and do not negatively impact neighborhoods. The Commission finds that the proposed PUD and zoning map amendment are consistent with this philosophy because the development will have a positive impact on the surrounding area by virtue of the exceptional site and architectural design. The proposed PUD's design carefully considers the nearby uses and, accordingly, will not have an unacceptable impact on the area. Moreover, the proposed PUD will have no unacceptable impact on existing or future traffic conditions.
43. The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:
  - a. 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.
  - b. Policy ED-2.3.1: Growing the Hospitality Industry. Develop an increasingly robust tourism and convention industry, which is underpinned by a broad base of arts, entertainment, restaurant, lodging, cultural, and government amenities.
  - c. Policy ED-2.3.4: Lodging and Accommodation. Support the development of a diverse range of hotel types, serving travelers with varying needs, tastes, and budgets. New hotels should be encouraged both within central Washington and in outlying commercial areas of the City, particularly in areas that presently lack quality accommodation.

- d. Policy HP-2.4.1: Rehabilitation of Historic Structures. Promote appropriate preservation of historic buildings through an effective design review process. Apply design guidelines without stifling creativity, and strive for an appropriate balance between restoration and adaptation as suitable for the particular historic environment.
- e. Policy HP-2.4.2: Adaptation of Historic Properties for Current Use. Maintain historic properties in their original use to the greatest extent possible.
- f. Policy HP-2.4.3: Compatible Development. Ensure that new construction, repair, maintenance, and improvements are in scale with and respect the historic context through sensitive siting and design and the appropriate use of materials and architectural detail.
- g. Policy HP-2.4.4: Suitability to the Historic Context. Apply design standards in a manner that accounts for different levels of historic significance and different types of historic environments. Encourage restoration of historic landmarks while allowing enhancements of equivalent design quality, provided such enhancements do not damage the landmark. Allow greater flexibility where the inherent character of historic properties can accommodate greater intervention or more dramatic new design, for example, in non-residential areas and in areas without a significant design pattern.
- h. Policy HP-2.4.5: Protecting Historic Building Integrity. Protect historic buildings from demolition whenever possible, and protect the integrity of whole buildings.
- i. Policy CW-1.1.10: Central Washington Hotels and Hospitality Services. Encourage the development of additional hotels in central Washington, including around the new Convention Center. A range of hotel types, including moderately priced hotels, and hotels oriented to family travelers as well as business travelers should be encouraged. Hotels generate jobs for District residents and revenues for the general fund and should be granted incentives when necessary.
- j. Policy CW-2.4: Mount Vernon District. Mount Vernon Square itself was designed to be a focal point among Washington's ensemble of great civic landmarks. Its focus is the 1902 former Carnegie Library building, an elegant historic structure that is now in use by the Washington Historical Society. Facing the north edge of the Square is the 2.3 million square foot Washington Convention Center, completed in 2003. To the southwest, the now vacant site of the former convention center is awaiting redevelopment. Immediately northwest of the Square, a major convention hotel is planned. Large-scale office buildings occupy other sides of the Square, framing it as potentially great public space.

- k. Policy CW-2.4.3: Convention Center Area Land Uses. Encourage land uses around Mount Vernon Square that capitalize on the presence of the Washington Convention Center. Such uses include hotels, restaurants, retail, and entertainment uses. Convention-related hotel construction should be focused on vacant or underutilized land immediately adjacent to the Washington Convention Center to minimize impacts on the surrounding neighborhood.
- l. Action CW-2.4.B: Convention Center Hotel. Develop a major convention center hotel in close proximity to the Washington Convention Center. The Hotel should be sited and designed to complement adjacent uses and add activity and aesthetic value to the Mount Vernon Square neighborhood.

### **Air Space Development**

44. The PUD includes subsurface improvements within the public space, including, but not limited to, an underground pedestrian tunnel that connects to the Washington Convention Center on the east side of 9<sup>th</sup> Street, an underground loading dock area below 9<sup>th</sup> Street, and parking, meeting space, mechanical equipment, and other hotel uses (including, but not limited to, stairs, escalators, and kitchen space) below Massachusetts Avenue and L Street.
45. Under § 5 of the District of Columbia Public Space Utilization Act (D.C. Official Code § 10-1121.04), the Commission must, after public hearing and after securing the advice and recommendations of the National Capital Planning Commission, determine the uses to be permitted in the airspace and establish regulations applicable to the use of such airspace consistent with regulations applicable to the abutting privately owned property, including limitations and requirements respecting the height of any structure to be erected in such airspace, off-street parking and floor area ratios applicable to such structure, and easements of light, air, and access.
46. The Applicant and the District desire to construct portions of the Hotel, including parking and loading area areas and auxiliary function space beneath the surface of adjacent public space.
47. Because the “air space” improvements are completely underground, have no impact external to the project, and must be built in accordance with the plans approved in this Order and used in accordance with its conditions, the Commission finds it unnecessary to separately regulate the use proposed for the space.

### **Office of Planning ("OP") Report**

48. By report dated July 3, 2008 (Setdown Report; Exhibit 13), OP recommended that the Commission schedule a public hearing on the application.

49. By report dated November 14, 2008 (Public Hearing Report; Exhibit 31), OP recommended final approval of the application. OP indicated that the application will further a number of the elements and principles of the Comprehensive Plan and is not inconsistent with the Comprehensive Plan's policies and land use maps. OP also indicated that the proposed hotel and the amenities identified by the Applicant would be of benefit to the Mount Vernon Square neighborhood as well as the District overall. OP also supported the proposed DD/C-3-C designation and indicated that the proposed zoning is not inconsistent with the Comprehensive Plan's Future Land Use designation for high density residential and commercial uses and the District's goal of developing a convention center hotel on the site.
50. By report dated January 2, 2009 (Supplemental Report; Exhibit 56), OP recommended that the Commission approve the application, as amended by the post-hearing documents filed by the Applicant. The Supplemental Report states that the redesign of the building resolves prior concerns regarding the overall building height, and the revised drawings clarify the use of the areas within the building that exceed 130' in height. The Supplemental Report also notes that the Applicant appeared before the Public Space Committee ("PSC") on December 18, 2008, and the PSC granted conditional approval with some modifications. Overall, the PSC was supportive of the project, but deferred final approval of some items to subcommittees like the Street Light Division of DDOT, and encouraged the developer to work with the Urban Forestry Administration to coordinate all tree removals and new plantings.

#### **District of Columbia Department of Transportation ("DDOT") Report**

51. DDOT submitted a memorandum dated November 17, 2008 (Exhibit 33), recommending that the project be approved. DDOT indicated in its report that the transportation impacts of the development will not compromise the proper-functioning network that already exists. DDOT also noted that the Applicant's request that DDOT change 10<sup>th</sup> and L Streets to two-way operations would, if implemented, increase neighborhood access, and the loading underground would decrease potential impacts on traffic. The Commission notes that the proposed change can not be effectuated until DDOT takes the appropriate administrative action.

#### **Response to Contested Issues**

52. In response to the concerns raised by Shaw Main Street, ONE DC Development Corporation, and Emmaus Services for the Aging, the Applicant amended its community benefits and amenities package to include a monetary contribution of \$50,000 to various non-profit organizations in the Shaw community. The funds will be used to support senior citizens' nutritional programs, employment training in the healthcare industry, medical screening for low-income Shaw residents, meals for the homeless and low-income families, and similar services provided by the non-profit organizations. The

Commission finds that this additional benefit is reasonable in light of the PUD's impact to the area and the development flexibility requested.

53. In the plans that were filed as part of the post-hearing submission, the Applicant has reduced the height of the atrium skylight cover so that it does not exceed the height of the roof structure penthouse at 18' 6". The skylight cover will be mostly surrounded by the roof structures for mechanical equipment, stair towers and elevator overrides and will not be visible from the Massachusetts Avenue or L Street frontages.

### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk and density standards of the Zoning Regulations. The uses for this project are appropriate for the Property. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.

8. Approval of this PUD 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 Comprehensive Plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. In accordance with § 5 of the District of Public Space Utilization Act D.C. Official Code § 10-1121.04), the Commission, after public hearing and after securing the advice and recommendations of NCPC, has determined the uses to be permitted in the airspace below Massachusetts Avenue, 9<sup>th</sup> Street, and L Streets, N.W., adjacent to the private property included within the PUD. As noted earlier, the Commission finds it unnecessary to separately regulate the use of the space, but subjects it to the controls of this Order applicable to the project as a whole.
10. The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to any issues or concerns raised in the written recommendations of the affected ANC. In this case, ANC 2F voted unanimously to approve the PUD application. (See Exhibit 34.) The Commission has given ANC 2F's recommendation great weight in approving this application. ANC 2C did not submit written recommendations to the Commission.
11. 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. OP recommended approval of the application. The Commission has given OP's recommendation great weight in approving this application.
12. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review and approval of a planned unit development ("PUD"), related map amendment, and air space development, subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed substantially in accordance with the Plans, as prepared by The CooperCarry – TVS Collaborative, dated February 13, 2009, marked as Exhibit 60A in the record (the "Plans"); and as further modified by the guidelines, conditions and standards herein.

2. The PUD shall have between 1,150 and 1,182 guest units and a maximum density of approximately 9.3 FAR.
3. The maximum height of the building shall be 130 feet, not including roof structures, which may exceed the permitted height by no more than 18 feet, 6 inches.
4. The project shall include an underground parking garage that accommodates approximately 400 valet-parked vehicles.
5. In the loading dock area below 9<sup>th</sup> Street, the PUD shall provide a minimum of three loading berths with a depth of 55 feet, three loading berths with a depth of 30 feet, and one 20-foot wide service/delivery loading space.
6. The Applicant shall also have flexibility with the design of the PUD in the following areas:
  - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building.
  - b. To vary the interior of the parking levels, including the location and arrangement of parking spaces, so as to provide valet parking for no less than the minimum number of spaces required for a hotel in the C-3-C Zone District.
  - c. 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 and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.
  - d. The Applicant shall have the flexibility to vary the exterior design, signage, landscaping, and public space improvements in accordance with comments received from the Historic Preservation Review Board or its staff.
7. No base building permit shall be issued for this PUD and the PUD-related map amendment shall not become effective until the Applicant has submitted to the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") a fully-executed First Source Employment Agreement with the Dept. of Employment Services and a fully-executed Certified Business Enterprise Agreement with the Office of Local Business Development.

8. The Applicant will contribute \$50,000 to one or more non-profit organizations in the Shaw community. Each contribution shall be conditioned upon the recipient spending the funds solely to support senior citizens' nutritional programs, employment training in the healthcare industry, medical screenings for low-income Shaw residents, meals for the homeless and low-income families, or similar services. No base building permit shall be issued for the PUD unless:
  - a. The Zoning Administrator has received a written statement from each recipient indicating the amount of the contribution received and committing to spend the contribution only for the purposes described above; and
  - b. The total amount of monies acknowledged as having been received by the recipients is at least \$50,000.
9. No base building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicants and all successors in title to construct on and use the Subject Property in accordance with this Order or amendment thereof by the Zoning Commission.
10. No certificate of occupancy shall issue until the exterior of the historic American Federation of Labor Building is restored and the interior completely renovated to house approximately 42 guestrooms and a public restaurant/bar at the street level.
11. The PUD approved by the Zoning Commission shall be valid for a period of two (2) 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 shall begin within three (3) years of the effective date of this Order.
12. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicants to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On January 12, 2009, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to approve; the third Mayoral appointee position vacant, not voting).

On February 23, 2009, upon the motion of Vice Chairman Jeffries, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to adopt; the third Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on     **MAR 27 2009**    .