

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-08**

Z.C. Case No. 11-08

Il Palazzo, LLC

**(Consolidated Approval for a Planned Unit Development and Related Zoning Map
Amendment @ Square 2578, Lot 26)**

October 27, 2011

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on September 8, 2011, to consider an application from Il Palazzo, LLC (“Applicant”) for consolidated review and approval of a planned unit development (“PUD”) and related Zoning Map amendment. The Commission considered the application pursuant to Chapters 1, 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, Hearing, and Supplemental Filings

1. The project site consists of Square 2578, Lot 26, more commonly known as 2700 16th Street, N.W. (“Property” or “Subject Property”). (Exhibit 4, p. v; Exhibit 15, p. v.)
2. The Subject Property consists of approximately 42,494 square feet of land area. The Subject Property is bounded by 16th Street, N.W. to the east, Mozart Place, N.W. to the west, Fuller Street, N.W. to the south and property of the Scottish Rite Temple to the north. The Property is located just south of Columbia Road. (Exhibit 4, pp. 1, 4; Exhibit 15, pp. 1, 4.)
3. The Subject Property is currently improved with the former Italian Embassy on the eastern portion of the lot. The western portion of the lot is unimproved. The Subject Property is located in the Mount Pleasant neighborhood. (Exhibit 4, p. 4; Exhibit 15, p. 4.)
4. The Applicant initially filed its application on March 24, 2011. The application requested consolidated review and approval of a PUD and PUD-related map amendment to rezone the portion of the Property located in the D/R-5-B Zone District to the R-5-D Zone District. The Office of Planning (“OP”) provided its report on April 14, 2011, and the

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ZONING COMMISSION
District of Columbia
CASE NO.11-08B
EXHIBIT NO.2B

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1. The project site consists of Square 2578, Lot 26, more commonly known as 2700 16th Street, N.W. (“Property” or “Subject Property”). (Exhibit 4, p. v; Exhibit 15, p. v.)
2. The Subject Property consists of approximately 42,494 square feet of land area. The Subject Property is bounded by 16th Street, N.W. to the east, Mozart Place, N.W. to the west, Fuller Street, N.W. to the south and property of the Scottish Rite Temple to the north. The Property is located just south of Columbia Road. (Exhibit 4, pp. 1, 4; Exhibit 15, pp. 1, 4.)
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case was set down for a public hearing on April 25, 2011. (Exhibits 4, 11; April 25, 2011 Transcript (“Tr.”), p. 76.)

5. The Applicant provided its prehearing statement on May 26, 2011 and a public hearing was timely scheduled for September 8, 2011. (Exhibits 15, 16.)
6. A public hearing was held on September 8, 2011. Testimony was presented by the Applicant’s project team, including the architect and transportation consultant. The Applicant also submitted its proposed community amenities, a supplemental transportation analysis in support of the proposed circulation of the site, as well as a letter from a trash consultant supporting the proposed circulation of the project. (September 8, 2011 Tr., pp. 8-67.)
7. There were no requests for party status.
8. At the close of the hearing, the Commission asked for a detailed roof plan, a LEED Checklist, a sun study, additional information on parking, and an updated property owners’ list and corresponding labels. The Applicant submitted the requested information on September 15, 2011. (Exhibit 30.) With respect to parking, the Applicant stated that it and/or the condominium association for the residential building will only sell spaces to tenants in the building. Nevertheless, tenants would be permitted to lease their spaces to third parties should they choose to do so. The Applicant further indicated that it is not proposing to opt out of the Residential Parking Permit program, but it would allow its tenants to be eligible for such permits. The ANC was provided until October 6, 2011, to respond to the Applicant’s filing. (The content of the ANC’s October 6, 2011 submission is discussed in Finding of Fact No. 47.)
9. The Commission took proposed action to approve the application at its public meeting on September 26, 2011. The Commission issued a procedural order requiring the Applicant to file its final statement of public benefits being proffered with the PUD, a list of potential adverse effects of the PUD, and requiring the Applicant to provide a draft condition to include in the PUD order that renders the proffered public benefit enforceable and adequately mitigates the identified potential adverse effects. The Applicant timely submitted the requested information on October 3 and October 17, 2011, and supplemented this information on October 26, 2011. The Commission also requested additional information regarding the courtyard in the northwest corner of the site and asked the Applicant to evaluate unit placement along the courtyard in the event the adjacent property were to be developed in the future. (September 26, 2011 Tr., p. 66.) The Applicant timely submitted the requested information on October 6, 2011.
10. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to the District of Columbia Home Rule Act. NCPC, by

action dated September 29, 2011, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

11. The Commission took final action to approve the application in Z.C. Case No. 11-08 on October 27, 2011. (October 27, 2011 Tr., p. 22.)

The Subject Property and Surrounding Area

12. The Subject Property consists of approximately 43,494 square feet of land area and is bounded by 16th Street, N.W. to the east, Mozart Place, N.W. to the west, Fuller Street, N.W. to the south, and property of the Scottish Rite Temple to the north. The Property is located just south of Columbia Road. (Exhibit 4, p. 4; Exhibit 15, p. 4.)
13. The Property is currently improved with the former Italian Embassy on the eastern portion of the lot. The western portion of the lot is unimproved. (*Id.*)
14. The Subject Property is located in the same square as the Scottish Rite Temple and the Unification Church of Washington, D.C. It is located across Fuller Street from the Embassy of Poland and the Embassy of Lithuania, which are located further south on 16th Street. The Property is directly across the Street from the former site of the Embassy of Spain. The Property is located along a strip of 16th Street that is dedicated primarily to institutional uses, the majority of which have religious or government affiliations. (*Id.*)
15. The site is approximately six blocks to the west of the Columbia Heights Metrorail Station located at the intersection of 14th and Irving Streets, N.W. (*Id.*)

Existing and Proposed Zoning

16. The Property is split-zoned: the eastern portion of the Property is located in the R-5-D Zone District and the western portion is located in the D/R-5-B Zone District in the Diplomatic Overlay. All of the properties along 16th Street, to the north, south and east, are all located in the R-5-D Zone District. The property immediately to the north, the Scottish Rite Temple, is located entirely in the R-5-D Zone District for the entire depth of the lot between 16th Street, N.W. and Mozart Place, N.W. The western portion of the Property is the only parcel in Square 2578 that is not located in the R-5-D Zone District. (*Id.*)
17. The Applicant requested approval of a PUD-related map amendment for the portion of the Property located in the D/R-5-B Zone District to the R-5-D Zone District. (Exhibit 4, Tab B.)

Description of the PUD Project

18. The Applicant plans to renovate the former Italian Embassy building, which is designated as a historic landmark on the District of Columbia Inventory of Historic Sites. The Applicant will construct an eight-story addition on the rear of the Property, which will be connected to the historic resource via an above-grade corridor to the north of the building. The development will be dedicated entirely to residential use and will include approximately 60-90 spaces of below-grade parking. (Exhibit 4, p. 6; Exhibit 15, p. 6.)
19. The development will include 110-135 residential units, including six affordable units, at least four of which will be two-bedroom family units, which will be reserved for households with an annual income no greater than 80% of the Annual Median Income. (*Id.*; Exhibits 30, 36.)
20. The total gross floor area included in the proposed PUD project is approximately 123,061 square feet of residential gross floor area for a total floor area ratio ("FAR") of approximately 2.83. Building heights range from approximately 56 feet to approximately 90 feet. The proposed density and building heights are significantly less than those permitted for a PUD in the R-5-D Zone District. The building will have a lot occupancy of 58% and a rear yard of 80 feet, as measured from the centerline of 16th Street. (Exhibit 4, p. 6; Exhibit 15, p. 6; Exhibit 30.)
21. Four curb cuts are proposed for the Property. The garage entrance will be accessed via a right-hand turn from Fuller Street, a one-way roadway with westbound traffic. Vehicles will exit the garage with a right-hand turn onto Mozart Place, another one-way roadway with northbound traffic. Loading will be accessed via Mozart Place. Vehicular access to the Property will also be permitted via the circular driveway on 16th Street, N.W. The use of the circular drive, however, will not be used as a primary point of vehicular access to the site. Three of the four proposed curb cuts for the project currently exist on the site. (Exhibit 30, Tab A.)
22. The design of the project can be broken into two components: the existing building and the addition to the rear. The addition consists of an eight-story, L-shaped tower with a shorter five-story component at the corner of Mozart Place and Fuller Street. The intentional stepping down of the building responds to the scale of the apartment building across Fuller Street and townhouses across Mozart Place from the development. The maximum height of the building is 90 feet, four inches, which steps down to 56 feet, 10 inches across the street from the townhouses on Mozart Place. (Exhibit 15, p. 7; Exhibit 30, Tab A.)
23. The Applicant will renovate the existing building and convert it to residential units. It will preserve many of the grand common spaces in the building. (Exhibit 30, Tab A.)

Flexibility Requested

24. The Applicant requested flexibility from the court requirements for the court located in the northwest corner of the Property. The Applicant also sought flexibility from the penthouse requirements for a uniform roof to the penthouse and for providing a single penthouse. The Commission has the authority to grant this flexibility pursuant to § 2405.5 and 2405.7 of the Zoning Regulations. (Exhibit 15, p. 18; Exhibit 30, Tab A)
25. The Applicant also sought flexibility to provide mechanical parking in place of conventional parking. (September 8, 2011 Tr., p. 63.)
26. No other type of flexibility from the Zoning Regulations was requested or granted.

Project Benefits and Amenities

27. The Applicant, in its written submissions and testimony before the Commission, noted that the following benefits and amenities will be created as a result of the project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403. (September 8, 2011 Tr., pp. 23-32); Exhibit 4, pp. 16-18; Exhibit 15, pp. 16-18; Exhibit 21, pp. 2-3; Tabs B, C.)
 - (a) Housing: Pursuant to § 2403.9(f) of the Zoning Regulations, the PUD guidelines state that the production of housing and affordable housing is a public benefit that the PUD process is designed to encourage. This project will create approximately 110-135 residential units. As required by Inclusionary Zoning Regulations set forth in Chapter 26, six of the units will be reserved for households earning up to 80% of the Area Median Income. Reserving the required amount of residential gross floor area for inclusionary units is not a public benefit, except to the extent that the gross floor area exceeds what would have been provided under matter of right zoning. However, at least four of the affordable units will be two-bedroom units and at least one of the affordable units will be located in the historic landmark. Under the Inclusionary Zoning Regulations, the mix of affordable unit types is required to be proportionate to the market rate unit mix. (11 DCMR § 2605.2.) Therefore, providing more two-bedroom units than is required is a public benefit.
 - (b) Urban Design, Architecture, Landscaping, or Creation of Open Spaces: Section 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. The project exhibits the characteristics of exemplary urban design and architecture. The project will invigorate a vacant site along a major District corridor. The superior architecture of the addition complements the landmark and highlights the historic resource rather than overpowering it. The

Applicant is incorporating high quality materials and a quality design that is consistent with the surrounding neighborhood as well as the landmark.

- (c) Site Planning, and Efficient and Economical Land Uses: Pursuant to § 2403.9(b) of the Zoning Regulations, “site planning, and efficient and economical land utilization” are public benefits and project amenities to be evaluated by the Commission. The creation of this significant residential project on the Subject Property and the preservation of a historic landmark is an example of appropriate site planning and efficient and economical land use as a project amenity. The landmark is currently vacant and its conversion to residential use will return an underutilized site to a contributing part of the community and will enhance greatly the 16th Street corridor.
- (d) Effective and Safe Vehicular and Pedestrian Access: The Zoning Regulations, pursuant to § 2403.9(c), state that “effective and safe vehicular and pedestrian access” can be considered public benefits and project amenities. The Applicant is proposing a simple circulation plan for the project, which will diminish vehicular and pedestrian conflicts at the intersection of Mozart Place and Fuller Street. All vehicular traffic will enter the parking garage from Fuller Street and, similarly, all vehicular traffic will exit the garage from a single exit onto Mozart Place.

A. Morton Thomas and Associates prepared a Transportation Impact Study for the project. Based on its findings, the project is contextually appropriate and will not exacerbate existing conditions. In fact, the analysis concludes that only half of the residents will use their personal vehicle for travel to and from work. Accordingly, the project will have a limited effect on the road network during peak times.

- (e) Uses of Special Value: According to § 2403.9(i), “uses of special value to the neighborhood or the District of Columbia as a whole” are deemed to be public benefits and project amenities. The Applicant has agreed to provide the following project amenities as a result of this project:
 - (i) Employment Agreement: the Applicant will hire a minimum of 12 District of Columbia residents for construction positions for the duration of the development of a construction project in the District of Columbia. The positions are not limited to the development of Il Palazzo. The Applicant will also host job fairs for District residents at least once every 90 days;
 - (ii) Renovation of Commercial Kitchen at Festival Center: The renovation of the kitchen will include the demolition and moving of the men’s restroom,

demolition and building of the new kitchen space, and installation of the new kitchen equipment;

- (iii) Tree Fence Buy-In Program: the Applicant will establish a tree fence buy-in program with the Reed-Cooke Neighborhood Association and the Applicant will contribute \$50,000 to the program. Once the program is established, the Applicant will be responsible for selling and installing up to 625 tree fences. The tree fences will be sold at-cost;
 - (iv) Sarah's Circle Repairs: the Applicant will survey and repair all visible damage to units in Sarah's Circle caused by the August 2011 earthquake; and
 - (v) H.D. Cooke Elementary School Investments: the Applicant shall provide the following materials to the H.D. Cooke Elementary School: library books that reflect the IB learner profile, key concepts and attitudes in Spanish and English (at a cost of up to \$12,000), choral sheet music to support the choral program (at a cost of up to \$500), and musical instruments to support the band program (at a cost of up to \$2,500). The Applicant will also establish the following prior to commencement of construction of the Project: scholarship for H.D. Cooke Elementary School students to attend classes at the SITAR art center also located in the Adams Morgan Area (at a cost of up to \$2,500), and funding to support training parents with a local community agency focused in one of the areas of job readiness, computer basics, educational advocacy, life skills, and language acquisition (at a cost of up to \$2,500).
- (f) Revenue for the District: Section 2403.9(i) states that "uses of special value to the neighborhood or the District of Columbia as a whole" are deemed to be public benefits and project amenities. The creation of approximately 110-135 new households will result in the generation of significant additional tax revenues for the District.
- (g) Employment and Training Opportunities: According to § 2403.9(e), "employment and training opportunities" are representative public benefits and project amenities. The Employment Agreement that the Applicant has entered into with the Advisory Neighborhood Commission ("ANC") will guarantee that at least 12 District residents will be hired at construction job sites throughout the city and that job fairs will be held at least every 90 days for the duration of the Il Palazzo project.

- (h) Comprehensive Plan: According to § 2403.9(j), public benefits and project amenities include “other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.” The proposed PUD is consistent with and furthers many elements and goals of the Comprehensive Plan, as described below.

Comprehensive Plan

28. The proposed PUD is consistent with and fosters numerous policies and action items enumerated in the Comprehensive Plan. The Subject Property is located in the Moderate Density Residential land use category on the Future Land Use map. The Framework Element (“Element”) provides guidelines for using the Future Land Use Map. This Element states that the Future Land Use map should be interpreted “broadly” and that zoning for an area should be guided by the Future Land Use Map interpreted in conjunction with the text of the Comprehensive Plan. The Element also clearly provides that density and height gained through the PUD process as bonuses may exceed the typical ranges cited for each land use category. Despite the Property’s designation as appropriate for moderate-density residential development under the Future Land Use Map, by the Comprehensive Plan’s own terms, it should be used only as guidance and not as a definitive source for appropriate uses. In this case, it is significant that the property immediately adjacent to the Property is located in the R-5-D Zone District and it shares the same Comprehensive Plan designation. (Exhibit 4, p. 18; Exhibit 15, p. 19.)
29. The Comprehensive Plan cites the importance of transit-oriented development and the redevelopment of underutilized properties. The project is consistent with the following policies: (Exhibit 4, p. 19; Exhibit 15, pp. 19-20.)
- ***Policy LU-1.2.7: Protecting Existing Assets on Large Sites:*** Identify and protect existing assets such as historic buildings, historic site plan elements, important vistas, and major landscape elements as large sites are redeveloped.
 - ***Policy LU-1.3.2: Development Around Metrorail Stations:*** Concentrate redevelopment efforts on those Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. Ensure that development above and around such stations emphasizes land uses and building forms which minimize the necessity of automobile use and maximize transit ridership while reflecting the design capacity of each station and respecting the character and needs of the surrounding areas.

- **Policy LU-2.1.1: Variety of Neighborhood Types:** Maintain a variety of residential neighborhood types in the District, ranging from low-density, single family neighborhoods to high-density, multi-family mixed use neighborhoods. The positive elements that create the identity and character of each neighborhood should be preserved and enhanced in the future.
- **Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods**
Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to “create successful neighborhoods” in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others.
- **Policy LU-2.1.4: Rehabilitation Before Demolition:** In redeveloping areas characterized by vacant, abandoned, and underutilized older buildings, generally encourage rehabilitation and adaptive reuse of existing buildings rather than demolition.
- **Policy LU-2.2.4: Neighborhood Beautification:** Encourage projects which improve the visual quality of the District’s neighborhoods, including landscaping and tree planting, façade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements.

The project is consistent with the land use element as it is renovating an underutilized structure on an underutilized site and returning it to contributing part of the community. The development will provide additional housing options for residents of the District and it is improving property that is proximately located to both a Metrorail station and several bus lines.

30. The project furthers several of the Housing policies of the Comprehensive Plan as well: (Exhibit 4, p. 20; Exhibit 15, p. 20.)

- **Policy H-1.1.1: Private Sector Support:** Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives.
- **Policy H-1.1.5: Housing Quality:** Require the design of affordable housing to meet the same high-quality architectural standards required of market-rate housing. Regardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance and should address the need for open space and recreational amenities, and respect the design integrity of adjacent properties and the surrounding neighborhood.

- **Policy H-1.2.1: Affordable Housing Production as a Civic Priority:** Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city.
 - **Policy H-1.2.3: Mixed Income Housing:** Focus investment strategies and affordable housing programs to distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing.
 - **Policy H-1.3.1: Housing for Families:** Provide a larger number of housing units for families with children by encouraging new and retaining existing single family homes, duplexes, rowhouses, and three- and four-bedroom apartments.
 - **Policy H-4.1.1: Integration of Special Needs Housing:** Integrate special needs housing units throughout the city rather than segregating them into neighborhoods that already have high concentrations of such housing.
31. The project is providing luxury residential housing along a critical transportation corridor in the District. The units will be spacious with a significant amount of corresponding green space on the lot. The Project will offer primarily one-bedroom and two-bedroom units; however, it will provide the option of studios as well as three-bedroom units. There will be a mix of units available to families as well as single people. Further, the project will dedicate four of its two-bedroom units to affordable housing. This will enable families to live in the neighborhood, an area that has become increasingly unaffordable for many.
32. The development is consistent with the following environmental policies: (Exhibit 4, p. 21; Exhibit 15, pp. 21-22.)
- **Policy E-1.1.3: Landscaping:** Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity.
 - **Policy E-3.1.1: Maximizing Permeable Surfaces:** Encourage the use of permeable materials for parking lots, driveways, walkways, and other paved surfaces as a way to absorb stormwater and reduce urban runoff.
 - **Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff:** Promote an increase in tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction and adaptive reuse, and the

application of tree and landscaping standards for parking lots and other large paved surfaces.

33. The development adaptively reuses an existing building, which greatly minimizes the impact of the development. Further, the site plan was developed so as to incorporate significant amounts of green space. The project only occupies 58% of the Property, which provides a significant amount of green space for landscaping and passive recreation.
34. The development is thoughtfully designed to incorporate elements of the existing building as the surrounding community. It is of an appropriate scale and use and promotes several urban design policies of the District: (Exhibit 4, p. 22; Exhibit 15, p. 22.)
 - **Policy UD-1.3.7: Neighborhood Connectivity:** Improve the physical connections between neighborhoods and nearby waterfronts. Where feasible, extend the existing city grid into large waterfront sites to better connect nearby developed areas to the shoreline.
 - **Policy UD-1.4.1: Avenues/Boulevards and Urban Form:** Use Washington's major venues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city.
 - **Policy UD-1.4.3: Avenue/Boulevard Vistas and View Corridors:** Protect views and view corridors along avenues/boulevards, particularly along streets that terminate at important civic monuments or that frame distant landmarks. Vistas along such streets should be accentuated by creating more well-defined street walls, improving landscaping, and requiring the highest architectural quality as development takes place.
 - **Policy UD-2.2.7: Infill Development:** Regardless of neighborhood identity, avoid overpowering contrasts of scale, height and density as infill development occurs.
 - **Policy UD-2.2.2: Areas of Strong Architectural Character:** Preserve the architectural continuity and design integrity of historic districts and other areas of strong architectural character. New development within such areas does not need to replicate prevailing architectural styles exactly but should be complementary in form, height, and bulk.

35. The project will respond appropriately to the existing institutional and residential uses surrounding the site. It will balance the varying uses, densities, and design of these structures, and at the same time, preserve the integrity of the historic resource.
36. One of the primary assets of this project is its preservation of the former Italian Embassy. The Applicant's preservation of the building is consistent with Historic Preservation policies of the Comprehensive Plan: (Exhibit 4, p. 23; Exhibit 15, p. 23.)
- **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.
 - **Policy HP-2.4.2: Adaptation of Historic Properties for Current Use:** Maintain historic properties in their original use to the greatest extent possible. If this is no longer feasible, encourage appropriate adaptive uses consistent with the character of the property.
 - **Policy HP-2.4.3: Compatible Development:** Preserve the important historic features of the District while permitting compatible new infill development. Within historic districts, preserve the established form of development as evidenced by lot coverage limitations, yard requirements open space, and other standards that contribute to the character and attractiveness of those areas. Ensure that new construction, repair, maintenance, and improvements are in scale with and respect historic context through sensitive siting and design and the appropriate use of materials and architectural detail.
 - **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. Exercise greater restraint in residential historic districts and areas with a clear prevailing development pattern or architectural style. 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.
 - **Policy HP-2.4.5: Protecting Historic Building Integrity:** Protect historic buildings from demolition whenever possible, and protect the integrity of whole buildings. Discourage treatments like facadism or relocation of historic buildings, allowing them only when there is no feasible alternative for preservation, and only after a finding that the treatment is necessary in the public interest. Waivers or administrative

flexibility should be provided in the application of building and related codes to permit maximum preservation and protection of historic resources while ensuring the health and safety of the public.

37. The project successfully responds to the existing developments adjacent to the Property. The project further supports the development with respect to the relationship between the addition and the historic resource. The design respects the significance of the former Embassy building yet it is architecturally significant in its own right. The cohesion of both elements of the project creates a presence along 16th Street that will only strengthen this historic corridor. Even further, the Applicant is doing more than preserving the exterior spaces. It recognizes that the interior spaces also contribute to the historic integrity of the landmark and it is keeping those grand rooms intact and it is making them available to be enjoyed by residents.
38. The Property is a part of the Mid-City Area Element. The development is consistent with the following policies of the Area Element: (Exhibit 4, p. 24; Exhibit 15, p. 24.)
- **Policy MC-1.1.1: Neighborhood Conservation:** Retain and reinforce the historic character of Mid-City neighborhoods, particularly its row houses, older apartment houses, historic districts, and walkable neighborhood shopping districts. The area's rich architectural heritage and cultural history should be protected and enhanced.
 - **Policy MC-1.1.2: Directing Growth:** Stimulate high-quality transit-oriented development around the Columbia Heights, Shaw/Howard University, and U St./African American Civil War Memorial/Cardozo Metrorail station areas, as well as along the Georgia Avenue corridor and the North Capitol Street/Florida Avenue business district. Opportunities for new mixed income housing, neighborhood retail, local-serving offices, and community services should be supported in these areas, as shown on the Comprehensive Plan Policy Map and Future Land Use Map.
 - **Policy MC-1.1.7: Protection of Affordable Housing:** Strive to retain the character of Mid-City as a mixed income community by protecting the area's existing stock of affordable housing units and promoting the construction of new affordable units.
39. The project will provide residential housing that will be available to households of different income levels. It will integrate affordable units with market-rate units. It will also make units available to families, seniors, and single individuals. It will be a true mix of residents, much like District policy intends.

Government Agency Reports

40. By report dated August 29, 2011, OP recommended that the proposed PUD and related Zoning Map amendment should be approved. In its report, OP stated, “[t]he proposal is not inconsistent with the Comprehensive Plan, including the Future Land Use and Policy Map.” (Exhibit 22, p. 1.)
41. OP further found that the “shift in height and density on the site would preserve the site’s important historic features while permitting a compatible and sensitive addition.” (*Id.* at p. 11.)
42. By its report dated August 31, 2011, the District Department of Transportation (“DDOT”) recommended approval of the PUD and related Zoning Map amendment. DDOT voiced concerns with the number of curb cuts on the site and indicated that it opposed providing more than one curb cut on the Property. Specifically, it stated its opposition to the two existing curb cuts on 16th Street due to the fact that they do not meet the DDOT Traffic Safety Division requirement that no curb cut may be within 60 feet of an intersection. It noted its opposition to the curb cut on Mozart Place given the two existing curb cuts on the adjacent property. It opposed there being 72 feet of curb cuts along a single block of Mozart Place. (Exhibit 23, pp. 1-4.)
43. In its testimony at the hearing, DDOT reiterated its concerns with providing four curb cuts for the Property.
44. The Historic Preservation Review Board Staff Report was submitted by the Applicant into the record. It stated that “[w]hile there is additional refinement to be done, the revised proposal addresses and successfully resolves the height and massing concerns raised by the earlier design. The HPO recommends that the Board approve the overall conceptual design for new construction on the site, and direct the applicants to continue working with the staff on design development.” (Exhibit 15, Tab B.)

ANC 1C Reports

45. ANC 1C submitted a written report dated July 15. (Exhibit 18.) The resolution indicated the ANC’s support for the application as presented to the ANC, because it includes the preservation of the former Italian Embassy, and because the Applicant entered into two agreements with ANC 1C. The first is a Community Employment Agreement that obligates the Applicant to hire local residents for the project. The second is a Festival Kitchen Renovation Agreement, which obligates the Applicant to renovate the commercial kitchen in the Festival Center located at 1640 Columbia Road, N.W. The Applicant also proffered provisions of these agreements as benefits and amenities of the PUD project, and they are included as conditions of the Commission’s approval of the Application. Condition B.6 of this Order requires the Applicant to hire a minimum of 12 District residents for construction positions for the duration of the construction of the

project. Condition B.3 requires the Applicant to renovate the commercial kitchen of the Festival Center.

46. Through a letter dated September 8, 2011, the ANC submitted a supplement to its July 15th report. (Exhibit 28.) The report noted that the Applicant had entered into additional agreements with the ANC to provide additional public benefits in its proffer, concerning Sarah's Circle, H.D. Cooke Elementary School, and tree fencing. The Applicant proffered elements of the agreements as public benefits of the PUD, which are described in detail in paragraph 27 above, and they are included as conditions of the Commission's approval of the PUD, as Conditions B.1 and B.2 (H.D. Cooke Elementary School), Condition B.4 (tree fencing), and Condition B.5 (Sarah's Circle). The ANC also "expressed strong support for the originally submitted creation of two curb cuts; one on Fuller Street, N.W. and one on Mozart Place, N.W."
47. Through a letter dated October 6, 2011, the ANC offered a third supplement to its original report. (Exhibit 35.) This report was in response to the Applicant's post-hearing submission in which the Applicant stated that it and/or the condominium association for the residential building will only sell spaces to tenants in the building. Nevertheless, tenants would be permitted to lease their spaces to third parties should they choose to do so. The Applicant further indicated that it is not proposing to opt out of the Residential Parking Permit program, but it would allow its tenants to be eligible for such permits. In response, the ANC stated that it supported recommending to the developer that "the condominium corporation include in relevant documents, such as [b]y [l]aws, a provision allowing condominium owners purchasing parking inside the project to rent the parking to other individuals inside the condominium and individuals not residing in the condominium." The resolution further states that the ANC "supports that Residential Parking Permits be eligible for project residents consistent with the same rights as allowed members of the District of Columbia."
48. All three reports stated that the votes were taken at a duly noticed meeting with a quorum present and were unanimous.
49. At the public hearing, the chairperson of the ANC, Wilson Reynolds, testified in support of the application. (September 8, 2011 Tr., pp. 155-165.)

Parties and Persons in Support

50. There were no parties or persons in support of the application.

Parties and Persons in Opposition

51. There were no parties or persons in opposition of the application.

Contested Issues

52. The Applicant provided evidence from two different traffic consultants that the curb cut on Mozart Place was necessary for the proper day-to-day functioning of the building. The curb cut on Mozart Place was necessary for loading and for trash pick-up. The Applicant submitted a letter from a trash company indicating that there was a risk that the Applicant would not be able to secure a private trash collection service for the site if there was no curb cut on Mozart Place to accommodate a trash and service room. Without a curb cut on Mozart Place, the Applicant would be forced to haul trash to the curb for pick-up, several times a week. This would not be ideal from a pedestrian point of view or from a cleanliness point of view. The Applicant also provided evidence of the level of use of the curb cuts on the adjacent property. It is insignificant, diminishing the risk the multiple curb cuts pose to pedestrians. Finally, the Applicant noted that its curb cut is designed to align with the alley on the north side of Mozart Place, making it visible for pedestrians. Further, by providing a curb cut on Mozart Place, cars exiting the garage will avoid the intersection of Mozart Place and Fuller Street, thus minimizing pedestrian and vehicular conflicts at an already busy intersection. With respect to the curb cuts on 16th Street, the Applicant provided evidence that it is an existing condition that exists at numerous properties in the vicinity along 16th Street. It further noted that the Historic Preservation Office specifically requires the preservation of the driveway (even if it is not functional); elimination of the curb cuts but maintenance of the driveway would cause confusion and create a hazard for motorists. Finally, the curb cuts are an existing condition and have not been responsible for any motor vehicle accidents since their establishment as far as accident records can establish. (September 8, 2011 Tr., pp. 16-67; Exhibits 25-27.)
53. For the reasons stated in the preceding finding, the Commission agrees with the Applicant that retaining the existing curb cuts on 16th and adding a curb cut on Mozart Place would have no adverse impacts.
54. The Commission also finds that the Applicant's Traffic Impact Study was conducted and prepared in an appropriate manner. The Commission agrees with the conclusions of the Applicant's Traffic Engineering expert that this project will not create adverse traffic impacts. The Commission finds that the design of this project is consistent with good urban planning principles and will not have a detrimental effect on neighboring properties.
55. The Commission further finds that the Applicant's submission dated October 6, 2011, adequately addresses the Commission's concerns regarding the narrowness of the courtyard in the northwest corner of the Property.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is “designed to encourage high quality developments that provide 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, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) 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, and 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. (11 DCMR § 2405.)
3. The development of the project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.
4. The application meets the minimum area requirements of 11 DCMR § 2401.1.
5. The application meets the contiguity requirements of 11 DCMR § 2401.3.
6. Pursuant to 11 DCMR § 2403.3, the Commission concludes the impact of the project on the surrounding area and the operation of city services and facilities is acceptable given the quality of public benefits of the project. The proposed height and density of the building in the project will not cause a significant adverse effect on any nearby properties and does, in fact, comport with District goals for development. As demonstrated in the Traffic Study submitted by the Applicant and supported by DDOT, the project will not cause adverse traffic impacts. The Commission also notes that it finds the provision of four curb cuts entirely acceptable and disagrees with DDOT’s position as to the elimination of two of the existing curb cuts and the addition of a new curb cut on Mozart Place. The Commission does not find that the proposed curb cuts pose a risk to pedestrian safety. The Commission notes that the authority to remove curb cuts and approve new ones is entirely within the jurisdiction of another agency. However, the Commission also understands that it must adjudge the impacts of even those decision over which it has no control, *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 750 -751 (D.C.1990) (BZA required to consider effects on surrounding neighborhood of street closings in university’s campus development plan, even though Board did not have

jurisdiction to approve such proposals). Thus, had the Commission considered the proposed curb cuts to be unacceptable, it would have been required to deny this application, making any subsequent approval by the Public Space Committee meaningless. Conversely, the fact that the Commission considers the curb cuts acceptable does not prevent a contrary ruling by the Committee.

7. Pursuant to 11 DCMR § 2403.4, the Commission concludes the proposed PUD, and the PUD-related rezoning of the Property, are not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to the subject site. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The project is consistent with the major themes and city-wide elements of the Comprehensive Plan, including the Land Use, Housing and Transportation Elements. The PUD is also consistent with the more specific goals and policies of the Area Element.
8. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” (11 DCMR § 2403.8.) The Applicant’s testimony at the public hearing noted that it had substantially increased its benefits and amenities package since the initial submission of the application. Further, the Commission notes that the Applicant is not seeking a significant increase in density, but seeks the flexibility to redistribute density on the site. Given the significant amount and quality of the project amenities and public benefits included in this PUD and related Zoning Map amendment application, the Commission finds that the development incentives to be granted for the project and the related rezoning are appropriate. The Commission also finds that the requested areas of flexibility from the requirements are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this project. The Commission notes that the amount of development proposed in this PUD project is generally consistent with the amount of density that would be permitted on the Property as a matter-of-right, without the restrictions imposed by the landmark.
9. A PUD “project may qualify for approval by being particularly strong in only one or a few of the categories in § 2403.9 of the Regulations, but must be acceptable in all proffered categories and superior in many.” (11 DCMR § 2403.10.) The Commission finds that the project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to affordable housing, urban design, landscaping and open space, site planning, job training and employment opportunities, transportation measures, environmental benefits, and uses of special value to the neighborhood and District as a whole. The Commission finds the written statements, reports and testimony of the Applicant and OP persuasive that the preservation of the historic landmark and proposed residential addition is a considerable attribute to the 16th Street corridor.

10. The application seeks a PUD-related zoning map amendment to the R-5-D Zone District. The Commission concludes that the Applicant has met its burden of showing that the PUD-related map amendment meets the applicable standards set forth in the §§ 1 and 2 of the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, D. C. Official Code §§ 6-641.01 and .02) and would not be inconsistent with the Comprehensive Plan,
11. 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 of the affected ANC. Great weight requires the acknowledgement of the ANC as the source of the recommendations and explicit reference to each of the ANC’s concerns. The written rationale for the decision must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In doing so, the Commission must articulate specific findings and conclusions with respect to each issue and concern raised by the ANC. (D.C. Official Code § 1-309.10(d)(3)(A) and (B).)
12. ANC 1C submitted three written reports, all of which indicated that the ANC supported the PUD project. The first two stated that the support was in part because the Applicant had signed written agreements with the ANC to provide certain public benefits with the PUD project. The Applicant proffered relevant provisions of those agreements as public benefits of the PUD, and they have been incorporated as conditions of this Order.
13. The third report responded to the Applicant’s post-hearing submission in which it indicated that unit owners would not be precluded from renting to third parties or from applying for residential parking permits. The ANC report recommended to the developer that the leasing flexibility be included in the relevant condominium document and expressed its agreement that residential parking permits remain available.
14. Since the ANC’s recommendation as to the leasing of parking spaces is being made to the Applicant and not the Commission, there is no need for the Commission to respond. In any event, the decision whether to allow the rental of parking spaces to persons not living in the development raises security concerns that are best left to the discretion of the Applicant and eventually the unit owners. While the Commission does not object to the flexibility proffered, it will not compel it. The Commission agrees with the Applicant and the ANC that there is no need to restrict the availability of residential parking permits. There is nothing in the record to suggest the PUD project would adversely impact the availability of curbside parking.
15. 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 the recommendations of OP. The Commission gives OP's recommendation to approve the PUD great weight and concurs with its conclusions.

16. The PUD project and the rezoning of the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
17. The applications for a PUD and related Zoning Map amendment are 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 this application for consolidated review of a planned unit development and related Zoning Map amendment for the Subject Property (Square 2578, Lot 26). For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner. The approval of this PUD is subject to the following conditions:

A. Project Development

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit 30 as modified by Exhibit 36 of the record, as modified by the guidelines, conditions, and standards of this Order.
2. The Applicant shall have flexibility with 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, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
 - (b) 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;
 - (c) To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;

- (d) To provide mechanical parking in place of the proposed conventional parking garage, so long as any resulting modifications to the floor plans or building elevations are approved by the Historic Preservation Review Board; and
- (e) To respond to comments or concerns initiated by the Historic Preservation Review Board or the Historic Preservation Office staff in connection with final review.

B. Public Benefits

1. **Prior to the issuance of a building permit for the project**, the Applicant shall provide the following materials to the H.D. Cooke Elementary School:
 - (a) Library books that reflect the IB learner profile, key concepts and attitudes in Spanish and English, at a cost of up to \$12,000;
 - (b) Choral sheet music to support the choral program, at a cost of up to \$500; and
 - (c) Musical instruments to support the band program, at a cost of up to \$2,500.
2. **Prior to the issuance of a building permit for the project**, the Applicant shall establish:
 - (a) Scholarships for H.D. Cooke Elementary School students to attend classes at the SITAR art center also located in the Adams Morgan Area, at a cost of up to \$2,500; and
 - (b) Funding to support training parents with a local community agency. The training to be focused in one of the areas of job readiness, computer basics, educational advocacy, life skills, and language acquisition, at a cost of up to \$2,500.
3. **Prior to the issuance of a certificate of occupancy for the project**, the Applicant shall renovate the commercial kitchen at the Festival Center located at 1640 Columbia Road, N.W. The renovation of the kitchen shall include the demolition and moving of the men's restroom, demolition and building of the new kitchen space and installation of the new kitchen equipment.
4. **Prior to the issuance of a certificate of occupancy for the project**, the Applicant shall establish a tree fence buy-in program with the Reed-Cooke Neighborhood Association and the Applicant shall contribute \$50,000 to the program. Once the

program is established, the Applicant shall be responsible for selling and installing up to 625 tree fences. The tree fences shall be sold at-cost.

5. **Prior to the issuance of a certificate of occupancy for the project**, the Applicant shall survey and repair all visible damage to units in Sarah's Circle caused by the August 2011 earthquake.
6. **For the duration of the construction of the project**, the Applicant shall hire a minimum of 12 District of Columbia residents for construction positions; the positions are not limited to the development of Il Palazzo. The Applicant shall also host job fairs for District residents at least once every 90 days.
7. **During the life of the project**, the Applicant shall dedicate at least four of the six Inclusionary Zoning Units to be provided pursuant to the set-aside requirements of 11 DCMR § 2603 as two-bedroom units, as depicted on Sheets A29-A44 of Exhibit 30, as modified by Exhibit 36 filed on October 6, 2011. The final location of the two units shall be as indicated in the approved Certificate of Inclusionary Zoning Compliance, as required by 14 DCMR § 2202.4.

C. Miscellaneous

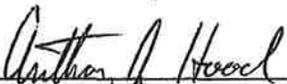
1. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct and use the Subject Property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The change of zoning from the D/R-5-B Zone District to the R-5-D Zone District shall be effective upon the recordation of the covenant pursuant to 11 DCMR § 3028.9.
3. The PUD shall be valid for a period of two (2) years from the effective date of Zoning Commission Order No. 11-08. Within such time, an application must be filed for a building permit for the construction of the project as specified in 11 DCMR § 2409.1; the filing of the building permit application will vest the Zoning Commission Order. Construction of the project must commence within three (3) years of the effective date of Zoning Commission Order No. 11-08.

4. 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.

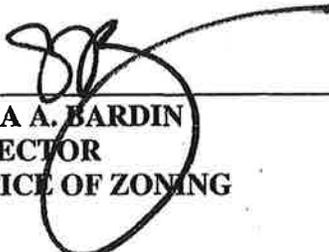
On September 26, 2011, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Schlater, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; Greg M. Selfridge, not having participated, not voting).

On October 27, 2011, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt; Marcie I. Cohen not having participated, not voting).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 9, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., February 2, 2011

Plat for Building Permit of: SQUARE 2578 LOT 26

Scale: 1 Inch = 40 feet Recorded in Book 199 Page 160

Receipt No. 11-01808

Furnished to: GOULSTON & STORRS


Surveyor, D.C.

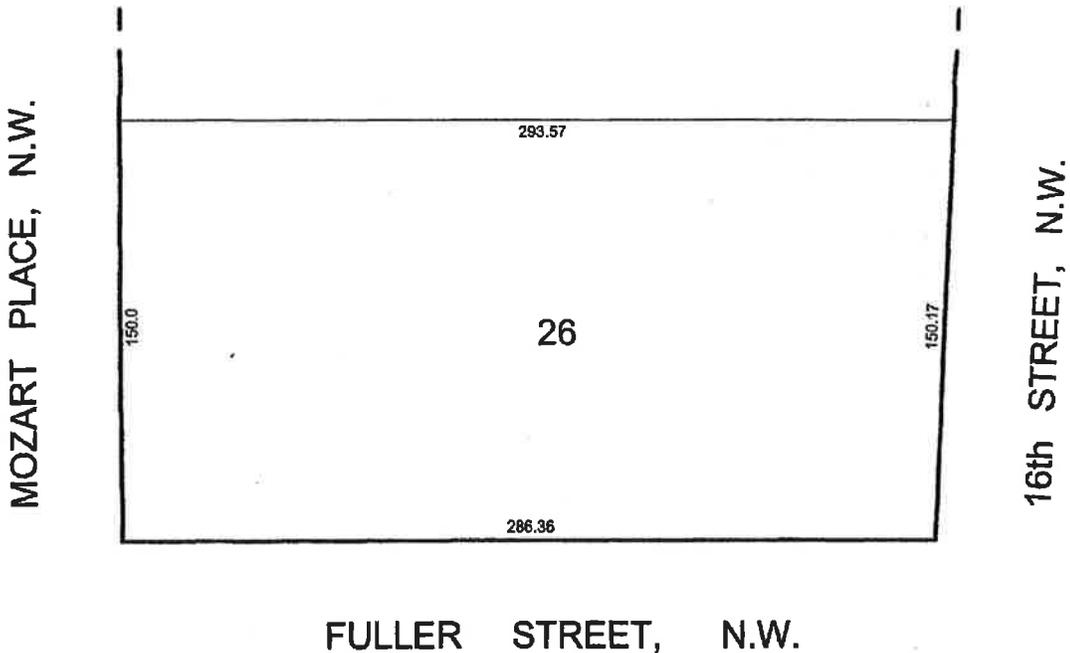
By: A.S. 

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 11-08

MAR 12 2012

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 11-08 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. D.C. Register
2. Allison Prince, Esqs.
Christine Roddy, Esq.
Goulston & Storrs
1999 K Street, N.W. Suite 500
Washington, D.C. 20006-1101
3. ANC 1B
2000 14th Street, N.W. Suite 100B
Washington, DC 20009
4. ANC 1C
P.O. Box 21009
Washington, D.C. 20009
5. Commissioner Juan E. Lopez
ANC/SMD 1B07
2750 14th Street, N.W. #208
Washington, D.C. 20009
6. Commissioner Steve Lansing
ANC/SMD 1C06
1736 Columbia Road, N.W. # 101
Washington, D.C. 20009
7. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
8. Councilmember Jim Graham
9. DDOT (Martin Parker)
10. Melinda Bolling, Acting General Counsel
DCRA
1100 4th Street, S.W.
Washington, DC 20024
11. Office of the Attorney General (Alan Bergstein)

ATTESTED BY: _____


Sharon S. Schellin
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Office of Zoning

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-08A**

Z.C. Case No. 11-08A

Il Palazzo, LLC

**(One-Year Time Extension for an Approved Planned Unit Development and Zoning Map
Amendment @ Square 2578, Lot 26)**

April 15, 2014

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) considered a request from Il Palazzo LLC (“Applicant”) for a one year extension of the planned unit development (“PUD”) approved in Z.C. Case No. 11-08. The time extension request was made pursuant to Chapter 24 of the District of Columbia Zoning Regulations. The Commission voted to approve the request without a public hearing at its public meeting on April 14, 2014. The reasons for its approval are stated below.

FINDINGS OF FACT

Case Background

1. On March 12, 2012, the Commission issued Z.C. Order No. 11-08 approving a residential PUD at Square 2578, Lot 26, more commonly known as 2700 16th Street, N.W. (“Property” or “Subject Property”). (Exhibit [“Ex.”] 1, Tab A.)
2. The Subject Property consists of approximately 43,494 square feet of land area. The Subject Property is bounded by 16th Street, N.W. to the east, Mozart Place, N.W. to the west, Fuller Street, N.W. to the south and property of the Scottish Rite Temple to the north. The Property is located just south of Columbia Road. (Ex. 1, Tab A.)
3. The Property is split-zoned: the eastern portion of the Property is located in the R-5-D Zone District and the western portion is located in the D/R-5-B Zone District in the Diplomatic Overlay. All of the properties along 16th Street, to the north, south, and east, are located in the R-5-D Zone District. (*Id.*)
4. The Applicant requested approval of a PUD-related map amendment for the portion of the Property located in the D/R-5-B Zone District to the R-5-D Zone District. (*Id.*)
5. The approved PUD includes 60-90 spaces of below-grade parking and 110-135 residential units, including six affordable units, at least five of which will be two-

bedroom family units to be reserved for households with an annual income no greater than 80% of the Area Median Income. (*Id.*)

6. Z.C. Order No. 11-08 was valid for a period of two years, within which time an application for a building permit was required to be filed.
7. On March 7, 2014, the Applicant filed a request to extend the PUD approval for a period of two years. (Ex. 1.)
8. The request was placed on the Commission's April 14, 2014, meeting agenda, at which time the Commission took action to approve a one-year extension of the consolidated PUD and PUD-related map amendment. The PUD was extended through March 9, 2015.

Extension Request

9. Subsection 2408.10 of the Zoning Regulations grants the Commission the authority to extend a consolidated PUD approval. The Commission must determine whether (a) the extension request was served on all parties to the application by the Applicant and that parties were given at least 30 days to respond; (b) there was no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the Applicant demonstrated with substantial evidence that there was good cause for such extension.
10. The Applicant satisfied each of the three standards. With respect to the first prong, the request was served on the only party to this case, Advisory Neighborhood Commission ("ANC") 1C. By letter dated September 11, 2014, ANC 1C stated that it had no objection to the time extension¹. (Ex. 6.)
11. The subject neighborhood has not undergone any significant changes since the PUD was initially granted. (Ex. 1.)
12. The Comprehensive Plan designation and zoning designation for the Property and surrounding property remains unchanged. The Commission voted to approve the PUD in 2011. The Order was issued in 2012.
13. The Applicant noted that it had assumed the lead in developing the project only 12 months prior to the expiration of the PUD approval, impeding its ability to timely file for building permits. (Ex. 1, 4.)

¹ The Applicant notified ANC 1B when it filed its time extension. This was an error because only ANC 1C participated as a party in the original case. The Applicant notified ANC 1C when it discovered this error.

14. Despite having recently assumed leadership of the PUD, the Applicant made numerous efforts to meet the deadline for submitting an application for a building permit. It included an affidavit with its extension request that outlined the efforts it made to implement the PUD approval during those 12 months:
 - Retained Davis Carter Scott to prepare the permit plans. Davis Carter Scott finalized the plans for final submission;
 - Hired Clark as the general contractor for the project;
 - Established a marketing campaign for the residential units and retained a firm to market the units;
 - Secured a demolition permit on July 26, 2013 for the stand alone garage on the Property;
 - Submitted an application for a sheeting and shoring permit on February 24, 2014;
 - Submitted its Environmental Impact Screening Form on August 29, 2013. In response to comments on the EISF, The Garrett Companies resubmitted the form on January 28, 2014;
 - Submitted a site plan to DC Water and the District Department of the Environment in February 2014 for final review; and
 - Submitted an application for approval of improvements in public space in February 2014.
15. ANC 1C submitted a letter into the record to indicating its support for a one-year time extension.
16. The Office of Planning (“OP”) submitted a report dated April 4, 2014. OP recommended approval of the time extension request and noted the Applicant’s fulfillment of the standard promulgated in § 2408.10 of the Zoning Regulations. OP noted that there had been a change in the ownership entity that delayed the permitting process, which made compliance with the PUD deadlines beyond the Applicant’s control. (Ex. 4.)
17. Though the Applicant requested a two-year time extension, it noted that it anticipated filing for its building permits in April 2014; accordingly, the Commission found that a one-year extension was justified, but that a two-year extension was not justified.

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11 DCMR §§ 2408.10, 2408.11, and 2408.12 are satisfied. Subsections 2408.10 and 2408.11 give the Commission the authority to extend the validity of a consolidated PUD approval. Subsection 2408.10(a) requires that the applicant serve the extension request on all parties and

that all parties are allowed 30 days to respond. The Applicant served the only party, ANC 1C with notice of the extension request, and by letter dated September 11, 2014, ANC 1C stated that it had no objection to a one-year extension.

Section 2408.10(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. The Commission concludes that extending the time period of approval is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

Finally, § 2408.10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, as provided in § 2408.11. Pursuant to § 2408.11, an extension of validity of a PUD may be granted if the applicant has demonstrated with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;
- (b) An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
- (c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

The Commission finds that there is good cause shown to extend the period of time of the validity of the PUD. The Commission also finds that the Applicant has made good faith efforts to effectuate the PUD and has demonstrated that it is pursuing its building permit to begin construction as soon as possible.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations (as discussed in paragraph 16 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation.

For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR § 2408.10 and 2408.11.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 11-08A for a one-year time extension of Z.C. Order No. 11-08. The validity of the PUD is extended until March 9, 2015, within which time a building permit for the approved PUD must be filed. Construction must start on the PUD prior to March 9, 2016.

For the reasons stated above, the Commission concludes that the Applicant has met its burden; it is hereby **ORDERED** that the request be **GRANTED** for a one-year period.

On April 15, 2014, upon motion by Commissioner May, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR 3028.8, this Order shall become final and effective upon publication in the *D. C. Register* on October 17, 2014.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 11-08B

Z.C. Case No. 11-08B

Il Palazzo Project

(One-Year Extension for a Planned Unit Development and Zoning Map Amendment @

Square 2578, Lot 26)

December 14, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) considered an application from MCREF Embassy, LLC (“Applicant”) for a one-year extension in which to start construction of the planned unit development (“PUD”) approved in Z.C. Case No. 11-08. The time extension request was made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determined that this request was properly before it under the provisions of § 2408.10 *et seq.* of the Zoning Regulations. The Commission voted to approve the application without a public hearing at its public meeting on December 14, 2015. The reasons for its approval are stated below.

FINDINGS OF FACT

Case Background

1. On March 12, 2012, the Commission issued Z.C. Order No. 11-08 approving a residential PUD at Square 2578, Lot 26, more commonly known as 2700 16th Street, N.W. (“Property”). (Exhibit [“Ex.”] 1A.)
2. The Property consists of approximately 43,494 square feet of land area. The Property is bounded by 16th Street, N.W. to the east, Mozart Place, N.W. to the west, Fuller Street, N.W. to the south, and property of the Scottish Rite Temple to the north. The Property is located just south of Columbia Road. (*Id.*)
3. The Property is split-zoned: the eastern portion is located in the R-5-D Zone District and the western portion is located in the D/R-5-B Zone District in the Diplomatic Overlay. All of the properties along 16th Street, to the north, south, and east, are located in the R-5-D Zone District. (*Id.*)
4. The Applicant requested approval of a PUD-related map amendment for the portion of the Property located in the D/R-5-B Zone District to the R-5-D Zone District. (*Id.*)

5. The approved PUD includes 60-90 spaces of below-grade parking, 110-135 residential units, including six affordable units, at least five of which will be two-bedroom family units to be reserved for households with an annual income no greater than 80% of the Annual Median Income (AMI). (*Id.*)
6. By Z.C. Order No. 11-08A, which became effective on October 17, 2014, the validity of Z.C. Order No. 11-08 was extended through March 9, 2015.
7. Z.C. Order No. 11-08A required that construction of the approved PUD begin before March 9, 2016.
8. On November 11, 2015, MCREF Embassy, LLC, owner of the Property, filed a request to extend the time within which it must start construction of the PUD by one year. (Ex. 1.)
9. The Office of Planning (“OP”) submitted a report dated November 25, 2015, in support of the requested extension. (Ex. 5.)
10. The request was placed on the Commission’s December 14, 2015, meeting agenda, at which time the Commission took action to approve a one-year extension of the time during which construction of the PUD can commence. The start of construction of the PUD was extended through March 9, 2017.

Extension Request

11. Subsection 2408.10 of the Zoning Regulations grants the Commission the authority to extend the time period within which construction of a PUD must commence. The Commission must determine whether: (a) the extension request was served on all parties to the application by the Applicant and that parties were given at least 30 days to respond; (b) there was no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD; and (c) the Applicant demonstrated with substantial evidence that there was good cause for such extension.
12. The Applicant satisfied each of the three standards. With respect to the first prong, the request was served on Advisory Neighborhood Commission (“ANC”) 1C, the only party to the PUD, on the same day as it was filed with the Commission. (Ex. 1.) The request was considered by the Commission after the 30-day period for response had lapsed.
13. The neighborhood in which the PUD is to be located has not undergone any significant changes since the PUD was initially granted. (Ex. 1.)
14. The Comprehensive Plan designation and zoning designation for the Property surrounding property remains unchanged since the approval of the PUD in 2011.

15. The Applicant noted that it had purchased the Property four months prior to submitting the request for an extension. (Ex. 1, 1C.)
16. Despite having recently acquired the Property, the Applicant made numerous efforts to meet the deadline for starting construction. It included an affidavit with its extension request that outlined the following efforts it made to start construction of the PUD:
 - Retained Davis Carter Scott to refine the plans to accommodate more livable interior spaces;
 - Hired Mill Creek Residential (“MCR”) as the general contractor. MCR has undertaken surveys to determine its preferred construction plan, including a comprehensive laser scan of the Property, an environmental and geotechnical survey of the Property, a survey of the existing landscaping and retaining wall, as well as an inspection of the roof of the historic resource;
 - Secured through MCR raze and demolition permits to begin interior alteration and hazardous material abatement on-site. Permit No. B1510743 was issued on July 29, 2015, and Permit No. B1510933 was issued on August 3, 2015, just one month after the Applicant closed on the Property; and
 - Met with representatives of the Festival Kitchen to coordinate construction of their kitchen space with construction of the project, using MCR as general contractor.
17. ANC 1C did not submit a report into the record to indicate its support or opposition of the extension.
18. OP submitted a report dated November 25, 2015. OP recommended approval of the time extension request and noted the Applicant’s fulfillment of the standard promulgated in § 2408.10 of the Zoning Regulations. OP noted that there had been a change in ownership that delayed the start of construction, which made compliance with the PUD deadlines beyond the Applicant’s control. (Ex. 5.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11 DCMR §§ 2408.10, 2408.11, and 2408.12 are satisfied. Subsections 2408.10 and 2408.11 give the Commission the authority to extend the period during which construction must commence. Subsection 2408.10(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The Applicant served ANC 1C, the only other part in this proceeding, when it filed the PUD and Zoning Map amendment and time

extension application on November 11, 2015. The ANC was given 30 days to respond to the extension request.

Subsection 2408.10(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. The Commission concludes that extending the time period of approval is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

Finally, § 2408.10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, as provided in § 2408.11. Pursuant to § 2408.11, an extension of validity of a PUD may be granted if the applicant has demonstrated with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;
- (b) An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
- (c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

The Commission finds that there is good cause shown to extend the period of time within which construction of the PUD must commence. The Commission also finds that the Applicant has made good faith efforts to start construction within the requisite time period and demonstrated that it continues to pursue construction of the PUD.

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, which in this case is ANC 1C. As noted, that ANC did not submit a report as to this request.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP's recommendations (as discussed in paragraph 18 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation.

For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR §§ 2408.10 and 2408.11.

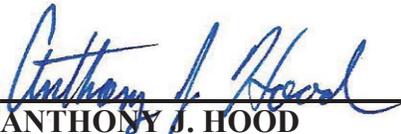
DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 11-08B for a one-year time extension of Z.C. Order No. 11-08A. The validity of the PUD is extended until March 9, 2017, within which time construction of the PUD must commence.

For the reasons stated above, the Commission concludes that the Applicant has met its burden; it is hereby **ORDERED** that the request be **GRANTED**.

On December 14, 2015, upon motion by Vice Chairperson Cohen, as seconded by Commissioner May, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register* on February 19, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING