

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 12-02**

Z.C. Case No. 12-02

**Bush at 50 Florida Avenue Associates, LLLP and B&B 50 Florida Avenue, LLC
(Consolidated PUD & Related Map Amendment @ Square 3516)
October 21, 2013**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on July 11, 2013 to consider applications from Bush at 50 Florida Avenue Associates, LLLP and B&B 50 Florida Avenue, LLC (collectively the "Applicant"), for review and approval of a consolidated planned unit development ("PUD") and related map amendment to rezone Lots 134 and 819 in Square 3516 (the "PUD Site") from the C-2-A and C-M-2 Zone Districts to the C-3-B Zone District. The Commission considered the applications 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 applications.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On February 23, 2012, the Applicant filed applications and supporting materials with the Commission requesting approval of a consolidated PUD for the PUD Site, and a map amendment to rezone the PUD Site from the C-2-A and C-M-2 Zone Districts to the C-3-B Zone District. (Exhibits ["Ex.,"] 2-4.)
2. On June 4, 2012, the Applicant submitted a revised set of Architectural Plans and Elevations that replaced the plans included with the initial PUD application materials filed on February 23, 2012. (Ex. 11-12.)
3. By report dated June 15, 2012, the Office of Planning ("OP") recommended that the Commission schedule a public hearing on the applications. (Ex. 13.)
4. On June 25, 2012, the Commission voted to set down the applications for a public hearing.
5. On April 22, 2013, the Applicant submitted a Prehearing Statement. (Ex. 14-17.) The Prehearing Statement included the information required pursuant to § 3013 of the Zoning

Regulations, revised Architectural Plans and Elevations, and a proposed construction management plan.

6. D.C. Water submitted a letter dated June 12, 2013 indicating that the water and sewer demands for the proposed building will likely be similar to the existing water and sewer demands of the buildings adjacent to and in the vicinity of the project site. (Ex. 24.) The letter also indicated that there is existing public water and sewer infrastructure located within 250 feet of the PUD Site; therefore, the public water and sewer infrastructure is considered available per DCMR Title 12. The letter notes that a final determination of the existing public system's ability to support the proposed project will be made during the permitting process.
7. On June 21, 2013, the Applicant submitted a Supplemental Prehearing Statement. (Ex. 25.) The Supplemental Prehearing Statement included supplemental architectural sheets; a Transportation Impact Assessment prepared by O.R. George & Associates, Inc. and submitted to the D.C. Department of Transportation; a table demonstrating that the project's proposed parking ratio is consistent with the parking ratio of other recent condominium projects; a letter from McWilliams|Ballard, a well-known and reputable condominium marketing firm based in the Washington Metropolitan area, describing the need for the project's proposed parking ratio; a revised construction management plan addressing comments from property owners near the PUD Site; and a chart summarizing the proposed public benefits and amenities associated with the project, and the estimated value of each amenity where quantifiable.
8. On June 27, 2013, the Commission received a timely party status request in opposition from Kimberly Konkel on behalf of several property owners in the vicinity of the PUD Site and herself ("Party Opponents"). (Ex. 26.) The Commission granted party status to the Party Opponents. (7/11/13 Transcript ["Tr."], pp. 16-17.)
9. On July 3, 2013, the Applicant submitted additional witness resumes. (Ex. 28.)
10. David Soo and JC Calam, who reside at 33 Q Street, N.E., submitted a letter dated July 9, 2013 in opposition to the applications. (Ex. 30.)
11. The Eckington Civic Association ("ECA") submitted a letter, dated July 2, 2013, in support of the project. (Ex. 32.) ECA indicated that the Applicant presented the project to the community and the civic association a number of times during the past three years, including in 2011, on June 3, 2013, and on July 1, 2013. ECA indicated that each of these meetings have been well-attended by members of the community, and that the Applicant responded in great detail to the concerns raised by a number of citizens regarding shadows, building setbacks and privacy, truck and vehicle traffic, and construction issues. ECA also indicated that it believes the project will result in a number of benefits to the District of Columbia and the Eckington neighborhood, including replacing an industrial

warehouse building with a well-designed building and additional density which will support the desire for additional retail. The letter concludes by stating that overall, the majority of the membership of ECA voted to support the project on July 1, 2013, and therefore ECA recommended that the Commission approve the application.

12. Advisory Neighborhood Commission (“ANC”) 5E submitted a resolution in support of the project. (Ex. 33.) ANC 5E indicated that the Applicant and its representatives attended the ANC's June 18, 2013 regularly scheduled public meeting, at which notice was properly given and a quorum was present, and over the course of nearly two years, the development team attended Single Member District (“SMD”) community meetings, meetings with the Eckington Civic Association, and meetings with the SMD Commissioner. ANC 5E indicated that the Applicant presented a detailed analysis of the project, discussed the requested zoning relief and proffered public benefits and amenities, and responded to all the questions raised by the Commissioners and the community. ANC 5E noted that the Applicant's proposal to provide a below-grade garage for 210 vehicles will help to eliminate the potential demand for parking on adjacent residential streets, and ANC 5E found that the project includes substantial public benefits and amenities. ANC 5E indicated that its support of the project would be contingent upon the vote of ECA, and the resolution indicates that on July 1, 2013, the membership of ECA voted to support the project and proposed amenities. Thus, ANC 5E indicated that it also supports the project and believes that approval of the applications would not have any detriment to the general public good or on neighboring properties, but would rather be an improvement over the existing condition of the site, will help continue the positive development of the area, and will result in a number of important public benefits. ANC 5E therefore recommended that the Commission approve the applications.
13. After proper notice, the Commission held a public hearing on the applications on July 11, 2013.
14. The parties to the case were the Applicant, ANC 5E, and the Party Opponents.
15. OP testified in support of the project. The District Department of Transportation (“DDOT”) submitted a report and testified in overall support of the project.
16. At the hearing, the Applicant submitted a copy of a report prepared by Mr. Steven E. Sher (Ex. 34), a brief in response to the issues raised by the Party Opponents (Ex. 35), the hearing PowerPoint presentation (Ex. 36), a materials board (Ex. 37), the resume of Jeffrey Richard of Wiles Mensch (Ex. 38), and a petition in support of the project signed by individuals in the vicinity of the PUD Site (Ex. 39).
17. Four principal witnesses testified on behalf of the Applicant at the public hearing, including Rick Brown, on behalf of B&B 50 Florida Avenue, LLC and Andrew A. Viola, on behalf of Bush at 50 Florida Avenue Associates, LLLP; George Dove on behalf of

WDG Architecture, PLLC, as an expert in architecture; and Osborne R. George, P.E., PTOE, on behalf of O. R. George & Associates, Inc., as an expert in transportation planning and analysis. Based on their professional experience, as evidenced by the resumes submitted for the record, Mr. Dove and Mr. George were qualified by the Commission as experts in their respective fields.

18. A number of witnesses testified at the hearing on behalf of the Party Opponents. At the hearing, the Party Opponents submitted a constriction vibration noise study (Ex. 40), written testimony of Terrell McSweeney in opposition (Ex. 41), and a submittal regarding notice of an ANC 5E SMD meeting (Ex. 42).
19. On August 8, 2013, the Applicant submitted a Post-Hearing Submission. (Ex. 55.) The Post-Hearing Submission included Revised Architectural Plans and Elevations addressing the Commission's comments at the public hearing, a letter from 3D Structural Engineers, Inc. discussing the vibration impacts of the project, and the supplemental transportation slides presented by Mr. George at the public hearing.
20. On August 8, 2013, the Party Opponents submitted a letter. (Ex. 56.) The letter expressed disappointment with the outcome of the meeting the Party Opponents had with the Applicant held on July 22, 2013. The letter expressed the reasons for the Party Opponent's continued opposition to the project.
21. On August 15, 2013, the Applicant submitted a letter responding to the Party Opponent's August 8, 2013 letter. (Ex. 57.)
22. At its public meeting held on September 9, 2013, the Commission took proposed action to approve the applications and the plans that were submitted to the record.
23. On September 16, 2013, the Applicant submitted its list of final proffers and draft conditions, pursuant to 11 DCMR § 2403.15. (Ex. 59.)
24. On October 1, 2013, the Applicant submitted its list of proffers and draft conditions that it revised in light of comments received by the District of Columbia Office of the Attorney General. (Ex. 60.)
25. The application was referred to the National Capital Planning Commission ("NCPC") for review of any impacts on the federal interest under the Comprehensive Plan. By delegated action dated October 21, 2013, the Executive Director of NCPC found that the application was not inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 61.)
26. The Commission took final action to approve the applications on October 21, 2013.

The PUD Site and Proposed Development

27. The PUD Site has a combined land area of approximately 42,223 square feet and is located on the north side of Florida Avenue, N.E. with approximately 204.11 linear feet of frontage on Florida Avenue, N.E. The PUD Site is bounded by a 16-foot-wide public alley to the north, private property to the east, Florida Avenue, N.E. to the south, and private property to the west. A 12-foot-wide public alley running north to south separates Lot 134 from Lot 819.
28. The PUD Site is split-zoned C-2-A (1,564 sq. ft. of land area) and C-M-2 (40,659 sq. ft. of land area). The C-M-2 portion of the site accounts for approximately 96% of the land area.
29. The District of Columbia Comprehensive Plan Future Land Use Map designates the PUD Site in the Mixed-Use, Medium-Density Commercial and Production, Distribution, and Repair ("PDR") land use categories. The District of Columbia Comprehensive Plan Generalized Policy Map designates the PUD Site as in a Main Street Mixed-Use Corridor.
30. Square 3516 is located in the northeast quadrant of the District and is generally bounded by Q Street, N.E. to the north, Eckington Place, N.E. to the east, Florida Avenue, N.E. to the south, and North Capitol Street, N.E. to the west.
31. The PUD Site is currently improved with a two-story warehouse and associated surface parking. The Applicant proposes to raze the existing building in connection with redevelopment of the PUD Site and to build a multiple-family dwelling building with ground-floor retail.
32. The Applicant proposes to rezone the entire site to C-3-B to facilitate the development of 196,029 square feet of residential use, 7,858 square feet of retail space, and associated parking in a below-grade garage for approximately 210 vehicles. The proposed development also includes approximately 1,384 square feet of plaza space adjacent to the westernmost retail space that can be utilized for an outdoor café area for the retailer. The residential use will be comprised of 182 residential units, including 16 units dedicated as affordable housing units. The project also includes 71 bicycle parking spaces (61 residential and 10 retail). The building will have varying heights and cornice lines, ranging from 60.75 feet at the northernmost portion of the PUD Site to a maximum height of 90 feet along the Florida Avenue frontage.
33. The total proposed density is 4.83 floor area ratio ("FAR"), which is less than the maximum permitted density of 6.0 FAR (utilizing IZ bonus density) in the C-3-B Zone District (11 DCMR §§ 771.2 and 2604.1) and is less than the maximum permitted density of 5.5 FAR under the C-3-B PUD requirements (11 DCMR § 2405.2). The net effect of

the proposed rezoning is an increase in permitted density of 0.83 FAR and increases in permitted height of 10 feet for the middle portion of the building and 30 feet for the portion of the building fronting on Florida Avenue.

34. The proposed building is arranged around two court systems and a rear yard. The first court system opens to the southwest corner of the site and Florida Avenue. It includes a public plaza at the ground level and a landscaped court with a two-level pool and communal recreation space at the second floor. The public plaza fronts Florida Avenue and has direct access to ground-floor retail spaces and to the residential building's main entrance. It is enhanced with planting beds and vertical planting screens that buffer the space from the alley and parking garage entrance. The court orientation capitalizes on mid-day and afternoon sunlight to improve the court areas, especially the second-level pool and communal space.
35. The second court system opens to the east interior lot line. The court facades and the adjacent lot line facades include corbeled masonry to provide architectural interest. The court space includes private terraces and landscaping and accommodates an existing five-foot fire egress easement that must be maintained for the adjacent property.
36. In deference to the scale of the existing row houses to the north of the PUD Site, the building mass steps down from 90 feet to 70 feet, then to 60 feet, and finally to a rear yard that, combined with the new alley dimension of 20 feet, buffers the row houses by 35 feet. The stepping down creates exterior spaces for green roofs and private residential terraces along the north edge of the PUD Site and coupled with the distance from the row houses facilitates the transmission of natural light to the row houses.
37. There is no public access to the main roof where a central mechanical system is employed to eliminate the need for a roof-top condenser unit for every residential unit. These design modifications create the opportunity to enhance the green roof area, eliminate concerns about noise and light pollution and eliminate the need for an additional, remote roof structure to house an exit stair.
38. Parking and loading access to the PUD Site is proposed via the adjacent public alley system to avoid the need for additional curb cuts along Florida Avenue. Parking and loading are accessed from the north-south alley. The loading area provides space for a 30-foot truck and a 20-foot service vehicle. The development provides for both the north-south and east-west portions of the public alley adjacent to the PUD Site to be widened to 20 feet. The development also provides protection of the row house immediately to the west of the PUD Site by eliminating the existing, adjoining parking lot and replacing it with an expanded alley right-of-way, sidewalk, plantings, and bollards.

Zoning Flexibility Requested

39. The Applicant requested flexibility from the roof structure requirements and the loading requirements of the Zoning Regulations.
40. **Roof Structure Setback.** The roof structure provisions of the Zoning Regulations require that all roof structures must be setback from all exterior walls a distance at least equal to their height above the roof. (§ 411.2 and § 770.6(b).) As shown on the roof plan included with the plans, the project includes one roof structure. The roof structure has a height of 16 feet, and is thus required to be set back 16 feet from all exterior walls. The roof structure meets the setback requirements from all street frontages; however, flexibility is requested to allow a portion of the roof structure to be set back 10 feet and four inches in lieu of 16 feet from the edge of the roof adjacent to the internal courtyard. Although the roof structure requires setback relief along the edge of the internal courtyard, the structure meets the setback requirement from all street frontages. Moreover, the location of the roof structure is driven by the layout and design of the residential units within the building. In addition, the Applicant is providing the greatest setbacks possible given the size of the roof and the internal configuration of the proposed building. Thus, the Commission finds that the requested roof structure design will not adversely impact the light and air of adjacent buildings since the roof structure has been located to minimize its visibility. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.
41. **Loading.** The Applicant requested relief from the off-street loading requirements for the project. The loading requirements in § 2201.1 of the Zoning Regulations are based upon the proposed uses of the PUD Site. The project includes 7,858 square feet of retail use and 182 residential units, plus or minus 10%. Pursuant to § 2201.1 of the Zoning Regulations, an apartment house or multiple dwelling with 50 or more dwelling units is required to provide one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. Loading facilities are not required for the retail use since it has less than 8,000 square feet of gross floor area. (§ 2201.1.) However, due to the anticipated needs of the residents' uses, the Applicant is seeking flexibility to provide one loading berth at 30 feet deep, in lieu of the required 55-foot loading berth, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. This requested flexibility is in accordance with the Comprehensive Plan's recommendations to consolidate loading areas within new developments and minimizing curb cuts on streets to the greatest extent possible, and to provide shared loading spaces in mixed-use buildings. Moreover, given the nature and size of the residential units, it is unlikely that the building will be served by 55-foot tractor-trailer trucks. In addition, the loading areas are likely to be used by the residents primarily when they move in or out of the building, and any subsequent use by residents will generally be infrequent since the

building is anticipated to be condominiums and not rental units. Therefore, the Commission believes the requested flexibility will not have any adverse impacts.

Development Flexibility Requested

42. The Applicant has made every effort to provide a level of detail in the drawings that conveys the significance and appropriateness of the project's design for this location. Nonetheless, some flexibility is necessary that cannot be anticipated at this time. Thus, the Applicant also requests flexibility in the following areas:
- a) To be able to provide a range in the number of residential units of plus or minus 10% from the 182 depicted on the plans;
 - b) 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 change the exterior configuration of the building;
 - c) To vary the number, location, and arrangement of parking spaces, provided that the total is not reduced below the number required under the Zoning Regulations;
 - d) To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project is no fewer than the number of points required to be the equivalent of a Silver designation under the LEED 2009 for New Construction and Major Renovations rating standards;
 - e) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including window frames, doorways, glass types, belt courses, sills, bases, cornices, railings and trim; and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit; and
 - f) If the retail area is leased by a restaurant user, flexibility to vary the location and design of the ground-floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any restaurant use.

Public Benefits and Project Amenities

43. The Commission finds that the project incorporates a variety of public benefits and project amenities that include the following:
- a) Housing and Affordable Housing (11 DCMR § 2403.9(f)) - Given that the majority of the PUD Site is currently zoned C-M-2, no new housing or affordable housing can be constructed on approximately 96% of the site. Thus, the Applicant's proposal to rezone the site will result in 196,029 square feet of new residential use, which is an amenity, including 16 new units devoted to affordable housing which is also an amenity;
 - b) Urban Design, Site Planning, and Comprehensive Plan Elements (11 DCMR § 2403.9(a), (b), and (j).) - Replacement of a warehouse building with surface parking in the front of the building along Florida Avenue with a new mixed-used development constructed to the property line with below-grade parking is consistent with many of the City's goals, including the following:
 - (i) Promoting transit-oriented and corridor development given the site's convenient walking distance to the New York Avenue Metro station and proximity to several major bus routes along Florida Avenue, N.E.;
 - (ii) Developing mixed residential and commercial uses rather than single purpose uses, particularly with a preference for housing above ground-floor retail uses;
 - (iii) Developing diverse housing types, including affordable units;
 - (iv) Rezoning land for non-industrial purposes when the land can no longer support industrial activities or is located such that industry cannot co-exist adequately with adjacent existing uses, particularly since the site is adjacent to residential uses to the north and west, and is adjacent to the growing NoMA neighborhood which is becoming increasingly commercial and residential and no longer suitable for industrial activities; and
 - (v) Implementing the Mid-City Area Element's goals of developing new residential uses in areas that are best able to handle high density, and redeveloping/rehabilitating vacant lots and abandoned structures within the community, particularly along Florida Avenue, North Capitol Street, and in the Shaw, Bloomingdale, and Eckington communities;

- c) Public space improvements (11 DCMR §2403.9(a)) - The Applicant will be improving the configuration of the public sidewalk adjacent to the southern portion of the PUD Site, widening the east-west portion of the public alley adjacent to the north of the PUD Site, and widening the north-south public alley that divides the site near its western edge. The sidewalk and alley improvements will help improve circulation for the public and for individuals that utilize the existing alley system in the square. The estimated cost for these improvements is \$265,000;

- d) Environmental Benefits (11 DCMR § 2403.9(h).) - The project will provide a number of environmental benefits, including street tree planting and maintenance, landscaping, energy efficiency and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices. Although the Applicant is not seeking LEED-certification for the building, the proposed development is contemplated to meet rigorous energy and environmental design standards using the LEED 2009 for New Construction and Major Renovations rating system and is expected to incorporate features that would be the equivalent of the minimum number of points as shown on the theoretical LEED checklist included with the plans, so as to meet the Silver designation standard;

- e) Transportation Benefits (11 DCMR § 2403.9(c).) - The proposed development includes 210 below-grade parking spaces and a total of 71 bicycle parking spaces (61 residential and 10 retail). The bicycle parking spaces will be installed at a cost of approximately \$160,000. The three levels of below-grade parking will be constructed at an estimated cost in excess of \$6,300,000 in order to ensure that there is an adequate supply of parking spaces for the condominium owners, which thus will diffuse the need for spill-over parking on the adjacent residential streets. The Applicant will request that DDOT remove the property from the list of properties eligible for Residential Parking Permits (“RPP”). If the property presently is not on the list of properties eligible for RPP, the Applicant will request that DDOT classify the property as ineligible for RPP. In addition, the Applicant has committed to offering each initial unit owner the choice of one of the following options:
 - (i) The payment of a one-time Capital Bikeshare annual membership fee (totaling \$75 each) per unit for initial owners; or

 - (ii) The payment of a one-time car-sharing application and annual membership fee (totaling \$85 each) per unit for initial owners; and

- f) Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403.9(i).)
- (i) Prior to the issuance of a certificate of occupancy for the project, the Applicant has agreed to: 1) provide funds to Cultural Tourism DC of up to \$220,000 towards the cost of the development and installation of eight signs for an Eckington Heritage Trail in the neighborhood; and 2) incur costs in the amount of \$65,000 for the fabrication and installation of three-sided perimeter tree enclosures ("commonly referred to as "tree boxes") and mulch at the locations selected by the neighborhood and which shall be located on the north and south sides of Q Street and R Street, N.E. between North Capitol Street and Eckington Street; and
 - (ii) During the construction of the project, the Applicant has agreed to abide by a construction management plan, described in detail in Finding of Fact No. 70.

Compliance with PUD Standards

44. The Commission finds that the project advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan.
45. The purposes of the Comprehensive Plan are six-fold: (1) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; (2) to guide executive and legislative decisions on matters affecting the District and its citizens; (3) to promote economic growth and jobs for District residents; (4) to guide private and public development in order to achieve District and community goals; (5) to maintain and enhance the natural and architectural assets of the District; and (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Official Code §1-245(b) (§ 1-301.62).)
46. The Commission finds that the project significantly advances these purposes by promoting the social, physical and economic development of the District through the provision of a high-quality mixed-use development that will increase the housing supply, add new retail uses, and generate significant tax revenues for the District.
47. The Commission also finds that the project is consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities.

48. The Commission finds that the project is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as follows:
- a) *Managing Growth and Change.* In order to manage growth and change in the District, the Comprehensive Plan encourages, among other factors, the growth of both residential and non-residential uses. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. The proposed PUD is fully consistent with each of these goals. Redeveloping the PUD Site into a residential development with ground-floor retail will further the revitalization of the neighborhood;
 - b) *Creating Successful Neighborhoods.* One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. The proposed PUD furthers this goal since, as part of the PUD process, the Applicant worked with and received the support of ANC 5E and the ECA, and agreed to deliver a community benefits package which includes a number of items identified by the ANC as important community needs; and
 - c) *Building Green and Healthy Communities.* A major objective for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. As discussed in more detail above, the building will include a significant number of sustainable design features.
49. The Commission also finds that the project furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:
- a) *Land Use Element.* For the reasons discussed above, the project supports the following policies of the Land Use Element:
 - (i) Policy LU-1.2.2: Mix of Uses on Large Sites. The project, which includes residential and retail uses, is consistent and compatible with adjacent uses and will provide a number of benefits to the immediate neighborhood and to the city as a whole. In addition, as discussed above, the proposed mix of uses on the PUD Site is consistent with the Comprehensive Plan Future Land Use Map's designation of the PUD Site;

- (ii) Policy LU-1.3 Transit-Oriented and Corridor Development. The project exemplifies the principles of Transit-Oriented Development. The PUD Site is located within convenient walking distance of the New York Avenue Metro station and is served by several major bus routes along Florida Avenue, N.E. In addition, the project is consistent with the following principles:
 - (1) A preference for mixed residential and commercial uses rather than single purpose uses, particularly a preference for housing above ground-floor retail uses; and
 - (2) A preference for diverse housing types, including affordable units;
- (iii) Policy LU-1.3.4: Design to Encourage Transit Use. The project has been designed to encourage transit use and helps to enhance the safety, comfort and convenience of passengers walking to local buses along Florida Avenue since the project incorporates ground-floor retail uses that will activate and animate the street frontages;
- (iv) Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods. In designing the project, and consistent with this policy element, the architect has sought to balance the housing supply in the area and expand neighborhood commerce with the parallel goals of protecting the neighborhood character and restoring the environment;
- (v) Policy LU-2.2.4: Neighborhood Beautification. Policy LU-2.2.4 encourages projects to improve the visual quality of the District's neighborhoods. The architect has designed the building to improve the visual aesthetics of the neighborhood. Moreover, the development of the PUD Site will be an improvement to the current neighborhood condition and will help to revitalize the area. The project also includes a significant amount of landscaped and open spaces with will help to enhance the streetscape;
- (vii) Policy LU-2.3.3: Buffering Requirements. This policy encourages the use of buffers to ensure that new commercial development adjacent to lower-density residential areas provides effective physical buffers to avoid adverse effects. The project includes a number of elements designed to serve as buffers, including landscaping, height step-downs and setbacks, and other architectural and site planning measures that avoid potential conflicts. Furthermore, the project will eliminate the existing warehouse and provide new retail use opportunities along Florida Avenue; and

- (vii) Policy LU-3.1.4: Rezoning of Industrial Areas. This policy encourages the rezoning of land for non-industrial purposes when the land can no longer support industrial or PDR activities or is located such that industry cannot co-exist adequately with adjacent existing uses. The immediately surrounding uses to the north and west are residential. As the PUD Site is located adjacent to the growing NoMA neighborhood, and as the surrounding area, particularly around the New York Avenue Metro station becomes increasingly committed to commercial and residential uses, the PUD Site is no longer suitable for industrial activities. The proposed development and rezoning supports the policy of rezoning industrial land to permit residential and commercial uses on land included in a targeted redevelopment area;

- b) *Transportation Element.* The PUD Site is located on Florida Avenue, N.E., which enables the proposed project to help further several policies and actions of the Transportation Element of the Comprehensive Plan, including:
 - (i) Policy T-1.1.4: Transit-Oriented Development. The proposed project is an example of transit-oriented development and includes various transportation improvements, including the construction of new mixed uses along a major transportation corridor, bike storage areas, and public space improvements, including new lighting, bike racks, and sidewalk paving;
 - (ii) Policy T-2.2.2: Connecting District Neighborhoods. The project will help to encourage improved connections between District neighborhoods due to its location and convenient access to metrorail and bus routes;
 - (iii) Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning. As shown on the Plans, the project architect has carefully considered and integrated bicycle and pedestrian planning and safety considerations in the development of the project;
 - (iv) Action T-2.3-A: Bicycle Facilities. This element encourages new developments to include bicycle facilities. The Applicant proposes to include secure bicycle parking and bike racks as amenities within the development that accommodate and encourage bicycle use. Specifically, the Applicant will be providing 71 bicycle parking spaces (61 residential spaces and 10 retail spaces); and
 - (v) Policy T-2.4.1: Pedestrian Network. The project will help to improve the city's sidewalk system to form a network that links residents across the

city since the project includes public space improvements, including sidewalk paving;

- c) *Housing Element.* The overarching goal of the Housing Element is to "[d]evelop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia." (10 DCMR § 501.1.) The Commission finds that the project will help achieve this goal by advancing the following policies:
- (i) Policy H-1.1.1: Private Sector Support. The project helps to meet the needs of present and future District residents at locations consistent with District land use policies and objectives. Specifically, the project will contain approximately 196,029 square feet of gross floor area devoted to residential uses, which represents a substantial contribution to the District's housing supply. The provision of new housing at this particular location, moreover, is fully consistent with the District's land use policies;
 - (ii) Policy H-1.1.4: Mixed-Use Development. The project is consistent with the goals of promoting mixed use development, including housing on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors. The project will contain retail and residential uses along a Main Street Mixed-Use Corridor. This project represents exactly the type of mixed-use development contemplated by Policy H-1.1.4; and
 - (iii) Policy H-1.2.3: Mixed-Income Housing. The proposed development is mixed-income and includes both market-rate and affordable housing units. Thus, the project will further the District's policy of dispersing affordable housing throughout the city in mixed-income communities, rather than concentrating such units in economically depressed neighborhoods;
- d) *Environmental Protection Element.* The Environmental Protection Element addresses the protection, restoration, and management of the District's land, air, water, energy, and biologic resources. This element provides policies and actions on important issues such as energy conservation and air quality, and specific policies include the following:
- (i) Policy E-1.1.1: Street Tree Planting and Maintenance - encourages the planting and maintenance of street trees in all parts of the city;
 - (ii) Policy E-1.1.3: Landscaping - encourages 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;

- (iii) Policy E-2.2.1: Energy Efficiency - promotes the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses through mixed-use and shared parking strategies to reduce unnecessary construction of parking facilities;
- (iv) Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff - calls for the promotion of tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction; and
- (v) Policy E-3.1.3: Green Engineering - has a stated goal of promoting green engineering practices for water and wastewater systems.

As discussed in both the Environmental Benefits and Building Green and Healthy Communities sections of this statement, the Commission finds that the project will include street tree planting and maintenance, landscaping, energy efficiency, methods to reduce stormwater runoff, and green engineering practices, and is therefore fully consistent with the Environmental Protection Element;

- e) *Urban Design Element.* The goal of the Comprehensive Plan's Urban Design Element is to "[e]nhance the beauty and livability of the city by protecting its historic design legacy, reinforcing the identity of its neighborhoods, harmoniously integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and security of streets and public spaces." (10 DCMR § 901.1.) The proposed PUD is also consistent with a number of the policies included in the Urban Design Element of the Comprehensive Plan. For example, the project is consistent with Policy UD-2.2.1 and Policy UD-2.2.7 because the proposed development will help to strengthen the architectural quality of the immediate neighborhood by relating the project's scale to the existing neighborhood context, while also avoiding overpowering contrasts of scale, height and density. In addition, as shown on the plans, the project includes an attractive, visually interesting and well-designed building façade. (*See* Policy UD-2.2.5.) The project is also consistent with the improved streetscape design and sidewalk management goals of Policy UD-3.1.1 and Policy UD-3.1.2 since the Applicant proposes to install street trees and the sidewalks and plantings adjacent to the PUD Site will enhance the visual character of these streets and provide a buffer to reduce the impacts of vehicle traffic; and
- f) *Mid-City Area Element.* The PUD Site is located within the boundaries of the Mid-City Area Element. Subsection 2007.2 of the Comprehensive Plan explains the Mid-City Area Element's planning and development priorities. One stated priority is to develop new condominiums, apartments, and commercial centers in areas that are best able to handle high density. The area around the New York

Avenue Metro station is listed as such an area. With its close proximity to the New York Avenue Metro station, the proposed PUD is consistent with a number of policies this area elements. Specifically, Policy MC-1.1.3 encourages the redevelopment of vacant lots and the rehabilitation of abandoned structures within the community, particularly along Florida Avenue, North Capitol Street, and in the Shaw, Bloomingdale, and Eckington communities.

Moreover, the PUD Site is located in the North Capitol Street/Florida/New York Avenue Business District under the Mid-City Area Element. The North Capitol commercial district is just a few blocks west of the New York Avenue Metro station and lies on the northern edge of the NoMA district. The Comprehensive Plan states that the "[c]onditions on the corridor are likely to change dramatically as NoMA is redeveloped with offices and high-density housing. The commercial district is well situated to benefit from these changes." (§ 2017.3.) Policy MC-2.7.1 calls for upgrading the commercial district at Florida Avenue/North Capitol/New York Avenue by restoring vacant storefronts to active use and accommodating compatible neighborhood-serving infill development. The project, which will redevelop the PUD Site, which is currently an underutilized site, and construct a residential development with ground-floor retail, is compatible with the PUD Site's immediate surrounding uses. Furthermore, the project is compatible with the NoMA Vision Plan and Development Strategy, which is district adjacent to the PUD Site.

Zoning Map Amendment Application

50. The PUD Site is split-zoned C-2-A (1,564 sq. ft. of land area) and C-M-2 (40,659 sq. ft. of land area). The C-M-2 portion of the site accounts for approximately 96% of the land area. The Applicant proposes to rezone the entire PUD Site to the C-3-B Zone District.
51. According to the District of Columbia Comprehensive Plan Future Land Use Map, the PUD Site is included in the Medium-Density Commercial land use category and the Production, Distribution, and Repair ("PDR") land use category. The Medium-Density Commercial category is used to define areas where buildings are generally larger and/or taller than those in moderate-density commercial areas but generally do not exceed eight stories in height. The C-2-B, C-2-C, C-3-A, and C-3-B Zone Districts are generally consistent with this land use category. The PDR category is used to define areas characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services, food services, printers and publishers, tourism support services, and commercial, municipal, and utility activities which may require substantial buffering from noise, air pollution, and light-sensitive uses such as housing. The PUD Site appears to have been zoned C-M-2 because of its prior use as a warehouse. However, the PUD Site is presently bounded by residential uses to the north and west, with no buffers for these existing uses.

52. The Commission finds that the Applicant's proposal to rezone the PUD Site from the C-M-2 and C-2-A Zone Districts to the C-3-B Zone District to construct a mixed-use development is consistent with the Comprehensive Plan designation of the PUD Site. The proposed C-3-B Zone District is specifically identified as a Medium-Density Commercial District. The proposed mixed-use development will be built to a maximum density of approximately 4.83 FAR, which is consistent with the amount of density permitted in medium-density commercial zones and PDR zones. The building will be constructed to a maximum height of 90 feet, with a number of step-downs and setbacks, which is consistent with the maximum height permitted under the proposed C-3-B Zone District.
53. The PUD Site is located in the Main Street Mixed-Use Corridor category on the District of Columbia Comprehensive Plan Generalized Policy Map. Main Street Mixed-Use Corridors are traditional commercial business corridors with a concentration of older storefronts along the street. These corridors have a pedestrian-oriented environment with traditional storefronts. Many have upper-story residential or office use. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs.
54. The Commission finds that the project is consistent with this designation. The Applicant proposes to redevelop a currently underutilized site through construction of a mixed-use development on the PUD Site. As shown on the Plans, this new development is compatible with the surrounding uses. The Applicant proposes to build a multi-family dwelling building with ground-floor retail and the PUD Site has approximately 204.11 linear feet of frontage on Florida Avenue, N.E. The mix of new residential and retail uses in the project will help to improve the neighborhood fabric and bring new residents and retail uses to the area.

Office of Planning Reports

55. By report dated June 15, 2012, OP recommended that the Commission schedule a public hearing on the applications. (Ex. 13).
56. By report dated June 28, 2013, OP recommended that the applications be approved, subject to the Applicant addressing DDOT's conditions to mitigate any adverse traffic impacts due to the PUD Site's redevelopment. (Ex. 27.) OP indicated that the project will be constructed on a site which served a former light industrial use, and that the redevelopment would add to the District's housing stock and complement the revitalization of a vital intersection of major District arterials. OP indicated in its report that the proposed development and its related map amendment are not inconsistent with the Comprehensive Plan's objectives for the MidCity Area and the Generalized Land Use

and Policy Maps. OP also indicated that it supports the Applicant's requested flexibility, and that the project includes a number of public benefits and amenities.

DDOT Report

57. By report dated July 3, 2013, DDOT indicated that after an extensive multi-administration review, DDOT found that: a) a robust network of pedestrian, bicycle, and transit infrastructure exists in close proximity to the proposed development; b) the proposed development will generate minimal new vehicle trips; c) the proposed vehicle parking supply is roughly double what DDOT has typically seen with similar recent projects; d) Florida Avenue is a constrained facility that is heavily congested during peak commuting times; e) the current alignment of Porter Street with Florida Avenue presents safety hazards for site access; f) the proposed development has non-conforming public space elements; and g) the proposed reconfiguration of the intersection of Porter Street with Florida Avenue will improve site access. (Ex. 29.) DDOT indicated that it has no objection to the applications and requested that the Commission's approval of the project be conditioned on the following requirements: a) The Applicant should lower the parking supply for the subject property or commit to a robust performance monitoring program with trip generation at the levels predicted in the Applicant's Comprehensive Transportation Review; b) the Applicant should limit site access from Florida Avenue to right-in and right-out access; c) the Applicant should unbundle the cost of vehicle parking from the cost of residential units in order to not incentivize automobile usage; d) the Applicant should remove the SmartTrip Card transit subsidy and limit financial incentives to providing Capital Bikeshare membership or a subsidy to a car-sharing service; and e) the Commission should provide flexibility in their public space plan in order for DDOT to address issues, such as pylons that are proposed in public space, during the public space permitting process.
58. In response to DDOT's proposed conditions, the Applicant agreed to commit to a robust performance monitoring program as outlined in the DDOT report, to limit site access from Florida Avenue to right-in and right-out access, to unbundle the cost of vehicle parking from the cost of residential units in order to not incentivize automobile usage, and to remove the SmartTrip Card transit subsidy and limit financial incentives to providing Capital Bikeshare membership or a subsidy to a car sharing service. The Applicant also committed to ensuring that all public space improvements meet all the applicable requirements during the public space permitting process.

Contested Issues

59. The Party Opponents and a number of individuals raised concerns regarding potential loss of access to light, air, and privacy; potential increased traffic, the loss of on-street parking, and increased use of east-west public alley; construction issues; and the design of the project. The Commission has carefully reviewed and considered each of the points

made both in writing and orally at the public hearing, and made in its post-hearing letter dated August 8, 2013, and makes the following findings.

60. **Loss of Access to Light, Air, and Privacy Concerns**. In its Party Status Request and at the public hearing, the Party Opponents asserted that the project will result in the loss of daylight to homes, the loss of the use of solar panels, diminish their views and privacy, and would subject them to light pollutions related to the outdoor lighting on the north side of the building. Individual members of the public expressed similar concerns. However, the Commission finds that it is well-settled in the District of Columbia that a property owner is not entitled to a view, light, or air across another person's property without an express easement, and a property owner has no right to a view across another person's property. *See Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004) (“American courts have wisely refused to allow the acquisition by prescription of easements of light and air;” “[o]ne may obstruct his neighbor's windows at any time” and “[n]o action can be maintained for obstructing a view”); *see also Ash v. Tate*, 73 F.2d 518 (D.C. Cir. 1934) (no injunction under District of Columbia law to prevent adjoining landowner from erecting structure that cuts off light and air) and *Z.C. Order No. 11-03, Finding of Fact No. 91* (“The Commission finds that the viewsheds and property values of the Tiber Island homeowners are not protected by any restrictive covenants or by the Zoning Regulations. Nevertheless, the Commission finds that the PUD has been designed in such a way as to minimize the effects of the development on the adjacent residential community through appropriate setbacks and height limits.”).
61. The Commission finds that the Applicant made significant efforts to minimize the visual impact of the project on neighboring property owners. For example, the Applicant designed the building to include a number of setbacks and step-downs in height in deference to the scale of the existing row houses to the north of the PUD site, and to minimize the mass of the project. As shown on the plans included in the record in this case, from south to north, the project has a height of 90 feet along Florida Avenue, steps down to an intermediate height of 70 feet, and then steps down to 60.75 feet for the portion of the building which is closest to the existing row houses to the north.
62. The Commission finds that the project is set back a substantial distance from the existing northern property line of the public alley and from the actual rear of the existing row houses. As shown on the "Overlay" plan included in the Applicant's materials: (1) the 90-foot portion of the project is set back approximately 74 feet four inches from the northern edge of the existing east-west alley, and approximately 94 feet four inches from the southern wall of the existing row houses to the north of the site given that the row houses include a 20-foot rear yard; (2) the 70-foot portion of the project is set back approximately 64 feet two inches from the northern edge of the existing east-west alley, and approximately 84 feet two inches from the southern wall of the existing row houses to the north of the site; and (3) the 60-foot portion of the project is set back approximately 36 feet from the northern edge of the existing east-west alley, and

approximately 56 feet from the southern wall of the existing row houses to the north of the site. The Commission finds that these distances are substantial and are consistent with the distances between buildings throughout the District. Moreover, as shown on the site sections included in the record, the 60-foot north-facing elevation of the Subject Building is not substantially higher than the height of the existing row houses to the north given the grade of the existing alley relative to the existing homes.

63. The Applicant also had extensive shadow studies prepared that demonstrate the nominal impact of the project on access to light throughout the day, including during the winter and summer solstice, and the spring and autumn equinox. (See Ex. 25A and 55). The shadow studies demonstrate that the project will have a nominal impact on the light and air of adjacent properties when compared to a building that could be constructed on the site as a matter-of-right. (*See id.*) As shown on the shadow studies, the project will cast nominal shadows throughout the year, and the only time that the proposed building would cast any more shadows than a matter-of-right building would be at 8:00 a.m. on December 21st, which is the winter solstice and the shortest day of the year with the least amount of daylight.
64. To mitigate the potential light pollution effects of the project, the Applicant removed the rooftop deck that was shown in the previously submitted PUD plans from the final plans approved by this Order.
65. **Increased Traffic, Loss of On-Street Parking, and Use of East-West Public Alley.** In the Party Status Request and at the public hearing on the applications, the Party Opponents and individuals testified that the project will cause a negative impact on traffic in the neighborhood, will result in the loss of on-street parking, and that the proposed loading activates along the east-west portion of the public alley might impact their retaining walls. However, the Commission finds that the evidence of record demonstrates that the project will not generate an adverse impact on traffic in the neighborhood, nor will it result in the loss of any on-street parking spaces. The Commission also finds that the Applicant's reorientation of the proposed loading facilities, providing access from the north-south portion of the public alley, minimizes any potential adverse impacts to the retaining walls along the northern boundary of the east-west alley.
66. The Applicant submitted a Traffic Impact Assessment Report prepared by O.R. George & Associates to DDOT and to the Zoning Commission ("Traffic Report"). (Ex. 25B.) The Traffic Report demonstrates that the project will not generate any adverse traffic impacts. The Traffic Report concludes that the level of trip generation is minimal, since the project will only generate 22-25 trips during the weekday peak hours, and that the trips will be well-distributed throughout the network.

67. In addition, DDOT submitted a report assessing the safety and capacity impacts of the project on the transportation network. (Ex. 29.) DDOT's findings include the following: (1) given the Subject Building's location, DDOT expects a high percentage of residents in the proposed development to use transit, pedestrian, and bicycle infrastructure as their primary means of transportation during peak commuting times; (2) the Subject Building will generate minimal new vehicle trips; (3) the relative change in intersection delay between future no-build conditions and future build-out conditions are predicted to be minimal due to the small increase in estimated site-generated traffic; and (4) the Applicant's Transportation Demand Management plan includes strategies, programs, and services that will encourage the use of alternative modes of transportation. The Applicant has also agreed to implement the performance monitoring program as recommend by DDOT, which will ensure that congestion and traffic are further mitigated, and to limit site access from Florida Avenue to right-in and right-out access, to unbundle the cost of vehicle parking from the cost of residential units in order to not incentivize automobile usage, and to remove the SmartTrip Card transit subsidy and limit financial incentives to providing Capital Bikeshare membership or a subsidy to a car-sharing service.
68. The Commission finds that the Applicant's proposal to use the existing alleys, which the Applicant will be widening, is appropriate and will not cause an adverse impact on traffic. Parking and loading access to the site is proposed via the adjacent public alley system to avoid the need for additional curb cuts along Florida Avenue. In response to comments raised at the public hearing, the loading facilities have been relocated from the east-west portion of the public alley to the north-south portion of the public alley. The Commission finds that this reconfiguration substantially minimizes any potential impact to the retaining walls along the northern edge of the public alley. The development plan also provides for both alleys to be widened to 20 feet in order to facilitate delivery truck movements. (Ex. 55, 57.) The proposed 20-foot alleys are in accordance with DDOT standards and the loading facilities are located in accordance with DDOT's preference for loading to occur from alleys. The Applicant also submitted diagrams demonstrating that all truck turn movements can be accommodated in a safe manner, and the widened alleys accommodate loading berth access for trucks and delivery vehicles for the project. (Ex. 4A, at C-601 and C-604; Ex. 55.)
69. The Commission further finds that the project will not result in the loss of on-street parking given that the Applicant is providing ample parking within the project, and since the Applicant has agreed to restrict residents of the project from being eligible for Residential Parking Permits.
70. **Construction Issues.** In the Party Status Request and at the public hearing on the applications, the Party Opponents and individuals testified that the project may cause a risk of structural damage to nearby homes. Construction issues are governed by the D.C. Construction Code and therefore are not within the Commission's jurisdiction. However, the Commission notes that the Applicant has agreed to implement a Construction

Management Plan to minimize any impacts on the adjacent residential uses from the construction of the project. (Ex. 25E.) The Plan includes a (1) traffic control plan; (2) construction truck plan; (3) construction parking plan; (4) construction communication plan; (5) site management plan; (6) debris removal plan; and (7) limited work hours. (*Id.*) The plan also provides that, prior to commencement and throughout the duration of construction activity on the project, the Applicant will survey and document all abutting properties immediately to the north of the east-west portion of the public alley for evidence of settlement and general condition. (*Id.*) The Applicant will also be available to survey and document any changes in conditions reported by any owner of an abutting property. (*Id.*) In the event that the Applicant ascertains there has been any damage caused as a direct result of the construction activity, the Applicant will make repairs rendering the condition of the property consistent with its prior condition. (*Id.*) The Commission believes that these commitments adequately address the concerns raised by the Party Opponents and individuals.

71. **Historic Significance and Design of The Building**. In its Party Status Request and at the public hearing on the applications, the Party Opponents testified that the project is not compatible with the historic character of the neighborhood, does not fit with surrounding historic structures, and violates the Historic Preservation Review Board's *New Construction in Historic District Guidelines*. Similar concerns were expressed by individual members of the public.
72. The Commission finds that the historic preservation guidelines are not applicable in this case since the existing homes are not designated as historic landmarks, nor is the PUD Site included in any historic district. The applicable planning guidelines for development of the PUD Site are the Zoning Regulations and the Comprehensive Plan. The District of Columbia Comprehensive Plan Future Land Use Map designates the Subject Property as Mixed-Use, Medium-Density Commercial and Production Distribution and Repair ("PDR") land use categories. The District of Columbia Comprehensive Plan Generalized Policy Map locates the Subject Property within a Main Street Mixed-Use Corridor. As discussed above, OP submitted a report to the Commission recommending approval of the proposed PUD. The OP report included a detailed analysis indicating that the proposed PUD would further the policies of the Comprehensive Plan's Land Use, Housing, Urban Design, and Mid-City Area elements. (Ex. 27.) The OP report also indicated that the project would "add to the District's housing stock and complement the revitalization of a vital intersection of major District arterials." (Ex. 27.) The OP report further states that the Subject Building would result in a number of important public benefits and amenities, including quality urban design and site planning, landscaping and streetscape design, housing and affordable housing, and environmental benefits. (*Id.* at 6-8.) Based upon OP's recommendations, as well as the plans, materials board, and other evidence of record submitted by the Applicant, the Commission finds that the project will help to strengthen the architectural quality of the immediate neighborhood by relating the

project's scale to the existing neighborhood context, while also avoiding overpowering contrasts of scale, height, and density.

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 which 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, which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The retail and residential uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area and the operation of city services is acceptable, given the quality of the public benefits in the project. Accordingly, the project should be approved.
5. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
6. The Applicant’s request for flexibility from the Zoning Regulations is not inconsistent with the Comprehensive Plan. The Commission also concludes that the project benefits and amenities are reasonable trade-offs for the requested development flexibility.
7. 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 site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

8. The proposal to rezone the Property from the C-2-A and C-M-2 Zone Districts to the C-3-B Zone District is not inconsistent with the Property's designation on the Future Land Use Map and the Generalized Policy Map, and with the Comprehensive Plan as a whole.
9. 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 issues and concerns expressed in the affected ANC's written recommendation. In this case, ANC 5E voted to approve the applications. The Commission concurs with the ANC 5E's recommendation for approval, and has given the recommendation the great weight to which it is entitled.
10. 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 recommendations. The Commission concurs with the OP's recommendation for approval, and has given the recommendation the great weight to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the applications for review and approval of a consolidated planned unit development and related map amendment to rezone Lots 134 and 819 in Square 3516 from the C-2-A and C-M-2 Zone Districts to the C-3-B Zone District. For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the PUD Site. 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 PUD Site, 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 guidelines, conditions, and standards set forth below:

A. Project Development

1. The development shall be developed in accordance with the Architectural Plans & Elevations, dated August 8, 2013 (Ex. 55), and as modified by the guidelines, conditions, and standards of this Order.
2. In accordance with the plans, the PUD shall be a mixed-used project consisting of approximately 203,887 square feet of gross floor area, with 196,029 square feet of gross square feet of floor area devoted to residential use and 7,858 square feet of gross floor area devoted to retail use.

3. The PUD shall have a maximum density of 4.83 FAR.
4. The PUD shall have varying heights and cornice lines ranging from 60.75 feet at the northernmost portion of the site to a maximum height of 90 feet along the Florida Avenue frontage.
5. The PUD shall provide parking for no less than 210 vehicles and 71 bicycle parking spaces (61 residential and 10 retail).
6. The Applicant shall have zoning flexibility with the PUD in the following areas:
 - a) To be able to provide a range in the number of residential units and the corresponding residential floor area of plus or minus 10% from the 182 depicted on the Plans;
 - b) To reallocate or reconfigure the number of parking spaces provided, so long as the total amount of parking provided meets the applicable Zoning Regulations;
 - c) 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 change the exterior configuration of the buildings;
 - d) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;
 - e) To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction; and
 - f) To make minor refinements to exterior details and dimensions, including 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.

B. Public Benefits and Mitigation¹

1. Public Space Improvements. The PUD shall provide public space improvements as shown on the Architectural Plans & Elevations, dated August 8, 2013, including improving the configuration of the public sidewalk adjacent to the southern portion of the PUD site; widening to 20 feet the east-west portion of the public alley adjacent to the north of the PUD site; and widening to 20 feet the north-south portion of the public alley that divides the site near its western edge.
2. The building shall be designed to include no less than the minimum number of points necessary to be the equivalent of a Silver designation as shown on the theoretical LEED score sheet submitted with the plans dated August 8, 2013. The Applicant shall put forth its commercially reasonable efforts to design the PUD so that it may satisfy such LEED standards, but the Applicant shall not be required to register or to obtain the certification from the United States Green Building Council.
3. During the construction of the project, the Applicant shall abide by the Construction Management Plan included as Exhibit 25E of the record.
4. Prior to the issuance of a certificate of occupancy for the building, the Applicant shall submit to the Department of Consumer and Regulatory Affairs (“DCRA”) evidence that:
 - a) The Applicant provided \$220,000 to Cultural Tourism DC for the development and installation of eight signs for an Eckington Heritage Trail in the neighborhood;
 - b) The Applicant paid a contractor or otherwise incurred costs of \$65,000 for the fabrication and installation of three-sided perimeter tree enclosures ("commonly referred to as "tree boxes") and mulch at the locations on the north and south sides of Q Street and R Street, N.E. between North Capitol Street and Eckington Street; and
 - c) The eight heritage trail signs have been installed or are in the process of being developed and that the tree boxes and mulch have been installed.

¹ As explained above, the Commission recognizes the affordable housing component of this Project as a public benefit even though the Project is providing only the amount of affordable housing required by Chapter 26 of the Zoning Regulations. Since the Applicant is doing no more than what the law requires, there is no need to include a condition restating these mandatory obligations.

C. Transportation Demand Measures

1. During the life of the project, the Applicant shall implement to following Transportation Demand Management ("TDM") measures:
 - a) Provide off-street parking spaces accessible to the residential units, which shall not be less than the zoning required minimum but which may be in excess of a 1:1 ratio up to 210 parking spaces to deter spill-over parking on surrounding neighborhood streets;
 - b) Each residential lease and purchase agreement shall contain a provision prohibiting the tenant/owner from applying for an off-site permit under the Residential Parking Permit Program;
 - c) Provide seven designated parking spaces for retail use;
 - d) Provide links to goDCgo.com and CommuterConnections.com on its developer and property management websites;
 - e) Provide each initial residential unit owner upon move-in with a one-time choice of one of the following options:
 - i) A \$75 Capital Bikeshare annual membership fee; or
 - ii) An \$85 car share application and annual membership;
 - f) Provide a carpool and mass transit coordinator and participation in the Guaranteed Ride Home Program;
 - g) Provide 10 fully accessible outdoor bike parking spaces for the retail use and 61 bike parking spaces in the parking garage for residential unit owners;
 - h) The Applicant will request that the District Department of Transportation remove the property from the list of properties eligible for Residential Parking Permits. If the property is not presently is not on the list of properties eligible for Residential Parking Permits, the Applicant will request that the District Department of Transportation classify the property as ineligible for Residential parking Permits; and
 - i) The Applicant shall limit site access to and from Florida Avenue to right-in and right-out access.

D. Miscellaneous


1. 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, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the 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 PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 12-02. 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 Order. Construction of the project must commence within three years of the effective date of Z.C. Order No. 12-02.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination 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.

On September 9, 2013, upon the motion of Commissioner May, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the applications 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).

On October 21, 2013, upon the motion of Vice Chairman Cohen, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Miller, Robert E. Miller, Peter G. May, and Michael G. Turnbull).

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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 November 29, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDI
DIRECTOR
OFFICE OF ZONING