

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

DENNIS R. HUGHES
202 419 2448
dennis.hughes@hklaw.com

November 17, 2014

VIA IZIS AND HAND DELIVERY

Zoning Commission of the District of Columbia
441 4th Street, NW
Suite 210S
Washington, DC

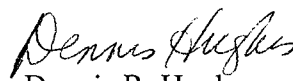
Re: ZC 05-36I, Toll DC II LP
Square 749 PUD Modification

Dear Commissioners:

At the request of the Zoning Commission at the conclusion of the October 30, 2014, public hearing in the above-referenced matter, enclosed please find the Applicant's Proposed Findings of Fact and Conclusions of Law, pursuant to 11 DCMR § 3026.

Thank you for your consideration of these materials.

Sincerely,


Dennis R. Hughes

Enclosure

cc: Advisory Neighborhood Commission 6C (First Class Mail)

#33969166_v1

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

ZONING COMMISSION ORDER NO. 05-36I
Case No. 05-36I
Modification to Approved Planned Unit Development
Square 749

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on October 30, 2014, to consider an application filed by Toll DC II LP (the "Applicant"), owner of Lots 826 and 827 in Square 749 (the "Phase II Property"), for approval of a modification to a planned unit development ("PUD") approved pursuant to Zoning Commission Order No. 05-36, as amended. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). A public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the modification application.

FINDINGS OF FACT

The Application

1. On April 7, 2014, the Applicant filed an application to modify a PUD in order to make certain design and operational refinements to Phase II of the multi-phase residential development in Square 749 (the "Application").
2. The PUD which the Applicant seeks to modify was first approved by the Zoning Commission in 2006 in Order No. 05-36 (as amended, the "Approved PUD") and is structured as a multi-phased residential project to occupy virtually the entirety of Square 749.¹
3. The Applicant requests modification of the Approved PUD in order to make certain refinements to the Phase II building's layout, façade treatment, and parking and loading operations. No other phase of the Approved PUD is included as part of the modification request.

Background of Approved PUD

4. By Z.C. Order No. 05-36, effective October 10, 2006, the Commission granted first-stage PUD approval and related Zoning Map amendment from C-M-3 and C-2-B to C-3-C for virtually the entirety of Square 749, all to permit construction of a two-phase apartment

¹ The only lot in Square 749 not included in the Approved PUD is Lot 829, which was created as a result of the closing of the small stub alley in the northeast corner of Square 749 and is owned by Union Place Phase I LLC, current owner of Lot 828, which property is improved with Phase I of the Approved PUD.

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

development around an outdoor central plaza, with a total of approximately 712 dwelling units, including 78 units restricted for affordable housing, ground-floor retail and daycare uses with a total gross floor area of approximately 850,000 square feet. At the same time that it granted first-stage approval for the overall project, the Commission granted consolidated approval for Phase I of the total project, to be located in the eastern portion of Square 749 with frontage along 3rd Street, NE, and consisting of a ten-story apartment building including approximately 202 dwelling units, 3,700 square feet of ground floor retail and 177 parking spaces (the "Phase I Building").² Construction of this Phase I Building has been completed.

5. By Order No. 05-36A, effective November 14, 2008, the Commission granted second stage approval of Phase II of the project, consisting of a fourteen-story building containing 500 dwelling units and approximately 14,000 square feet of retail uses and a child care containing approximately 3,500 square feet, to be constructed along the western portion of Square 749 with frontage along 2nd Street as well as K and L Streets, NE (the "Phase II Building").³
6. In Orders Nos. 05-36B and 05-36C, the Commission approved minor modifications to the Phase I Building, to restrict access for safety purposes to a small portion of the outdoor plaza to project residents only (05-36B), and to modify the affordable housing proffer slightly to allow prospective tenants to utilize more than 30% of household income for payment of rent in order to accommodate arts professionals (05-36C).
7. By Order No. 05-36D, the Commission extended the validity of the second stage approval granted for Phase II of the Approved PUD to November 14, 2012, by which time application must be made for a building permit, with construction to commence by November 14, 2013.
8. Pursuant to Order No. 05-36E, the Commission approved K Street's phasing plan to allow the Phase II Building to be constructed in two sub-phases (Phase II-A, to include approximately 244 dwelling units, and Phase II-B, to include approximately 256 dwelling units). The modification approved by the Commission with this order also directed that parking shall be provided throughout the Approved PUD at a ratio of 0.71 spaces per dwelling unit. The time extension approved pursuant to Order No. 05-36E provided that in order for the PUD to remain valid a building permit application for Phase II-A must be filed by November 14, 2012, and construction commence by November 14, 2013. In order for approval for Phase II-B to remain valid, a permit application must be filed not later than two years following the date of the issuance of a final certificate of occupancy for the residential portion of Phase II-A, with construction to commence within one year thereafter.
9. Pursuant to Order No. 05-36F, approved on July 30, 2012, the Commission granted a further time extension for Phase II of the Approved PUD such that a building permit for Phase II-A must be filed by November 14, 2014, and construction must commence by November 14,

² The PUD Approval was later modified per authority of the Zoning Administrator pursuant to 11 DCMR 2409.6(b) to permit development of 212 dwelling units in Phase I.

³ Flexibility granted in this Order allowed up to 525 units to be constructed.

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

2015, and in order for Phase II-B to remain valid, a permit application must be filed not later than two years following the date of the issuance of the final certificate of occupancy for the residential portion of Phase II-A, with construction of Phase II-B to commence within one year thereafter.

10. Pursuant to Order No. 05-36G, effective December 27, 2013, the Commission granted modification of the Approved PUD to include approximately 5,000 square feet of additional land in Square 749 for construction of a free-standing seven story apartment building containing 41 dwelling units and no vehicular parking, thereby reducing the ratio of parking spaces per unit across the Approved PUD from 0.71 to 0.67 (the "Phase III Building").
11. By Order No. 05-36H, effective June 21, 2013, the Commission granted minor modification of the Approved PUD to allow the Phase I Building and the Phase II Building to be constructed, occupied, and operated as separate buildings on a single record lot, to be accomplished through the Commission's approval of the removal of all door openings and above-grade connections between the phases.
12. Most recently, pursuant to Order No. 05-36J, effective October 24, 2014, the Commission granted the Applicant a one-year time extension for Phase II of the Approved PUD, such that a building permit for Phase II-A must be filed by November 14, 2015, and construction must commence by November 14, 2016, and in order for Phase II-B to remain valid, a permit application must be filed not later than two years following the date of the issuance of the final certificate of occupancy for the residential portion of Phase II-A, with construction of Phase II-B to commence within one year thereafter.

Procedural Background

13. By report dated May 30, 2014, the District of Columbia Office of Planning ("OP") recommended that the Zoning Commission schedule a public hearing for the Application ("Setdown Report") (Exhibit 12).
14. At its June 9, 2014, public meeting, the Zoning Commission determined to schedule the Application for public hearing.
15. The Applicant filed its supplemental statement including refined architectural drawings, and request for hearing date with the Office of Zoning on July 25, 2014 (Exhibit 13).
16. On October 10, 2014, the Applicant submitted its supplemental prehearing statement, including select revised architectural drawings and a supplemental memorandum prepared at the request of the District of Columbia Department of Transportation ("DDOT") identifying available on-street parking within the neighborhood surrounding Square 749 (Exhibits 17-19).

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

17. On October 20, 2014, OP submitted its final report to the Zoning Commission recommending approval and requested certain additional documentation from the Applicant ("Final Report") (Exhibit 21).
18. On October 20, 2014, DDOT submitted a memorandum to the Zoning Commission indicating no objections to the Application. (Exhibit 22).

Public Hearing on Modification Request

19. The Zoning Commission held a public hearing for the Application on October 30, 2014. At the hearing, the Applicant presented testimony in support of its applications from Jeff Harris, representative of the Applicant, and from Douglas Carter of Davis Carter Scott Architects, project architects. Based upon his professional experience and qualifications, Mr. Carter was recognized as an expert in architecture.

Office of Planning

20. Through its Setdown Report and its Final Report, and through testimony presented at the public hearing, OP expressed its support for the proposed modification of the approved PUD regarding the Phase II building.
21. In its Setdown Report and its Final Report, OP noted that the Commission has already found the Approved PUD to be not inconsistent with the Comprehensive Plan, and that the proposed modifications would not alter this relationship other than to strengthen the Approved PUD's ability to further promote the following Comprehensive Elements:
 - (a) Housing Element: The more efficient layout enabled by the modification would permit the addition of 25 units of housing for balanced, mixed-use growth near certain Metro stations, as encouraged by policies 1.1.3 and 1.1.4. The square footage and numbers of affordable housing units would increase in proportion to the overall residential square footage increase;
 - (b) Central Washington Element: The additional housing is responsive to Policy CW 1.1.4's encouragement of denser housing in the central area, particularly in NoMA;
 - (c) Urban Design Element: Phase II's revised design and massing would continue to be integrated with the rest of the Approved PUD, and the relocation of the courtyard's public entrance to K Street is consistent with the emphasis placed on that street by its generous width and the role its landscaping plays in plans for the development of NoMA. With the public space improvements being discussed by the Applicant and DDOT, the design is becoming more consistent with policy UD 2.2.7's encouragement of appropriately-scaled infill, and policy UD 3.3.1's encouragement of quality treatment of public spaces.
22. In its Setdown Report and its Final Report, OP noted that the requested modifications to Phase II would modify the public benefits package in only two ways:

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

- (a) The proffered daycare would increase from 3,446 square feet up to 6,475 square feet; and
 - (b) Phase II's affordable housing proffer would be increased in direct relation to the proposed increase in the residential square footage in Phase II.⁴
23. In its Setdown Report, OP requested that by the public hearing the Applicant provide certain additional materials regarding the loading plan being finalized between the Applicant and DDOT, public space design along K Street, NE, per approval by the Public Space Committee, and certain additional drawings related to the courtyard and temporary and end wall designs.
24. In its Final Report, OP noted that the Applicant had provided additional materials responsive to the Setdown Report, including loading plan, approval by the Public Space Committee of the public space design along K Street, end wall designs, and information regarding the proposed reduction of green roof from 16,450 square feet to approximately 13,000 square feet in order to accommodate rooftop mechanical equipment. OP requested the Applicant undertake further study of certain design elements including pedestrian circulation within the courtyard area.
25. In its Final Report, OP noted that the Application included a slight increase in gross floor area and building density from the approved Phase II Building, which would involve a changed reference in the conditions of the Approved PUD but no additional relief.
26. In its Final Report, OP noted that the Application included certain changes to the allocations of gross floor area within the Phase II Building as a result of the more efficient layout of the Phase II Building as modified, which would involve a changed reference in the conditions of the Approved PUD but no additional relief.
27. In its Final Report, OP noted that the Application included request to reduce the amount of vehicular parking provided within the Phase II Building, from 329 to 240 spaces, which would involve a change to the conditions of the Approved PUD but no additional relief.
28. In its Final Report, OP noted that the Applicant proposed to increase the amount of bicycle parking provided within the Phase II Building from 55 spaces to 175 spaces, which would involve a change to the conditions of the Approved PUD but no additional relief.

⁴ The Setdown and Final Report indicate that the daycare would increase to 6,842 square feet, however the drawings submitted by the Applicant indicate the daycare will measure approximately 6,475 square feet upon construction of a mezzanine level, if constructed.

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

29. In its Final Report, OP noted that the Applicant's proposed modification to its loading facilities required relief from the Zoning Commission not to provide a berth meeting the required 55 foot depth.
30. The Commission concurs with OP's findings in support of the Application.

Department of Transportation

31. By memorandum dated October 10, 2014, and through testimony presented at the public hearing, DDOT indicated no objection to the Application, including the requested loading variance.
32. DDOT noted that the proposed number of off-street parking spaces is a reasonable supply of parking for the land use and location, given its proximity to the NoMa-Gallaudet Metrorail Station and three Capital BikeShare stations, service by several major Metrobus routes, and an oversupply of off-street parking within Phase I of the Approved PUD. DDOT further noted that, at its request, the Applicant had conducted a field survey of available on-street parking within the neighborhood and determined that at peak demand (between 9 pm and 10 pm) on-street parking utilization measured 72 percent, equating to approximately 249 available on-street parking spaces.
33. DDOT further noted no objection to the Applicant's request to modify the loading facilities for the Phase II building, including consolidation of the loading facilities, reduction in the number of curb cuts along 2nd Street, NE, and flexibility to reduce the previously approved 55 foot loading berth to a 30 foot loading berth and one service delivery space. DDOT noted that the Applicant's proposed curb cuts and public space design, including consolidation of three curb cuts to two curb cuts, public access to the central courtyard off of K Street, NE, rather than 2nd Street, NE, and regarding of public space along K Street, all were approved by the Public Space Committee.
34. The Commission concurs with DDOT's findings in support of the Application.

ANC 6C

35. Advisory Neighborhood Commission ("ANC") 6C did not appear at the public hearing.
36. By letter dated October 14, 2014, ANC 6C confirmed that the ANC voted unanimously (6-0-0) to support the Application. The ANC noted that in May 2014 the ANC voted to support a formal memorandum of understanding ("MOU") between the ANC and the Applicant concerning denial of Residential Parking Permit ("RPP") registry to residents of the Phase II building. The ANC conditioned its support of the Application upon both parties signing the MOU before the October 30 public hearing.

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

Persons in Support or Opposition to the Applications

37. No testimony or submissions were received from any person in support or opposition to the Application.

Conclusion of October 30 Hearing and Closing of Record

38. At the conclusion of the October 30, 2014, public hearing, the Zoning Commission took proposed action by a vote of 5-0-0 to approve the Application with request for the Applicant to submit certain responsive documents to the Commission's questions and requests.
39. The record was left open for the Applicant to provide limited post-hearing submissions consisting of: additional architectural drawings requested by the Commission, proposed findings of fact and conclusions of law pursuant to a letter from the Applicant detailing its commitment regarding RPP for the Phase II building residents, and proposed findings of fact and conclusions of law. The record was also left open to receive any responsive materials from ANC 6C to the Applicant's post-hearing submissions.
40. By letter dated November __, 2014, the Applicant provided the materials requested by the Zoning Commission..
41. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by action dated December 4, 2014, found that the Application would not have any adverse impact on the federal interests.
42. The Zoning Commission took final action by a vote of _____ to approve the Application at its public meeting on December 8, 2014.

The Property and Surrounding Area

43. The property now included in the Approved PUD contains a lot area of approximately 101,000 square feet and represents virtually the entirety of land in Square 749.
44. Square 749 is located in the emerging NoMa neighborhood in Northeast Washington and is bounded by 2nd Street to the West, K Street to the South, 3rd Street to the East and L Street to the North.

Nature of Project and PUD Modification

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

45. As approved by the Commission in Orders No. 05-36A, 05-36E and 05-36H, the Phase II Building is a fourteen-story apartment building with significant ground level retail and service uses, including a designated child daycare facility. The approved Phase II building footprint occupies essentially the western half of Square 749 with a roughly C-shaped footprint wrapping around a large landscaped central courtyard accessible mid-block from 2nd Street, NE.
46. The Phase II Building was granted second stage approval to include a total of 555,545 square feet of gross floor area, including a ground floor containing 13,801 square feet of retail uses (including a 3,446 square foot daycare center) and approximately 415,307 square feet of gross floor area devoted to residential units. The building was approved for a total of 500 dwelling units, with flexibility granted to provide up to five percent more or fewer units. Ten percent of this residential space was committed to be dedicated to affordable housing pursuant to standards approved by the Zoning Commission in Case No. 05-36A. These affordable housing units are distributed throughout all but the top four floors of the Phase II building.
47. The Phase II Building was originally approved to include 545 vehicle parking spaces and 45 bicycle parking spaces in below-grade levels, which approval was later reduced to 329 vehicle spaces and 45 bicycle spaces. Given the large size of the Phase II Building and the opening to the courtyard provided mid-block along 2nd Street, NE, two separate loading areas were provided.
48. In Order No. 05-36E, the Commission granted flexibility to allow for the Phase II Building to be constructed in two sub-phases, with the portion of the building at the southwest corner of Square 749, including the daycare, to be constructed first. The overall appearance of the Phase II Building, upon full build-out, was unchanged from the original approval.
49. The Applicant purchased the Phase II Property in April 2013 from the longtime owners of the site, K Street Developers, LLC. After extensive study of the approved Phase II design, the Applicant filed the Application to request modification of the Approved PUD in order to make certain refinements to the Phase II Building's layout, façade treatment, and parking and loading operations, consistent with the Commission's first and second stage approvals for Phase II and with section 2403 of the Zoning Regulations.
50. The proposed building remains a fourteen-story apartment building with ground floor retail and service uses, including a daycare facility. The footprint remains C-shaped around an expansive landscaped central courtyard that will be publicly accessible. The proposed Phase II building maintains its significant affordable housing component of 10 percent of the residential unit gross floor area. Sustainability features that have been enhanced from the approved Phase II Building include reuse of collected storm water from the building roof to irrigate the courtyard as well as the installation of living "green" walls in the courtyard. The Commission finds that the proposed building's façade treatments and materials are also in keeping with the PUD and retain much of the design direction of the approved Phase II Building.

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

51. The Applicant's refinements to the building include a significantly more efficient building core, yielding approximately 35,000 square feet of additional gross floor area devoted to residential units, 10 percent of which will be devoted to affordable housing pursuant to the terms included in the Approved PUD. The Applicant has been able to accomplish these increases in residential and retail/service uses with only an overall requested increase of approximately 4,100 square feet of gross floor area in the Phase II Building.
52. The Applicant proposes to relocate the public entrance to the courtyard from 2nd Street, NE, to mid-block along K Street, NE, which the Commission finds is a more convenient access point for neighboring residents, most of whom live to the south or east of the site. The relocated courtyard entrance allows the Applicant to consolidate its loading operations from two areas to one and at the same time to align the loading entrance with the parking entrance along 2nd Street, both lessening the number of curb cuts along that block and placing the cuts in the middle of the block rather than close to intersecting streets.
53. As part of its modification request, the Applicant requests flexibility to reduce the amount of loading approved in Order No. 05-36A. Specifically, the Applicant proposes to provide a single loading berth at 30 feet deep, a service delivery space at 30 feet deep, and a loading platform measuring 200 square feet. The previously-approved loading configuration of two loading areas, each containing a 55-foot berth, 20-foot deep delivery space, and a loading platform, is no longer necessary given the relocated courtyard now allows for a single corridor to access virtually the entirety of the ground floor. Further, the Applicant's loading proposal is in keeping with the regulations applicable to apartment houses with greater than 50 dwelling units, with the exception of the overall depth of the loading berth.
54. The Applicant is proposing to reduce the amount of vehicular parking to be provided within the Phase II building, from 329 parking spaces to 240 spaces, while dramatically increasing the number of bicycle parking spaces provided, from 55 spaces to 175 spaces. The resulting ratio of parking spaces to dwelling units within the Phase II Building will be 0.46, which remains a significant increase over the minimum parking requirements established in the Zoning Regulations for apartment buildings in C-3-C district (0.25).
55. The Commission finds that all of the proposed refinements are consistent with the spirit of the PUD Approval and improve the operation and design of the building.

Development Incentives and Flexibility Requested

56. As part of the Application, the Applicant requests the following areas of flexibility from the C-3-C requirements and PUD standards to facilitate development of the Project:
 - a. to provide loading not meeting the dimensional requirements;

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

- b.* to provide approximately 240 vehicular parking spaces and 175 bicycle parking spaces;
- c.* to reduce the amount of green roof space provided to approximately 13,000 square feet;
- d.* to continue to provide multiple penthouse structures on the roof and penthouse structures located less than a distance of 1:1 from the building edge;
- e.* 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;
- f.* 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;
- g.* 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; and
- h.* to vary the final selection of landscaping and vegetation types as proposed, based upon availability at the time of construction and finalization of site grading and utility plans.

CONCLUSIONS OF LAW AND OPINION

1. Pursuant to §2400.1 of the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that a 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. The objective of the PUD process is to encourage high quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under conventional zoning procedures. Section 2403.9 of the Zoning Regulations provides categories of public benefits and project amenities for review by the Commission. In approving a PUD, the Commission must determine that the impact of a PUD on the surrounding area and on the operation of city services and facilities is either not unacceptable, is capable of being mitigated, or is acceptable given the quality of public benefits provided by said project (11 DCMR §2403.3).

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

3. The overall PUD, including as modified by the Application, meets the minimum area requirements of §2401.1 of the Zoning Regulations.
4. The development of the PUD, as modified by the Application, carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development. This application to modify the Approved PUD will achieve the goals of the PUD process by providing additional high-quality residential development in coordination with a residential project that has already been reviewed and approved by the Commission, in a neighborhood where infill development, especially of a residential nature, is strongly encouraged by the District, and in close proximity to a Metrorail station. This coordination extends to compatible materials, design elements and treatments, as well as public space landscaping improvements.
5. The PUD's benefits and amenities are reasonable for the development proposed on the Property. The impact of the PUD on the surrounding area is not unacceptable. Accordingly, the Application should be approved.
6. Evaluating the PUD modification according to the standards set forth in §2403 of the Zoning Regulations, the Commission concludes that the Application qualifies for approval. Judging, balancing and reconciling the relative value of amenities and benefits in the Application against the nature of the Applicant's request and any potential adverse effects, the Commission is persuaded that the proposed public benefits herein, in conjunction with the amenities discussed above, are appropriate in this case.
7. Approval of this PUD modification is not inconsistent with the Comprehensive Plan.
8. Approval of this PUD modification is not inconsistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, D.C. Official Code §6-641.02.
9. Approval of this PUD modification will promote the general welfare and tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, and civic activity.
10. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, building density, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that would otherwise require approval by the Board of Zoning Adjustment.
12. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 6C's recommendation in support of the Application. The Commission affords the views of ANC 6C the great weight to which they are entitled.

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

13. The Application for a PUD modification is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for modification to an approved Planned Unit Development in Lots 826 and 827 in Square 749. This approval is subject to the following guidelines, conditions and standards:

The guidelines and conditions established in Order No. 05-36A, granting second stage approval for the Phase II Building, as have been amended by Orders No. 05-36E, 05-36F, 05-36H, and 05-36J, are hereby further amended as follows:

1) The PUD shall be developed in accordance with the architectural plans and elevations dated June 2, 2008 and marked as Exhibit 38 of the record in Case No. 05-36A, as may be modified by the revised floor plans shown in the plans marked as Exhibit C to Exhibit 1 of the record in Case No. 05-36H, which plans provide no above-grade building connections between Phase I and Phase II of the PUD, **and the plans and elevations dated October 30, 2014 and marked as Exhibit 24 of the record in Case No. 05-36I, as supplemented by the plans and elevations dated November , 2014 marked as Exhibit of the record in Case No. 05-36I (collectively, the "Final Plans")** and as modified by the guidelines, conditions, and standards of this Order. The PUD may be constructed pursuant to the phasing plan shown in the plans marked as Exhibit 2 of the record in Case No. 05-36E. The Applicant shall have the flexibility to modify the design of the PUD in the following areas:

- a. To vary the location and design of all interior components including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and bathrooms, provided that the variations do not change the exterior configuration of the building;
- 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 without reducing the quality of the materials;
- c. To make minor refinements to exterior details and dimensions including balcony enclosures, belt courses, sills, bases, cornices, railing and trim, or any other changes to comply with the Construction Codes or that are otherwise necessary to obtain a final building permit;
- d. To modify the design of all landscaping and other streetscape improvements located in public space in order to secure any necessary permits from the District Department of Transportation;

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

e. To increase or decrease the overall number of residential units by no more than five percent provided that the percentage of residential gross floor area designated for affordable units shall be no less than 10% of the total gross floor area devoted to residential units and shall be provided consistent with the Commission's approval in Z C Corrected Order No 05 36; ~~and~~

f. To vary the number and location of parking spaces in the underground garage, provided that the total number of parking spaces provided in Phase II is no less than ~~545 vehicle spaces~~ **240 vehicle spaces and 175 bicycle spaces;** and

g. To provide loading facilities within Phase II as provided in the Final Plans, which include one 30 feet deep loading berth, one 30 feet deep service delivery space, and one 200 square foot loading platform.

2) The Phase II PUD shall have an overall density of no more than ~~5.49~~ **5.26** FAR. The development shall contain approximately ~~555,545~~ **559,678** square feet of gross floor area including ~~13,801~~ **13,369** square feet devoted to retail uses. The retail uses in the building shall include a daycare center containing at least 3,446 square feet of gross floor area.

3) The Phase II PUD shall have a total height of no more than ~~121~~ **130** feet as measured from the measuring point on ~~3rd~~ **L** Street, NE, ~~identified on Sheet C-6 of the Final Plans.~~

4) The Phase II PUD shall provide a green roof covering at least ~~16,000~~ **13,000** square feet of surface area on the building's roof.

5) The ground floor retail space in the Phase II PUD shall have a clear floor to ceiling height of no less than 14 feet.

6) No less than 10% of the gross floor area devoted to residential units in the Phase II PUD shall be reserved for households earning no more than 80% of Area Median Income ("AMI") and for the time frames set forth in Z C Corrected Order No 05-36.

7) The Applicant shall abide by the terms of the executed Memorandum of Understanding with the Department of Small and Local Business Development in order to achieve at a minimum the goal of 35% percent participation by local small and disadvantaged business enterprises in the contracted development costs associated with the design development, construction and security for the PUD project.

8) The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least 51% of the jobs created by the PUD project.

9) The Owner is required to comply fully with the provisions of the D C Human Rights Act of 1977, DC Law 2 38, as amended, DC Official Code § 2 1401 et seq (the "Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived race, color, religion,

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

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 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. The failure or refusal of the Owner to comply shall furnish grounds for denial, or if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

10) No building permit shall be issued for the construction of any improvements pursuant to this Phase II PUD until the owner of the Subject Property has recorded a covenant in the land records of the District of Columbia between the owner and the District of Columbia which is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs.

11) ~~The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this order. Within such time, an application must be filed for a building permit as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall begin within three (3) years of the effective date of this Order.~~ **In order for this PUD to remain valid, a building permit application for Phase II-A must be filed by November 14, 2016, and construction must start no later than November 14, 2017. In order for approval of Phase II-B to remain valid, a permit application must be filed not later than two years following the date of the issuance of a final certificate of occupancy for the residential portion of Phase II-A, with construction to commence within one year thereafter.**

12) The Applicant shall take the following steps to restrict residents of the Phase II Building from receiving a residential parking permit ("RPP") from the District of Columbia Department of Motor Vehicles ("DMV"): (i) placing a clause in emphasized typeface in all leases for residential units prohibiting any resident from applying for or obtaining a RPP or using an RPP visitor pass within one mile of the Property, upon pain of mandatory lease termination (following a cure period, not to exceed 5 business days), to the full extent permitted by law; (ii) formally requesting that DDOT removes the Phase II Building and its street address from the list of properties eligible for RPP, or if presently not on the list, classifying it as ineligible for RPP, and further requesting from DDOT written confirmation that it will not grant RPPs to residents; (iii) acknowledging that the recordation of the Notice of PUD Modification, which runs with the land, embodies the foregoing commitment.

13. No building permit shall be issued for the Project until the Applicant has recorded a Notice of PUD Modification 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 Notice shall bind the Applicant and all successors in title to construct on and use the Property in accordance with this order or amendment thereof by the Zoning Commission.

APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

14. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the Notice of PUD Modification with the records of the Zoning Commission.

15. Pursuant to the Human Rights Act of 1977, D.C. Code Ann. § 2-1402.67 (2001), the Applicant is required to comply fully with the provisions of the Act, and this Order is conditioned up full compliance with those provisions. Nothing in this Order shall be understood to require the Zoning Division of DCRA to approve permits if the Applicant fails to comply with any provision of the Human Rights Act.

The order was adopted by the Zoning Commission at its public meeting on December 8, 2014, by a vote of ____ ().

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 _____.

ANTHONY J. HOOD
Chairman,
Zoning Commission

SARAH BARDIN
Director
Office of Zoning