

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION CORRECTED¹ ORDER NO. 05-36

Z.C. Case No. 05-36

First Stage & Consolidated PUD & Related Map Amendment-200 K Street, N.E.
April 20, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia ("Zoning Commission" or "Commission") held a public hearing on January 5, 2006 to consider applications from 200 K Street, L.P., for (1) consolidated review and approval of a Planned Unit Development; (2) preliminary review of a Planned Unit Development; and (3) and a related map amendment to rezone all of Square 749 except Lots 804, 805, and 31 (the "PUD Site") from C-M-3 and C-2-B to C-3-C. The Commission considered the applications pursuant to Chapters 24 and 30 of the D.C. 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 with conditions.

FINDINGS OF FACT

The Applications, Parties, and Hearing

1. On November 29, 2005, 200 K Street, L.P. filed applications with the Zoning Commission for preliminary and consolidated approval of a planned unit development ("PUD") and for a PUD related map amendment for property located in the Northeast quadrant of Washington, D.C. and generally bounded by 2nd Street to the west, L Street to the north, K Street to the south, and 3rd Street to the east. The PUD site is comprised all of Square 749 except Lots 804, 805, and 31. 200 K Street, L.P. also requested that the Commission approve a PUD-related map amendment rezoning the entire PUD site from C-M-3 and C-2-B to C-3-C. 200 K Street, L.P. sought consolidated PUD approval for the property shown to the right of the "Phase Line" on the Preliminary Subdivision Plan submitted as Exhibit C to the Application and Pre-Hearing Submission. 200 K Street, L.P. sought preliminary PUD approval for the property shown on the left of the "Phase Line" on the Preliminary Subdivision Plan submitted as Exhibit C to the Application and Pre-Hearing Submission.

¹ This is a corrected version of the Order previously published in the September 15, 2006, edition of the *D C Register*. This corrected version includes a discussion of NCPD's comments and corrects the statement of the zoning relief requested.

2. The Applicant, is a limited partnership organized and in good standing in the District of Columbia. It is one of several real estate investment entities operating under the umbrella of the Cohen Companies, under the control of Ronald J. Cohen. The term "Applicant" is used in this Order to refer to 200 K Street, L.P., to the other Cohen-controlled entities that are the recorded owners of various properties within the PUD Site, and to any successors in interest or title to 200 K Street, L.P. and its related entities. The recorded owners of the properties within the PUD site are K Street Developers LLC, Casco, Inc., Three Cee Investors LLC, and Union North Corporation.
3. These applications are related to an earlier Zoning Commission case. Z.C. Order No. 783, adopted September 11, 1995, approved a Consolidated PUD and PUD related map amendment for the PUD Site. Order No. 783 was subsequently extended by Z.C. Order No. 783-A, adopted April 13, 1998, and Z.C. Order No. 783-B, adopted December 13, 1999. The Applicant applied for a further modification and time extension of Order 783. The application was designated as Zoning Commission Case No. 01-28TE, and was revised by the Applicant's submission dated January 18, 2005. The Zoning Commission convened a hearing on Case No. 01-28TE on November 17, 2005. After reviewing evidence and written submissions from the Applicant and the Office of Planning on the time-extension issue, the Commission voted to deny the time-extension application. Denial of the time extension had the effect of terminating the PUD approved by Z.C. Order 783.
4. After voting to deny the time extension at the November 17, 2005 hearing, the Zoning Commission voted to set down the proposed modified project as a new case. The Commission also agreed to treat the Office of Planning reports submitted March 4, 2005, September 23, 2005, as its report for the new case, and the pre-hearing statements submitted by the Applicant on April 25, 2005 and September 29, 2005 as the pre-hearing statement for the new case. The Commission scheduled the new case for a hearing on December 15, 2005, conditioned upon the Applicant's expedited payment of the filing and hearing fees and filing new application documents.
5. Upon the advice of the Office of the Attorney General, the Commission subsequently rescheduled the hearing on Case No. 05-36 to January 5, 2006, in order to comply with § 492(b)(2), of the Home Rule Act, codified at D.C. Official Code, § 6-641.05(a), which requires a 30-day notice period for Commission hearings on proposed map amendments.
6. Advisory Neighborhood Commission ("ANC") 6C, which represents the area including the PUD Site, adopted a resolution in support of the applications by a vote of 7-1, with one member absent, at a regularly scheduled and publicly-noticed meeting on December 14, 2005. The ANC submitted a copy of the resolution into the record and appeared as a party at the hearing.
7. After proper notice, the Zoning Commission conducted a public hearing on the applications on January 5, 2006. The parties to the case were the Applicant and ANC 6C.

8. At its meeting held February 23, 2006, the Zoning Commission took proposed action by a vote of 4-0-1 to approve, with conditions, the applications and plans that were submitted into the record.
9. The Zoning Commission took final action to approve the PUD and related map amendment on April 20, 2006.

The PUD Site and Surrounding Area

10. The 2.3-acre PUD Site (101,082 sf) consists of all of Square 749 except Lots 804, 805, and 31 ("the outparcels"), in the Northeast quadrant of the District of Columbia, bounded by L Street on the north, 3rd Street on the east, K Street on the south, and 2nd Street on the west. The outparcels are located in the northeast corner of Square 749, at 3rd and L Streets, N.E. The neighborhood is known as Near Northeast in Ward 6, and the PUD Site is in ANC Single-Member-District 6C04.
11. The PUD Site was most recently occupied by vacant and boarded-up rowhouses along the 3rd Street side, small structures once used as a church and for some commercial purposes on the K Street side, and a small warehouse on the L Street side. The Applicant applied for and received permits from the Department of Consumer and Regulatory Affairs to raze all of the existing structures, except the warehouse which will be used for construction staging and storage.
12. To facilitate development, the Applicant has submitted an application to the Office of the D.C. Surveyor to close the public alleys within the PUD Site, except for the portion of the north-south alley adjacent to the rear of the outparcels.
13. The PUD Site is within a neighborhood where the traditional land uses have been residential rowhouses to the east and south and small industrial facilities to the north. To the west, 2nd Street is adjacent to the railroad tracks on top of a rock-walled embankment.
14. Within the past five years, the neighborhood has become a center of substantial office development and has emerged as a locus of mid- to high-rise residential developments – some under construction, some awaiting zoning approval, and some in preliminary planning stages. It is within one-half mile of two federal agency headquarters buildings: to the north, the Bureau of Alcohol, Tobacco, Firearms & Explosives will locate in a 350,000-square-foot structure under construction at New York and Florida Avenues, N.E.; to the south, the Securities & Exchange Commission and other office tenants located in the partially-completed 1.3 million-square-foot Station Place complex on 2nd Street from F to H Streets, N.E. Residential developments are under construction at the Capital Children's Museum site at 3rd and H Streets, N.E., and in various planning stages at 318 I Street, N.E.; 300 L Street, N.E.; and on the east side of 3rd Street between K and L Streets, N.E.
15. The PUD Site is fewer than two blocks south of the New York Avenue Metrorail Station and approximately five blocks north of Union Station. It lies within the NoMa (North of

Massachusetts Avenue) area designated as a Redevelopment Area for city planning and economic development purposes. It is three blocks north of the H Street Corridor, subject of REVIVAL: The H Street NE Strategic Development Plan, proposed by the Executive Branch and adopted by the D.C. Council as a Small Area Plan in February 2004.

Existing and Proposed Zoning

16. The underlying zone districts are C-2-B for the easternmost portion of the PUD Site – 26,805 square feet – between 3rd Street and the north-south public alley bisecting the property, and C-M-3 for the westernmost portion of the PUD Site – 74,277 square feet – between 2nd Street and the public alley.
17. The C-2-B zone district is designed to serve commercial and residential functions, with high-density residential and mixed uses. Developments as a matter of right may be 90 feet high with a maximum density of 3.5 FAR and a maximum lot occupancy of 80%.
18. The C-M zones are designated as a Commercial-Light Manufacturing Districts, in which new residential uses are not permitted. In the C-M-3 district, developments as a matter of right may be 90 feet high, with a maximum density of 6.0 FAR. There is no prescribed maximum lot occupancy.
19. The Applicant requested a map amendment to rezone the PUD site to C-3-C to allow residential use and to permit greater height and density than permitted in C-M-3 and C-2-B zone districts. In a C-3-C district, the matter- of right maximum height is 90 feet, the maximum density is 6.5 FAR, and the maximum lot occupancy is 100%. The PUD Standards of the Zoning Regulations, at 11 DCMR § 2405.1, allow a maximum height of 130 feet and maximum density of 8.0 FAR in a C-3-C district.

The PUD Project

20. The PUD is proposed as a residential development, with ground-level retail, to be named Union Place. The Applicant proposes construction in two phases, with the Consolidated PUD as Phase 1 and the Preliminary PUD as Phase 2.
21. Overall, the PUD will have a gross floor area of 849,338 square feet apportioned as 831,841 square feet of residential and 17,497 square feet devoted to retail use- and to a child development center. The child development center will contain 3,449 square feet. The lot occupancy will be approximately 68%. The PUD will provide underground parking for Union Place residents at a ratio of one parking space per unit.
22. The PUD will include a landscaped central plaza of approximately 27,984 square feet as an aesthetic feature and an amenity for passive recreational and social use by Union Place and neighborhood residents. The plaza will be open for public use between the hours of 11:00 a.m. and 7:00 p.m. daily.

23. Loading docks and berths and access points will be situated so as to route delivery truck traffic along L Street or 2nd Street, rather than along residentially-oriented K and 3rd Streets. Loading facilities will comply with the requirements of 11 DCMR § 2201.1.

The Consolidated PUD

24. The Consolidated PUD will consist of 236,905 square feet of gross floor area, with 233,206 square feet for residential use and 3,699 square feet for retail use. The structure will be located on the eastern, most portion of the PUD site, with a land area of 42,995 square feet. The location will be between K, 3rd and L Streets, N.E. The lot occupancy will be 64%.
25. The Consolidated PUD will have a maximum height of 90 feet and ten (10) stories, stepping down to 61 feet/6 inches and seven (7) stories at the northern end.
26. The Consolidated PUD will include 202 residential units, 28 of which will be set aside as affordable housing. The affordable units are located on floors one (1) through five (5) as identified on floor plans submitted by the Applicant on January 20, 2006.
27. The Consolidated PUD will have 177 underground parking spaces for residents.
28. The Consolidated PUD design features a façade primarily using three shades of brick and pre-cast concrete trim caps and cornices. The first through third floors will be red brick, capped with a cornice. The fourth through eighth floors will be set back four feet and will use tan brick capped with a cornice. The ninth and tenth floors will use a light beige brick, topped with a cornice. The building will have a two- to three-story base, emulating traditional Washington rowhouse design, with unit entrances fronting on K Street and 3rd Street and also accessible from the project interior. There will be balconies on the fourth through tenth floors.

The Preliminary PUD

29. The Preliminary PUD is proposed to consist of approximately 612,433 square feet of gross floor area, with approximately 598,635 square feet for residential use and approximately 13,798 square feet for retail use, including a daycare center of approximately 3,449 square feet. The structure will be located on the westernmost portion of the PUD Site, with a land area of 58,087 square feet. The location is between K, 2nd, and L Streets, N.E.
30. The Preliminary PUD will contain approximately 500 residential units. At least 10% of the residential square footage will be set aside as affordable housing, providing approximately 50 affordable units. The affordable units will be further defined by the Applicant in the second-stage PUD application.

31. The Preliminary PUD will have at least 525 underground parking spaces for residents, if 500 units are built. In any case, the number of spaces will be sufficient to assure a 1:1 parking ratio for residents of the Consolidated and Preliminary PUD.

Development Incentives and Flexibility

32. In addition to the map amendment, the Applicant requests the following areas of flexibility from the C-3-C requirements and PUD standards:
- a. An increase of five percent (5%) in the floor area, to density of 8.4 FAR, pursuant to 11 DCMR § 2405.3;
 - b. A variance from the residential recreation space requirements of 11 DCMR § 773.3; and
 - c. A special exception from the prohibition of multiple roof structures set forth at 11 DCMR § 411.3.
33. The 5% bonus FAR provides the necessary density to allow development of approximately 702 residential units (78 of which would be set aside as affordable housing) and a spacious interior plaza available for public recreation use.
34. The proposed PUD provides the equivalent of approximately four percent (4%) of residential gross floor area as residential recreation space in the form of the central plaza and the rooftop terrace on the Consolidated PUD, which is less than the 10% required by § 773.3. The Applicant stated that some additional residential recreation space may be made available in the second-stage PUD, but in the meantime requested a variance from the 10% requirement.
35. The Zoning flexibility to permit multiple roof structures is necessary to allow elevator penthouses and stair towers on both the seven-story and the ten-story portions of the Consolidated PUD.

Public Benefits and Amenities

36. The following benefits and amenities will be created as a result of the PUD project:
- a. *Affordable Housing* – The primary benefit is the creation of approximately 78 new residential units set aside as affordable for households at no more than 80% of the Area Median Income (“AMI”). The affordable units comprise 92,045 square feet, which is 11.07% of the total residential. In the Consolidated PUD, 28 of the 202 units will be designated as affordable units; this is 32,182 square feet (11.07% of the total Consolidated PUD residential area of 233,206 square feet). In the Preliminary PUD, 50 of approximately 500 units will be designated as affordable units; this is 59,863 square feet (10% of the approximate total Preliminary PUD residential area of 598,635 square feet). The Applicant will

reserve for-sale units as affordable for a period of ten (10) years and rental units as affordable for a period of twenty (20) years. The Consolidated PUD affordable units are identified on the Applicant's floor plans for floors one (1) through five (5). The Preliminary PUD affordable units will be identified during second-stage PUD review.

- b. Day Care Center – The Preliminary PUD will include a licensed and professionally-operated child daycare center of approximately 3,449 square feet in size with convenient access to an outdoor play area. Based on per-child space requirements in the District Government's daycare center regulations, the facility may accommodate up to 75-80 children. Union Place residents will have first priority in applications for admission. Other available daycare slots will be open to applicants from the community at large. The city, and particularly Ward 6, has a substantial need for more daycare facilities. The Office of Early Childhood Development of the D.C. Department of Human Services has reported that, as of December 2004, there were 882 children on waiting lists for the 3,175 slots available in licensed childcare facilities in Ward 6.
- c. Green Roof – The Consolidated PUD features an extensive green roof system, with 11,928 square feet of roof space designed for plantings, comprised of a variety of different sedums and other succulents hardy for the D.C. metropolitan region. On the seventh-floor step-down roof at the corner of 3rd and L Streets, N.E., the green roof system is designed as a recreation amenity for residents. For the Preliminary PUD, the Applicant has committed to address the use of a green roof system and to explore the feasibility of a green and/or low-impact surface or storm water management system for the surface of the courtyard, that also serves as the roof for the parking garage. The reduction of negative environmental impacts is perhaps the foremost public benefit the proposed roofing system provides. Stormwater run off will be reduced by temporarily storing some of the rainwater within the growing medium and then slowly discharging the excess water into the off site storm water collection system, thereby reducing the peak flows of a major storm. It is estimated that this roof will store approximately 1,074 cubic feet of water, of which as much as 70-80% will never discharge directly into the public collection system. In addition, the plantings will extract a significant amount of airborne pollutants falling on the site, including acid rain and unhealthy particulates such as solid metals, dust, pollen, etc. The plants will also help improve air quality by reducing the amount of ozone and carbon dioxide often associated with smog. Also, because of the extra thickness of the soil medium, studies have shown that there is a significant energy savings over time for all seasons because of the insulation value of the green roof.
- d. Double-Height Ground Floor Retail – The Consolidated PUD features ground-floor retail space at a height of 18 feet, well above the requirements of the Zoning Regulations. This will provide flexibility for retail tenants to design unique and aesthetically-appealing showcases for consumer goods. The glass-walled double-

height storefronts will enhance interior natural light and present an inviting exterior face to passers-by.

- e. *Landscaped Central Plaza for Use by Residents and the Community* – The Union Place plaza of approximately 27,984 square feet is designed for both public and private use for passive recreation and social interaction. The plaza will be open to the from 11:00 a.m. to 7:00 p.m. daily, accessible through a gated entrance that will be open during public hours and closed during non-public hours except to Union Place residents. The Applicant will provide and maintain plaza signage to announce the public hours and general rules of use. The plaza will be protected by security personnel.
 - f. *Streetscape Beautification* – PUD landscaping constitutes a public benefit through substantial enhancement of the aesthetic appeal of the neighborhood streetscape.
 - g. *Interim Surface Parking for Phase 1 Residents* – During the interim between occupancy of the Consolidated PUD structure and completion of construction of the Preliminary PUD structure, off-street surface parking will be provided on the PUD Site to assure a 1:1 residential parking ratio at all times. The interim arrangement is necessary because the Consolidated PUD, with 202 residential units, is designed to provide 177 underground parking spaces. The Applicant stated that geotechnical factors make it difficult to provide the full complement of spaces for Consolidated PUD residents within the Consolidated PUD garage. The underground garage in the Preliminary PUD will provide a sufficient number of spaces to accommodate its residents at a 1:1 ratio, plus the 25 additional spaces necessary for Consolidated PUD residents, to assure a 1:1 space-per-unit ratio overall. Pervious materials will be used for the interim surface parking area.
 - h. *First-Source Employment Agreement* – The Applicant entered into a First-Source Employment Agreement with the Department of Employment Services, effective September 13, 2005.
 - i. *LSDBE Contracting Commitment* – The Applicant entered into a Local, Small, and Disadvantaged Business Enterprise (LSDBE) Memorandum of Understanding with the Department of Small and Local Business Development, effective January 18, 2006.
37. The Commission finds that the project is acceptable in all proffered categories of public benefits and amenities, and is superior in public benefits and project amenities relating to housing and affordable housing, the daycare facility, use of green roof technology, and the double-height retail design.

Office of Planning Report

38. By report dated December 27, 2005 and through testimony at the January 5, 2006 hearing, the Office of Planning (“OP”) recommended conditional approval of the PUD.

OP supported the applications and found that the proposed PUD is not inconsistent with the Comprehensive Plan and the PUD evaluation standards. OP testified that the PUD is consistent with neighborhood trends toward denser residential uses to replace derelict industrial and commercial uses, to replace in part by the completion of the New York Avenue Metrorail Station and the H Street Corridor Revitalization Plan of 2004 and the subsequent approval of the H Street N.E. Neighborhood Commercial Overlay Zone District.

39. OP recommended approval of the applications, subject to the Applicant's submission of additional requested information and the following conditions:
- a. The Consolidated PUD shall be constructed according to the plans submitted on November 29, 2005 (i.e., September 13, 2005 plans as amended September 29, 2005).
 - b. The Preliminary PUD shall be restudied to address the height issue and the Applicant shall submit an alternative that maintains a 90-foot building height along K Street, with at least a 40-foot horizontal setback from the building line, as part of the second-stage PUD application.
 - c. The Applicant shall file for a building permit no later than 18 months from the effective date of the final order and commence construction no later than 30 months from the effective date of this order.
 - d. At least 13.8% of the Consolidated PUD's residential gross floor area shall be made available as for-sale units to households earning no more than 80% of the AMI. The units shall remain affordable for at least 10 years after their initial sale. The sale of a unit within this 10-year period shall initiate a new 10-year affordability period for the unit. The units shall be evenly distributed throughout the first five floors of the building. The location and square footages of the affordable units shall be agreed upon by the Applicant and the Zoning Commission prior to the signing of the PUD covenant.
 - e. At least 10% of the Preliminary PUD's residential gross floor area shall be made available as rental or for-sale units to households earning no more than 80% of the AMI. If the units are for-sale, the 10-year affordability period shall apply. If the units are rental, they shall remain affordable for no less than 25 years.
 - f. The Applicant shall construct an in-fill all-residential building in Square 749, Lot 805. The building shall be no higher than 50 feet. The occupancy permit for the Preliminary PUD shall not be issued until the occupancy permit has been issued for the residential structure at Square 749, Lot 805.
 - g. The Applicant shall provide for a rental car option similar to Flex Car or Zip Car when the Preliminary PUD's garage is completed.

- h. The Applicant shall include a letter of intent, with general details on rental terms and similar matters for the operation of the daycare center when filing the second-stage PUD application.
 - i. The ground floor retail space in the second-stage PUD shall have an interior clear height of no less than 14 feet.
40. In response to OP's recommendations, the Commission finds as follows:
- a. The Commission concurs with OP's recommendations regarding approval of the bonus density and finds that the Applicant has met the burden of proof required by § 2405.3. The Commission finds that the high level of proffered affordable housing is an essential element of the proposed PUD and that the Applicant has demonstrated that the bonus density is "essential to the successful functioning of the project" as proposed and "consistent with the purposes and evaluation standards of" Chapter 24. The Commission further finds that any requested reduction in the level of proffered benefits and amenities will cause the Commission to consider a commensurate reduction in the bonus FAR.
 - b. The Commission finds that the Applicant has submitted the additional information requested in the OP report.
 - c. The Commission generally concurs with the conditions recommended by OP, and has incorporated these conditions with minor changes in the Decision portion of this Order.
 - d. The Commission does not concur with the OP recommendation that the Applicant should be required to submit, in the second-stage PUD application, a 90-foot-height plan as an alternative to the requested maximum height of 130- feet for the Preliminary PUD structure. Instead, the Commission has required that the Applicant submit design studies of approaches that ameliorate the appearance of the 130-foot height when presenting the second stage application to the Commission.
 - e. The Commission does not concur with the OP recommendation that the Applicant shall construct an in-fill building, or to limit the in-fill building to Lot 805 and to a height of 50 feet and to link the occupancy permit for the Preliminary PUD to the occupancy permit for the in-fill building. The Commission finds that, because the out parcels are not part of the PUD, it is inappropriate to link the Preliminary PUD occupancy permit to an occupancy permit for the out parcels structure.

Other Government Agency Reports

41. By report dated September 30, 2005 in the predecessor Case No. 01-28TE, the District Department of Transportation ("DDOT") stated that it has no objection to the proposed PUD. DDOT projected only a slight increase in trip generation as a result of the PUD

development, with no adverse impact on the surrounding transportation system. DDOT found the PUD loading facilities and access and circulation system to be acceptable. Consistent with DDOT policy to promote car-sharing programs, DDOT encouraged the Applicant to consider setting aside approximately five percent (5%) of the proposed garage parking spaces for car-sharing vehicles.

42. Stanley Jackson, Deputy Mayor for Planning and Economic Development, submitted a letter dated September 29, 2005 in support of the identical project in the predecessor Case No. 01-28TE. Mr. Jackson stated that that Applicant's affordable housing proffer will contribute to the District's priority goal of developing an additional 6,000 affordable housing units.
43. Jalal Greene, Director of the D.C. Department of Housing and Community Development, submitted a letter dated September 29, 2005, in support of the identical project in the predecessor Case No. 01-28TE. Mr. Greene also stated that the Applicant's affordable housing proffer supports the city's goal of developing 6,000 more affordable units.
44. D.C. Council Chairman Linda Cropp and Council member Vincent B. Orange, Sr. submitted letters dated November 21, 2005, and November 17, 2005, respectively, in support of the identical project in the predecessor Case No. 01-28TE.

The ANC Position

45. Advisory Neighborhood Commission 6C adopted a resolution in support of the applications, with conditions, by a vote of 7-1, with one member absent, at a regularly scheduled and publicly noticed meeting on December 14, 2005. The ANC resolution included the following conditions:
 - a. The Applicant shall file a Phase 1 (Consolidated PUD) building permit application within one (1) year following the effective date of a Zoning Commission approval order, and shall also begin Phase 1 construction within one (1) year subject to timely D.C. Government action on legislation to close alleys within the PUD Site. The Applicant will file quarterly reports to ANC 6C regarding the status of the building permit application and the construction start date.
 - b. The Applicant will file a second-stage PUD application at the earliest opportunity in order to prevent delays in Phase 2 (Preliminary PUD) construction and will timely provide copies of the second-stage PUD plans and documents to members of ANC 6C and its Planning and Zoning Committee for their review and comment.
 - c. The Applicant will provide the interim surface parking spaces as agreed upon with ANC 6C.

- d. The Applicant will set aside approximately 78 units – more than 11% of the total – as affordable housing and will deliver all of the other public benefits and amenities as set forth in the applications.
- 46. ANC 6C Commissioner Daniel M. Pernell, who represents Single-Member-District 6C04, which includes the PUD site, presented the ANC report at the January 5, 2006 hearing. He was accompanied by ANC 6C Chair Mark Dixon.
- 47. The Commission generally concurs with the conditions recommended by ANC 6C and has incorporated these conditions with minor changes in the Decision portion of this Order.

The Positions of Other Parties, Organizations, and Persons

- 48. There are no parties to the case other than the Applicant and ANC 6C.
- 49. In support of the PUD, the Commission received testimony at the January 5, 2006 hearing from the following:
 - a. Loree Murray, who resides at 1134 Seventh Street N.E., and was among the original organizers of the Near Northeast Citizens' Against Crime and Drugs, testified that Union Place will be a beneficial addition to the neighborhood, particularly because it will include affordable housing, a daycare center, and public plaza.
 - b. Reverend William Bynum, president of the Public Citizen Civic Association, testified that Union Place is one of the few significant developments in the past 40 years that will bring tangible public benefits to the vicinity of the H Street N.E. Corridor.
 - c. William Howard, who represented PSI Services, a provider of daycare and other social services in the District, commended the inclusion of a daycare center in the PUD project to meet community needs and said his firm will submit a proposal to the Applicant to operate the Union Place daycare center.
 - d. Anwar Saleem, chairman of H Street Main Street and the H Street Merchants and Professionals Association, testified that the Union Place development will be an asset to the community in continuing efforts to attract retailers to the H Street N.E. Corridor. He said the Applicant's package of public benefits and amenities responds to community needs.
- 50. In opposition to the PUD, the Commission received testimony at the January 5, 2006 hearing from Mozella Boyd Johnson, who stated that she owns the property located at 229 K Street, N.E. She spoke in opposition to the proposed 130-foot height of the Preliminary PUD structure and expressed the view that the project's height and mass would have an adverse effect on the neighborhood.

NCPC Report

51. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter.
52. NCPC, by action dated March 2, 2006, concluded: (1) the proposed consolidated PUD would not adversely affect the identified federal interests and would be consistent with the Comprehensive Plan for the National Capital; and (2) the proposed first stage PUD would adversely affect the federal interest and would be inconsistent with the Comprehensive Plan for the National Capital and the Height of Buildings Act of 1910. NCPC indicated that the two structures shared no meaningful communication and thus comprised two separate buildings, with two different fronts and therefore two distinct measuring points for height.² Yet, only the 3rd Street front was used to measure height. NCPC therefore concluded that the Commission should either require the Applicant to establish a "meaningful connection" between two structures, so as to permit the 3rd Street measuring point, or to lower the height of the building fronting 2nd and L Streets.
53. The Commission shared this same concern with the Applicant as part of the earlier PUD modification proceeding discussed in Find of Fact No. 3. The plans in that case did indeed show two separate structures with a single point of measurement. In response to the Commission's concerns, the Applicant submitted the revised drawings on September 29, 2006 that show a single building made of two parts connected by a twelve (12) story glass bridge. After the Commission denied the request for a time extension on November 17, 2005, thereby terminated the prior PUD, the Commission immediately set this case down for hearing based on the plans showing the connected structures.
54. Based upon statements in and attachments to the "staff recommendation" that accompanied NCPC action, it appears that NCPC may have been looking at the plans from the earlier case. In any event, the Commission believes that the glass bridge will establish communication between the two portions of the structure, thereby allowing the entire development to be considered a single building that fronts 3rd Street. The 3rd Street front was therefore properly used as the measuring point for height.

Compliance with PUD Evaluation Standards

55. Under the PUD regulations, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." 11 DCMR § 2403.8. Given the level of project amenities and public benefits, particularly the significant amount of

² The definition of building that appears at 11 DCMR § 119.1 provides that the "existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building." This statement has therefore been interpreted to mean that the "existence of communication" at or above the main floor allows the connected structures to be deemed a single building.

affordable housing, the Commission finds that the value of the project amenities and public benefits justifies the development incentives allowed by the PUD Standards.

56. Pursuant to 11 DCMR § 2403.3 of the PUD evaluation standards, the Commission finds that the impact of the project on the surrounding area and the operation of city services and facilities is acceptable.
57. The Commission finds that the project will have no detrimental impact on traffic and parking in the neighborhood.

Compliance with the Comprehensive Plan

58. The Commission finds that the proposed PUD is not inconsistent with the Comprehensive Plan.
59. The proposed PUD fosters the objectives of the Land Use Element to encourage substantial new housing primarily near Metrorail stations, to conserve and enhance the stability of residential neighborhoods and protect them from disruptive uses, and to promote retention and expansion of residential uses in mixed-use neighborhoods.
60. The proposed PUD fosters the objectives of the Housing Element, which calls for multi-unit housing development near Metrorail stations and on vacant, underutilized, or unused properties, with particular emphasis on meeting the housing needs of low- and moderate-income residents by means of zoning incentives such as permitting additional density.
61. The proposed PUD fosters the objectives of the Transportation Element, which supports higher-density residential and non-residential development near Metrorail stations.
62. The proposed PUD fosters the Ward 6 Objectives for Housing, which are “to maintain and strengthen the quality and construction of housing in the various neighborhoods throughout Ward 6; stimulate production in Ward 6 of new and rehabilitated housing; discourage encroachment of the non-residential uses in residential areas; and stimulate private investment in housing in Ward 6 and expand home ownership opportunities....”
63. The proposed PUD fosters the Ward 6 Objectives for Economic Development, which include “protect(ing) adjacent residential neighborhoods in Northeast against pressures for conversion to retail and office uses generated by Union Station development.” By creating a new residential community in the buffer zone, the proposed PUD will shield the residential neighborhood from commercial redevelopment.

CONCLUSIONS OF LAW

1. Pursuant to 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, welfare, and convenience.” 11 DCMR § 2400.2.

2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider these applications as a Consolidated and a Preliminary (first-stage) PUD, respectively. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The development of the PUD project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height, bulk, and density standards of the Zoning Regulations, and the height and density will not cause a significant adverse effect on any nearby properties. High-density residential and retail uses are appropriate for the site, which is located within the NoMa Redevelopment Area and in close proximity to mass transit. The impact of the project on the surrounding area is not unacceptable. The proposed project has been appropriately designed to complement and respect existing structures in the nearby neighborhood with respect to height and mass.
6. The PUD applications meet the contiguity requirements of § 2401.3 of the Zoning Regulations.
7. The PUD applications can be approved with conditions to ensure that any potential adverse effects on the area surrounding the development will be mitigated.
8. The project benefits and amenities, particularly the provision of housing, affordable housing, neighborhood-serving retail, the daycare center, the green roof system, and streetscape beautification, are reasonable for the development proposed on the site and responsive to the needs of the community and the city.
9. The Applicant seeks an increase in density as permitted by 11 DCMR § 2405.3. The Applicant has met the burden of proof required by 11 DCMR § 2405.3 for approval of 5% bonus density, because the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations. The bonus density will allow the Applicant to include a greater affordable housing component than would otherwise be feasible. The large affordable housing component is one of the primary benefits of the project, and is essential to the

success of the project, and consistent with the standards of Chapter 24 of the Zoning Regulations.

10. Approval of the PUD is appropriate, because the proposed development is not inconsistent with the Comprehensive Plan or with other public policies related to the subject site.
11. Approval of the PUD is appropriate, because the proposed development is consistent with other city policies, particularly the policies to generate development of more affordable housing.
12. In accordance with D.C. Official Code § 1-309.10(d)(3)(A) (2001 ed.), the Commission is required to give “great weight” to the position of the affected ANC. As is reflected in the Findings of Fact contained herein, the Commission has carefully considered the testimony and evidence submitted by ANC 6C and has incorporated conditions in this Order which reflect the recommendations of ANC 6C.
13. The applications for a PUD and related map amendment 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 Zoning Map of the District of Columbia.
14. The applications for a PUD and related map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this Order, of the applications for (1) consolidated review of a Planned Unit Development; (2) preliminary review of a Planned Unit Development; and (3) a Zoning Map amendment from C-M-3 and C-2-B to C-3-C for the PUD Site. The approval is subject to the following guidelines, conditions, and standards:

1. The consolidated approval of the PUD shall apply to the properties in Square 749 except Lots 804, 805, and 31 shown to the right of the “Phase Line” on the Applicant’s *Preliminary Subdivision Plan*, dated September 7, 2005, and submitted as Exhibit C of the Applicant’s *Application and Pre-Hearing Submission*, ZC Case No. 05-36, filed November 29, 2005.
2. The preliminary approval of the PUD shall apply to properties in Square 749 shown to the left of the “Phase Line” on the Applicant’s *Preliminary Subdivision Plan*, dated September 7, 2005, and submitted as Exhibit C of the Applicant’s *Application and Pre-Hearing Submission*, ZC Case No. 05-36, filed November 29, 2005.
3. A PUD-related map amendment shall rezone the PUD site, in its entirety, from C-M-3 and C-2-B to C-3-C.

4. With respect to the properties within the Consolidated PUD, the map amendment shall take effect at the time the Applicant records the covenants required by Conditions No. 6, No. 13, No. 14, and No. 17 below. With respect to the properties within the Preliminary PUD, the map amendment shall take effect upon final approval of the second-stage PUD application and the Applicant's recordation of the covenant as specified by the Commission in an Order approving the second-stage PUD.
5. The PUD shall have a maximum density of 8.4 FAR.
6. The Applicant shall designate 11.07% of the total residential gross floor area of the total project as affordable housing for eligible households with annual household incomes of no more than eighty percent (80%) of the Area Median Income, as determined and adjusted annually by the U.S. Department of Housing and Urban Development. The affordable-housing requirements shall be guaranteed by covenants that the Applicant shall execute and record in the land records of the District of Columbia. The affordable units shall be guaranteed by covenant to be set aside as affordable for ten (10) years in the case of for-sale units and twenty (20) years in the case of rental units, as defined with specificity in the covenants.
7. The Applicant shall apply green-roof technology in the development and construction of the Consolidated PUD and the Preliminary PUD. For the Consolidated PUD, the Applicant shall apply the green-roof plan as shown and described in Exhibit D, *Sheets L.9, L.9.1, L.9.2 and L.9.3*, of the Applicant's November 29, 2005 submission. For the Preliminary PUD, the Applicant shall develop and submit with the second-stage PUD application a similar green-roof plan for the maximum amount of roof space, minus the space needed for rooftop building systems such as elevator and mechanical penthouses.
8. The Applicant shall provide a central plaza of approximately 27,000 square feet in size. The central plaza shall be open to the public for passive recreational use between the hours of 11:00 a.m. and 7:00 p.m. daily, and shall be posted with appropriate signage to inform plaza users about permissible and prohibited plaza activities. The plaza shall be accessible to the public through a 2nd Street entrance that shall remain open during the hours of public access and shall be closed to all except building residents, employees, and any other authorized personnel between the hours of 7:00 p.m. and 11:00 a.m. In the second-stage PUD application, the Applicant shall provide data and drawings showing the design and placement of the 2nd Street entrance. The Applicant shall provide sufficient security personnel and procedures to ensure the safety of plaza users, including procedures defining the conditions requiring requests for Metropolitan Police Department assistance. Specific rules and operational details for the plaza shall be developed collectively by the Applicant, the condominium unit owner's association representing building residents in accordance with the provisions of D.C. Official Code § 42-1903.01 *et seq.*, and Advisory Neighborhood Commission 6C.
9. Ground floor retail space in the Consolidated PUD shall have an interior clear height of 18 feet. Ground floor retail space in the Preliminary PUD shall have an interior clear height of no less than 14 feet.

10. The Consolidated PUD shall be developed in accordance with the plans prepared by GTM Architects, dated September 13, 2005, including the revisions submitted September 29, 2005, and January 4, 2006 (the "Combined Plans"). The Consolidated PUD shall have a total of 236,905 gross square feet with 233,206 square feet for residential use and 3,699 square feet for retail use.
11. The Consolidated PUD shall be a residential development with ground-floor retail space, constructed to a maximum height of 90 feet above the measuring point, stepping down to a height of 61 feet/6 inches on the northeast end.
12. The Consolidated PUD shall contain 202 residential units, 28 of which shall be designated as affordable units for an affordability period of ten (10) years, if for-sale units, and twenty (20) years, if rental units, guaranteed by covenant between the Applicant and the District of Columbia and recorded in the land records of the District of Columbia.
13. The covenant required by Condition No. 6 shall be the Draft Covenant provided as Attachment 2 in the *Applicant's Post-Hearing Submissions, January 20, 2006*, revised only to provide the correct metes-and-bounds descriptions of the lots and parts of lots contained in the Consolidated PUD.
14. Except as otherwise provided below, the affordable housing units in the Consolidated PUD shall be the units designated by the Applicant in the floor plans for floors one (1) through five (5), submitted as Attachment 6 in the Applicant's Post-Hearing Submissions dated January 20, 2006 ("Affordable Unit Designation Plans").
15. The Applicant shall have flexibility with the design of the Consolidated PUD in the following areas:
 - a. To replace some of the units designated as affordable on floors one (1) through five (5) with some units of comparable type and size on floor six (6), subject to the approval of the person or agency charged with implementing and enforcing the affordable-housing requirements;
 - b. To increase or decrease the overall number of residential units by no more than five percent (5%), provided that the percentage of residential gross floor area designated for affordable units shall not be less than 13.8% of total residential gross floor in the Consolidated PUD;
 - c. To rearrange the unit types and mix, provided that the number, type, size, and distribution of the affordable units shall remain consistent with the Affordable Unit Designation Plans;
 - d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms,

elevators, escalators, and toilet rooms, provided that the variations do not change the exterior appearance or configuration of the buildings;

- 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
 - f. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, and trim, or any other changes necessary to comply with the Construction Codes of the District of Columbia or that are otherwise necessary to obtain a building permit.
- 16. The landscaping, streetscape, and exterior lighting shall be as shown on the Consolidated Plans. Landscaping, streetscape, and lighting improvements to public space shall be in accordance with the Consolidated Plans and as approved by the Public Space Division of DDOT. The Applicant shall maintain all landscaping, streetscape, and lighting improvements in good condition.
 - 17. No building permit shall be issued for the Consolidated PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the owners and all successors in title to construct on and use the property in accordance with this Order or amendment thereof by the Zoning Commission.
 - 18. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed copies of the covenant with the records of the Zoning Commission.
 - 19. The Consolidated PUD approved by the Zoning Commission shall be valid for a period of one (1) year from the effective date of this Order. Within such time, the first application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction on the Consolidated PUD shall begin within two (2) years of the effective date of this Order.
 - 20. The Preliminary PUD shall be developed in accordance with the Combined Plans and the character, scale, mixture of uses, and design of the uses proposed.
 - 21. The Preliminary PUD shall have a maximum height of 130 feet from the measuring point and a maximum of 14 stories, each of which shall have a minimum floor-to-ceiling height of 8 feet/6 inches, within the 130-foot height of the structure as measured for zoning purposes. The Preliminary PUD shall include approximately 500 dwelling units and 13,798 square feet for retail use, including the daycare center.
 - 22. The Commission is concerned with the proposed maximum 130 foot height of the second stage proposal along K Street. The Commission expects the Applicant to develop

alternative design studies that ameliorate the appearance of the 130 Foot height in presenting the second stage application to the Commission.

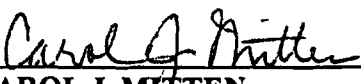
23. The Preliminary PUD shall include an affordable-unit set-aside of no less than 10% of the total residential gross floor area of the Preliminary PUD. Affordability periods of ten (10) years for for-sale units and twenty (20) years for rental units shall be guaranteed by covenants agreed upon by the Applicant and the Commission and recorded in the land records of the District of Columbia. The affordable unit types and sizes shall be in reasonable proportion to the types and sizes of market-rate units and shall be evenly dispersed among the central and lower residential floors.
24. The Preliminary PUD shall include a daycare center of approximately 3,449 square feet in size. In the second-stage PUD application, the Applicant shall provide evidence of progress in identifying and securing an agreement with a suitable daycare provider to operate the facility.
25. In the second-stage PUD application, the Applicant shall address the District Department of Transportation and OP recommendations for the inclusion of garage parking spaces for car-sharing services.
26. In the second-stage PUD application, the Applicant shall have flexibility with respect to:
 - a. Increasing or decreasing the overall number of residential units by no more than five percent (5%), provided that the percentage of residential gross floor area designated for affordable units shall not be less than 10.0% of total residential gross floor area in the structure; and
 - b. The exterior façade design and materials, so long as the exterior appearance is compatible with the exterior of the Consolidated PUD structure and consistent in quality and character with the façade design and materials and overall exterior appearance of the Consolidated PUD.
27. In the second-stage PUD application, the Applicant shall include, as an element of the architectural materials, street-level renderings and a cross-section showing the Second Street public access point of entry to the plaza and 2nd Street elevations.
28. The second-stage PUD application shall be submitted within one year following the effective date of this Order.
29. 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 thirty-five percent (35%) 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.

30. 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 fifty-one percent (51%) of the jobs created by the PUD project.
31. 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.* (the "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, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial of or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

The Zoning Commission at its public meeting held on February 23, 2006 approved the application, subject to conditions, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull in favor, John G. Parsons not participating, not voting).

The Order was adopted by the Zoning Commission at its public meeting on April 20, 2006 by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, and Michael G. Turnbull to adopt; Gregory N. Jeffries to adopt by absentee ballot; John G. Parsons not participating, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on OCT 13 2006.


CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION


JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

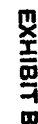
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322 STREET, EAST
ART WARD

322 STREET, EAST
ART WARD

THIS IS TO CERTIFY THAT THIS MAP ON PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH "MINIMUM SURVEYING DATA REQUIREMENTS FOR ALTA/ALTA LAND TITLE SERVICES", JOSEPH ESTABROOK AND ASSOCIATES OF ALTA, ARIZONA AND WERE IN COMPLIANCE WITH 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 AND 14 OF TABLE A HEREIN. FURTHER, THE ACCURACY STANDARDS OF AN ALTA/ALTA SURVEY, AS SET FORTH IN SECTION 10 OF THE "MINIMUM SURVEYING DATA REQUIREMENTS" FURTHER CERTIFY THAT THE SURVEY MEASUREMENTS WERE MADE IN ACCORDANCE WITH THE "MINIMUM SURVEYING DATA REQUIREMENTS FOR SURVEY MEASUREMENTS WHICH CONTROL LAND REQUIREMENTS FOR ALTA/ALTA LAND TITLE SERVICES".



1. TITLE REPORT FURNISHED BY FORT AMERICAN TITLE INSURANCE COMPANY, COMMENCING
 IN 1220-46, 1220-48, 1220-49, 1220-50 & 1220-52, EACH WITH AN EFFECTIVE DATE OF
 AUGUST 16, 1955.

- [illegible]

STATE T - 25 DATE OCTOBER 3, 2000

DATE: 10/22/2013 TIME: 10:00		Bowman CONSULTING	
28. Business Description: 29. Business Location: 30. Business Phone: 31. Business Fax: 32. Business Email: 33. Business Website: 34. Business Address: 35. Business City: 36. Business State: 37. Business Zip: 38. Business Country: 39. Business Postal Code: 40. Business Phone: 41. Business Fax: 42. Business Email: 43. Business Website: 44. Business Address: 45. Business City: 46. Business State: 47. Business Zip: 48. Business Country: 49. Business Postal Code: 50. Business Phone: 51. Business Fax: 52. Business Email: 53. Business Website: 54. Business Address: 55. Business City: 56. Business State: 57. Business Zip: 58. Business Country: 59. Business Postal Code: 60. Business Phone: 61. Business Fax: 62. Business Email: 63. Business Website: 64. Business Address: 65. Business City: 66. Business State: 67. Business Zip: 68. Business Country: 69. Business Postal Code: 70. Business Phone: 71. Business Fax: 72. Business Email: 73. Business Website: 74. Business Address: 75. 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~~M.C. Case 05-36~~

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Z.C. CASE NO.: 05-36

As Director of the Office of Zoning, I hereby certify that **6 OCT 10 2006** copies of this Z.C. Corrected Order No. 05-36 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. <i>D.C. Register</i> | 6. Councilmember Sharon Ambrose |
| 2. John Ray, Esq.
Manatt, Phelps, & Phillips
700 12th St NW # 1100, Washington,
DC 20005 | 7. Office of Planning (Ellen McCarthy) |
| 3. Mark Dixon, Chair
ANC 6C
P.O. Box 77876
Washington, DC 20013 | 8. Ken Laden, DOT |
| 4. Commissioner Daniel Pernell, III
ANC/SMD 6C04
1116 3rd Street, NE
Washington, DC 20002 | 9. Zoning Administrator |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Ave., N.W.
Washington, D.C. 20004 | 10. Office of the Attorney General |
| | 11. Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |

ATTESTED BY: 
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 05-36A
Z.C. Case No. 05-36A
K Street Developers, LLC
(Second-Stage PUD – 250 K Street, N.E.)
July 28, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on May 19, 2008 to consider an application from K Street Developers, LLC (the "Applicant") for review and approval of the second stage of a two-stage planned unit development ("PUD") and related zoning map amendment pursuant to Chapters 24 and 30 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning (the "Zoning Regulations"). The proposed project is a mixed-use development containing residential uses and ground-floor retail uses. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On November 29, 2005, 200 K Street, L.P., the Applicant's predecessor-in-interest, filed an application requesting preliminary and consolidated approval of a PUD, as well as a related map amendment to the C-3-C Zone District for all of Lot 67 in Square 749 (the "Subject Property"). The original application sought to develop the proposed PUD in two phases. The first phase of the development (the "Phase I PUD") was to be located on the eastern portion of the Subject Property, which contains approximately 42,839 square feet of land area (the "Phase I Site"). The second phase of the development (the "Phase II PUD") was to be located on the western portion of the Subject Property, which contains approximately 58,263 square feet of land area (the "Phase II Site"). The Phase I PUD was to contain approximately 236,905 square feet of gross floor area, including 202 residential units and approximately 3,699 square feet of ground-floor retail space. The Phase I PUD was to be constructed to a maximum height of 90 feet and was to include 177 off-street parking spaces in an underground garage. The Phase II PUD was to contain approximately 612,433 square feet of gross floor area, including 500 residential units and approximately 13,798 square feet of residential use. The Phase II PUD was to be constructed to a maximum height of 130 feet from the measuring point on 3rd Street, N.E. and was to include 545 off-street parking spaces for use by the building's residents. The Phase I PUD and Phase II

PUD would surround an outdoor central plaza that would be available for use by the public between the hours of 11:00 a.m. and 7:00 p.m.

2. Pursuant to Z.C. Corrected Order No. 05-36 (effective October 13, 2006) ("First Stage Order"), the Commission granted consolidated approval for the first phase of the proposed development and preliminary approval for the second phase of the project. That order required the Applicant to file an application for second-stage approval of the Phase II PUD within one year of the effective date of the order.
3. The Applicant is the owner of the Subject Property.
4. On October 4, 2007, the Applicant filed an application for second-stage approval of the Phase II PUD.
5. The Office of Planning ("OP") filed a preliminary report dated November 30, 2007 (Exhibit 12). The report recommended that the Commission set the application down for a public hearing.
6. At its public meeting on December 10, 2007, the Commission voted to schedule a public hearing on the application.
7. On March 7, 2007, the Applicant filed a prehearing statement and revised architectural plans and elevations, dated January 11, 2007. The Applicant's prehearing statement addressed a number of issues raised by OP and the Commission at the public meeting on December 10, 2007.
8. Advisory Neighborhood Commission ("ANC") 6C voted to approve the Phase II PUD at its regularly scheduled meeting on February 13, 2008. The ANC submitted a letter to the Commission, dated May 21, 2008 (Exhibit 36), recommending approval of the application.
9. On April 29, 2008, the Applicant filed supplemental materials in support of the application, including a revised set of architectural plans and elevations, dated April 29, 2008 (Exhibit 26). These revised plans responded to a number of comments received from OP following the submission of the Applicant's prehearing statement.
10. On May 9, 2008, OP filed a report (Exhibit 27) recommending approval of the second-stage PUD, subject to the Applicant's resolution of certain outstanding issues.
11. On May 19, 2008, the District Department of Transportation ("DDOT") filed a report, dated May 14, 2008 (Exhibit 29). In its report, DDOT requested that the Applicant be granted the flexibility to modify the landscaping and other streetscape improvements located in public space in coordination with DDOT. The report stated that DDOT had no objections to the site access or proposed circulation system.

12. After proper notice, the Commission held a public hearing on May 19, 2008. The parties to the case were the Applicant and ANC 6C.
13. The Applicant submitted a number of exhibits at the public hearing on May 19, 2008. These exhibits included revised architectural sheets, a letter from Smart Start, Inc. expressing its continued interest in operating the proposed daycare facility in the new development, written testimony prepared by the Applicant's land use expert, and a document demonstrating that the amount of affordable housing provided in the proposed development would be the same regardless of whether that requirement is calculated on a net-to-net basis or on a gross-to-gross basis. The Applicant also submitted an affidavit demonstrating compliance with the posting requirements of 11 DCMR § 3015.4.
14. The Applicant presented eight witnesses at the Commission's hearing on May 19, 2008, including Alan D. Cohen of ADC Builders on behalf of the Applicant; Richard Conrath, Colline Hernandez-Ayala, and Kimberly Lee of GTM Architects (architecture); Jonathan Fitch and Curt Millay of LAB (landscape architecture); Iain Banks of O.R. George & Associates, Inc. (transportation); and Steven E. Sher, Director of Zoning and Land Use Services at Holland & Knight LLP (zoning and land use planning). Based upon their professional experience, as evidenced by the resumes submitted for the record and prior appearances before the Commission, Messrs. Conrath, Fitch, Banks, and Sher were qualified by the Commission as experts in their respective fields. At the conclusion of the public hearing, the Commission requested additional materials from the Applicant and scheduled a special public meeting on the application for June 16, 2008 to decide the case.
15. At the Commission's request, the Applicant submitted supplemental materials in support of the application on June 2, 2008. These materials included a revised set of architectural plans and elevations, dated June 2, 2008 (Exhibit 38) (the "Final Plans"). The Final Plans addressed a number of issues raised by the Commission during the public hearing on May 19, 2008. The Applicant also submitted a supplemental transportation memorandum prepared by O.R. George & Associates, Inc., which indicated that any parking demand generated by the retail uses in the proposed project can be adequately accommodated by on-street parking spaces adjacent to the site. In addition, the Applicant submitted materials boards for the Commission's use during the special public meeting on the application. Finally, the Applicant submitted a revised Leadership in Energy and Environmental Design ("LEED") checklist, which indicated that the proposed project would qualify for nineteen points on the U.S. Green Building Council's LEED New Construction 2.2 ("LEED-NC") rating system.
16. At a special public meeting on June 16, 2008, the Commission took proposed action by a vote of 5-0-0 to approve with conditions the application and the Final Plans.

17. On June 19, 2008, the Applicant submitted a request for modification to the First Stage Order regarding Condition No. 8. The Commission assigned the request Z.C. Case No. 05-36B. The Commission granted the modification request on July 14, 2008. The Commission's order granting the modification requested in Z.C. Case No. 05-36B is published separately. This Order describes the PUD as modified.
18. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by letter dated July 14, 2008, informed the Commission that it considered the Application and took no action on the proposal.
19. The Commission took final action to approve the application on July 28, 2008 by a vote of 3-0-2.

The Subject Property, the Surrounding Area, and the Proposed Project

20. The Subject Property includes all of Lot 67 in Square 749 and contains approximately 101,102 square feet of land area. Square 749 is bounded by 2nd Street to the west, L Street to the north, 3rd Street to the east, and K Street to the south, in Northeast Washington, D.C. The Subject Property is located within the C-3-C Zone District and falls within the jurisdiction of ANC 6C. The site slopes significantly from northeast to southwest. Ground elevations on the Subject Property range from approximately 54.65 feet at the northeast corner of the site to 35.20 feet at the southwest corner of the site.
21. The Subject Property is located within the North of Massachusetts ("NoMA") planning area. Most of the adjacent property to the east and south is occupied by rowhouses and other residential uses and is zoned C-2-B, while the area to the north is devoted primarily to light industrial uses and is zoned C-M-1 and C-M-3. The properties located further to the east are located within the R-4 Zone District. The Subject Property is located across 2nd Street, N.E. from the Metrorail right-of-way to the west and is located two blocks south of the New York Avenue-Florida Avenue-Gallaudet University Metrorail station and five blocks north of Union Station. Consistent with the District's policy objectives for the NoMA planning area, the surrounding area is currently experiencing significant residential and commercial office development. The Subject Property is located within one-half mile of two federal agency headquarter buildings: the Bureau of Alcohol, Tobacco, Firearms, and Explosives to the north and the U.S. Security and Exchange Commission to the south.
22. The PUD is being developed in two separate phases, but will be constructed as a single building for zoning purposes. The Commission granted consolidated approval of the Phase I PUD in Z.C. Corrected Order No. 05-36. The Phase I PUD is located on the eastern portion of the Subject Property and contains 236,905 square feet of gross floor area, including 3,699 square feet of retail space. The Phase I PUD is currently under construction and includes 202 residential units and 177 off-street parking spaces in an

underground garage. This portion of the PUD has a maximum height of 90 feet as measured from 3rd Street, N.E. The Commission also granted preliminary approval of the Phase II PUD on the western portion of the site. As originally approved, the Phase II PUD contained 612,433 square feet of gross floor area and had a maximum height of 130 feet as measured from 3rd Street, N.E. As originally approved by the Commission, the PUD as a whole would contain 849,338 square feet of gross floor area, including 17,497 square feet devoted to retail uses.

23. In response to the Commission's concerns regarding the perceived height and massing of the Phase II PUD, the Applicant has eliminated one story from that portion of the building and reduced its maximum height from 130 feet to 121 feet. The building will be 12 stories above the measuring point on 3rd Street, N.E. and 14 stories above the sidewalk on 2nd Street, N.E. and K Street, N.E. Setbacks were also introduced on the upper stories. The reduction in the height of the building and the related setbacks have reduced the total gross floor area of the Phase II PUD from 612,433 square feet to 555,545 square feet. The Phase II PUD will include 415,307 square feet of gross floor contained in approximately 500 residential units, as well as 13,801 square feet of gross floor area devoted to retail uses (including a 3,446-square-foot daycare center). Additionally, the Phase II PUD will contain 13,328 square feet of gross floor area devoted to ancillary residential uses and 113,109 square feet of gross floor area devoted to core and service areas. The Phase II PUD will have a density of 5.49 FAR, resulting in an overall PUD density of 7.84 FAR, less than the 8.4 FAR originally approved.
24. The Phase II PUD has been designed to minimize the negative impacts of the building's height and mass as experienced from the pedestrian level and complement the character of the surrounding neighborhood. Drawing from the local vernacular, the brick veneer, double-story "warehouse" windows, stone cornice, headers, and sills are incorporated into the façade design to integrate the overall building within its surrounding context. The façade will read as separate buildings, rather than as a single, monolithic mass. At certain points along the façade, the massing at the building's upper levels steps back from the property line to reveal a glazed curtain wall system, which reduces the perceived height of the building from the pedestrian level. The building's contrasting exterior colors break up the building into smaller masses and soften the structure's appearance against the skyline. Both phases of the PUD have similar cornice and masonry detailing that will be repeated throughout the entire project.
25. The Phase II PUD will include a four-level underground garage containing 545 vehicle spaces and 55 bicycle spaces. The underground parking garage will be accessed from 2nd Street, N.E. The Phase II PUD will also contain two 55-foot loading berths, two 20-foot service/delivery spaces, and two 200-square-foot loading platforms. These loading facilities will also be accessed from 2nd Street, N.E. The Applicant intends to work with DDOT and Zipcar to establish car-sharing spaces on the streets surrounding Square 749.

26. The Phase II PUD will incorporate a number of sustainable design features, including a 16,000-square-foot green roof and stormwater management system that will increase the building's energy efficiency and reduce the volume of stormwater runoff from the site. The significant landscaping of the development's central plaza will also reduce runoff by minimizing the percentage of the site covered by impervious surfaces. The daycare center's outdoor play area will be surfaced with a recycled, poured-in-place material topped with a resilient layer. The Applicant intends to use low-emitting wall coverings, carpeting, and adhesives on the interior of the new building and will install low-flow plumbing fixtures in the residential units. Finally, the central plaza and building perimeter will be illuminated by energy-efficient LED lighting. Although the building will not be LEED certified, the Commission finds that the proposed project's sustainable design features are superior to what would be provided in a matter-of-right residential development at this location.
27. The Applicant will reserve 10% of the gross floor area devoted to residential units in the Phase II PUD, or approximately 41,558 square feet, for households earning no more than 80% of Area Median Income ("AMI") for the time periods set forth in Z.C. Corrected Order No. 05-36. These affordable housing units will be evenly distributed throughout all but the top four floors of the Phase II PUD and will be comparable in exterior design, materials, and finishes to the market-rate units in the building.
28. The PUD will surround an outdoor central plaza containing approximately 28,476 square feet of area. The elevated eastern portion of the plaza, which contains approximately 10,721 square feet, will be reserved for use by the residents of the Phase I PUD. Approximately 2,050 square feet of area in the southwest corner of the plaza will be used as an outdoor play area for the daycare center. The remaining portions of the western plaza, containing approximately 15,705 square feet, will be open to the public between the hours of 11:00 a.m. and 7:00 p.m. each day for passive recreational use. The central plaza will include significant landscaping, furniture, and public art displays. The central plaza will be accessed by the public through an arched gateway on 2nd Street, N.E.

Flexibility from the Zoning Regulations

29. The Applicant requests the following areas of flexibility from the requirements of the C-3-C Zone District and the corresponding PUD standards:
 - a. relief from the off-street parking requirements of 11 DCMR § 2101.1 for the retail uses in the proposed project;
 - b. relief from the prohibition on multiple roof structures set forth in 11 DCMR § 411.3; and
 - c. relief from the roof structure setback requirements of 11 DCMR § 770.6 for two of the four mechanical penthouses on the Phase II PUD.

30. In Z.C. Case No. 05-36, the Commission granted the Applicant flexibility to allow a five-percent increase in the gross floor area of the overall PUD to permit a maximum density of 8.4 FAR. The Commission notes that the overall density for the PUD as a whole has been reduced to 7.84 FAR, which is below the applicable PUD standards for the C-3-C Zone District. The Applicant no longer requires such flexibility.
31. Under 11 DCMR § 2101.1, the Applicant is required to provide 14 off-street parking spaces for the retail uses in the Phase II PUD. The supplemental memorandum submitted by the Applicant's transportation consultant, dated May 30, 2008 (Exhibit 37), indicates that any parking demand generated by the retail uses in the PUD can be fully accommodated by on-street parking spaces surrounding Square 749. The Applicant has presented evidence, moreover, that the provision of retail parking spaces in the underground garage would entail significant costs and would create serious security and safety risks for the building's residents. The Commission finds that the costs of strict compliance with the off-street parking requirements for the retail uses in the PUD would far exceed any likely benefits.
32. The Zoning Regulations provide that all penthouses and mechanical equipment on a building's roof must be placed within a single enclosure that harmonizes with the main structure in architectural character, material, and color. (11 DCMR § 411.3.) Although the Applicant may provide a separate enclosure for each of the building's two elevator cores, the Phase II PUD will include four separate mechanical penthouses. Multiple enclosures are necessary in this case due to the size of the building, the configuration of the building's mechanical equipment, and location of the planted green roof areas. The Commission further finds that compliance with the single-enclosure requirement in this case would only increase the visibility of the structure from the surrounding streets and would have an adverse visual impact on adjacent properties.
33. Within the C-3-C Zone District, any structure located on a building's roof must be set back from each of the building's exterior walls by a distance at least equal to the structure's height above the roof upon which it sits. (11 DCMR § 770.6.) Although the four mechanical penthouses on the roof of the Phase II PUD will be set back at least that distance from all of the building's street-facing walls, two of the penthouses will not be sufficiently set back from the walls of the building's interior courtyard. The Commission finds that the placement of these penthouses is dictated by the location of the Phase II PUD's stairway and elevator cores, and that it would be impractical to relocate these two enclosures to comply with the setback requirement.

Reports of the D.C. Office of Planning

34. OP filed a preliminary report on the application dated November 30, 2007 (Exhibit 12). The report recommended that the Commission set the application down for public hearing

and requested that the Applicant provide additional information and materials on the proposed project prior to the hearing.

35. OP filed its final report on the application (Exhibit 27) on May 9, 2008. The report recommended that the Commission approve the application, subject to the resolution of the following issues:
- a. OP asked the Applicant to revise the architectural plans to more clearly illustrate the connections between the Phase I PUD and the Phase II PUD to ensure that the entire project would function as a single building for zoning purposes. As illustrated on Sheets A1.02a through A1.09a of the Final Plans, the first and second phases of the development will be connected at every floor. The Commission finds that the Phase I PUD and the Phase II PUD constitute a single building for zoning purposes.
 - b. OP asked the Applicant to discuss whether calculating the 10% affordable housing requirement on a net-to-net basis rather than on a gross-to-gross basis would result in less affordable housing. The Applicant's land use expert submitted written testimony, dated May 19, 2008 (Exhibit 31), at the Commission's public hearing. That testimony included an attachment demonstrating that the calculation of the affordable housing requirement on a net-to-net basis does not result in any diminution in the amount of affordable housing that is provided. The Commission finds that the provision of 41,558 square feet of affordable housing in the Phase II PUD satisfies the 10% affordable housing requirement set forth in Z.C. Corrected Order No. 05-36.
 - c. OP asked the Applicant to establish a minimum square footage for each type of affordable dwelling unit. Because the size and configuration of the market-rate dwelling units in the proposed development have not been finalized, the Commission will not establish a minimum requirement for the size of the affordable units in the Phase II PUD. During the public hearing on the application, the Applicant testified that the gross floor area of each affordable housing unit would be no less than 95% of the average gross floor area of market-rate units of the same type.
 - d. OP asked the Applicant to explain why the core and service areas represented such a high percentage of the development's gross floor area. According to the Final Plans, the building's core and service areas contain approximately 113,109 square feet of gross floor area, which represents approximately 20% of the project's total gross floor area. These areas include the building's elevators, stairs, corridors, administrative areas, loading areas, trash rooms, utility rooms, and storage areas. Although the core and service areas in other buildings typically represent approximately 15% of a building's gross floor area, the Applicant explained that the size and configuration of these areas is dictated by the need for multiple egress stairways and by the location of the central elevator and stair cores. The placement of these circulation cores, in turn, was made necessary by the location of the garage entry previously approved by the Commission

in Corrected Order No. 05-36. Furthermore, the covered arched walkway to the central plaza is included in the project's density, along with an indoor swimming pool and two sets of loading berths.

- e. OP asked the Applicant to explain why the eastern portion of the central plaza would not be open to the public and whether any other public benefits would be provided to justify this reduction in public access. The Applicant testified that the elevated eastern portion of the central plaza is surrounded by dwelling unit windows. Opening this portion of the central plaza to the public would compromise the privacy and safety of the Phase I PUD's residents.
- f. OP requested that the Applicant continue to work with DDOT to refine the design of the landscaping and other improvements located in public space, and recommended that the Commission grant the Applicant the flexibility to modify the design of the ground floor of the proposed project as well as improvements within the adjacent public space along K Street, N.E.

Report of the District Department of Transportation

- 36. DDOT filed a report dated May 14, 2008 (Exhibit 29), recommending approval of the application. In its report, DDOT requested that the Commission grant the Applicant the flexibility to work with DDOT on the final design of the landscaping and other streetscape improvements located in public space adjacent to the proposed project.

Reports of Advisory Neighborhood Commission 6C

- 37. ANC 6C submitted a letter to the Commission dated February 19, 2008 (Exhibit 13), reporting that the ANC voted to recommend approval of the proposed project at its regularly scheduled public meeting on February 13, 2008. Although the letter stated that all nine commissioners had participated in the ANC's consideration of the project, it did not indicate the number of commissioners who actually voted in support of the application. The Commission requested that ANC 6C submit an additional letter for the record providing such information.
- 38. ANC 6C submitted a supplemental letter to the Commission dated May 21, 2008 (Exhibit 36), indicating that the ANC had voted 8-1-0 to recommend approval of the proposed project at its public meeting on February 13, 2008.

Testimony in Support and Opposition

39. No other parties testified in support of or opposition to the application.

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 two-stage PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, 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. The proposed development carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable in a matter-of-right development.
4. The proposed PUD meets the minimum area requirements set forth in § 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height and density standards approved by the Commission in Z.C. Corrected Order No. 05-36. Indeed, the Applicant has significantly reduced the height and density of the Phase II PUD below what was approved in Z.C. Corrected Order No. 05-36. The height and density of the proposed project will not cause an adverse impact on any nearby properties. The proposed mixed-use development is appropriate for this site, which is located in close proximity to public transportation and is adequately served by existing public services and facilities.
6. The Applicant's request for flexibility from the Zoning Regulations is consistent with the present character of the surrounding area and are not inconsistent with the Comprehensive Plan. The Commission concludes that the project's benefits and amenities represent a reasonable tradeoff for the requested development flexibility.
7. Approval of this application is appropriate because the proposed development is consistent with the present character of the area and 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 Zoning Map.

8. Approval of this application and the related map amendment is not inconsistent with the Comprehensive Plan or with the site's designation for medium-density residential land uses on the Future Land Use Map.
9. The Final Plans are consistent with the conditions set forth in the Z.C. Corrected Order No. 05-36, as modified by Z.C. Order No. 05-36B.
10. Pursuant to 11 DCMR § 2608.2, all other provisions of Chapter 26 of the Zoning Regulations, Inclusionary Zoning, do not apply to this application because it was set down for hearing prior to March 14, 2008.
11. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.
12. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the issues and concerns raised by the affected ANC in its written report. The Commission has carefully considered the report submitted by ANC 6C and concurs in its recommendation of approval.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained herein, the Zoning Commission orders **APPROVAL** of the application for second-stage review and approval of a Planned Unit Development on a portion of Lot 67 in Square 749. This approval is subject to the following guidelines, conditions, and standards:

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 this case (the "Final Plans"), and as modified by the guidelines, conditions, and standards of this Order. 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;
 - 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 is no less than 545 vehicle spaces and 55 bicycle spaces.
- 2. The Phase II PUD shall have an overall density of no more than 5.49 FAR. The development shall contain approximately 555,545 square feet of gross floor area, including 13,801 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 feet, as measured from the measuring point on 3rd Street, N.E. identified on Sheet C.6 of the Final Plans. Each floor in the Phase II PUD shall have a minimum floor-to-ceiling height of no less than eight feet, six inches.
 - 4. The Phase II PUD shall provide a green roof covering at least 16,000 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 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.

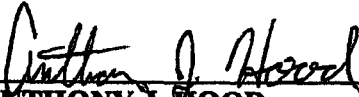
8. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least 51% of the jobs created by the PUD project.
9. The Owner is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 *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, 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.

On June 16, 2008, the Zoning Commission voted to **APPROVE** the application for proposed action by a vote of 5-0-0 (Anthony J. Hood, Curtis L. Etherly, Jr., Gregory N. Jeffries, and Peter G. May to approve; Michael G. Turnbull to approve by absentee ballot).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on July 28, 2008, 2008, by a vote of 3-0-2 (Anthony J. Hood, Michael G. Turnbull, and Peter G. May to adopt; Gregory N. Jeffries and Curtis L. Etherly, Jr., not present, not voting).

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In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon its publication in the *D.C. Register*; that is on NOV 14 2006.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 05-36A

As Secretary to the Commission, I hereby certify that on NOV 18 2008 copies of this Z.C. Order No. 05-36A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. <i>D.C. Register</i> | 6. Councilmember Tommy Wells |
| 2. Norman Glasgow, Esq.
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Suite 100
Washington, D.C. 20006 | 7. Office of Planning (Harriet Tregoning) |
| 3. Karen Wirt, Chair
ANC 6C
P.O. Box 77876.
Washington, DC 20015-7787 | 8. DDOT (Karina Ricks) |
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ANC/SMD 6C04
1150 5 th Street, N.E.,
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| | 11. Office of the Attorney General
(Alan Bergstein) |

ATTESTED BY:



Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-36I**

Z.C. Case No. 05-36I

Toll DC II, LP

**(Modification to Approved Planned Unit Development
Square 749)**

January 12, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on October 30, 2014, to consider an application filed by Toll DC II, LP ("Applicant"), owner of Lots 826 and 827 in Square 749 ("Phase II Property"), for approval of a modification to a planned unit development ("PUD") approved pursuant to Z.C. 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 ("Application").
2. The PUD which the Applicant seeks to modify was first approved by the Commission in 2006 in Z.C. Order No. 05-36 (as amended, "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

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.

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 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, N.E., and consisting of a 10-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 Z.C. Order No. 05-36A, effective November 14, 2008, the Commission granted second-stage approval of Phase II of the project, consisting of a 14-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, N.E. ("Phase II Building").³
6. In Z.C. Order 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 (Z.C. Order No. 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 (Z.C. Order No. 05-36C).
7. By Z.C. 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 Z.C. 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

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.

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 Z.C. 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 Z.C. 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, 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 Z.C. 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 ("Phase III Building").
11. By Z.C. 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 Z.C. 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 application 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. (Exhibit ["Ex."] 12.)

14. At its June 9, 2014, public meeting, the 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. (Ex. 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. (Ex. 17-19.)
17. On October 20, 2014, OP submitted its final report to the Commission recommending approval and requested certain additional documentation from the Applicant. (Ex. 21.)
18. On October 20, 2014, DDOT submitted a memorandum to the Commission indicating no objections to the Application. (Ex. 22.)

Public Hearing on Modification Request

19. The Commission held a public hearing for the Application on October 30, 2014. The parties were the Applicant and Advisory Neighborhood Commission ("ANC") 6C. 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; and
 - (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:
- (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, N.E., 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 a 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.

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.

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 a 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.
29. In its Final Report, OP noted that the Applicant's proposed modification to its loading facilities required relief from the 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 9:00 p.m. and 10:00 p.m.) on-street parking utilization measured 72%, 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, N.E., 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, N.E., rather than 2nd Street, N.E., and regarding public space along K Street, were all approved by the Public Space Committee.

34. The Commission concurs with DDOT's findings in support of the Application.

ANC 6C

35. 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, 2014 public hearing.

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 Commission took proposed action to approve the Application with a 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, 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 19, 2014, the Applicant requested additional time to provide the materials requested by the Commission.
41. The proposed action of the 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's Executive Director, by delegated action

dated December 4, 2014, found that the Application would not have any adverse impact on the federal interests.

42. By letter dated December 15, 2014, the Applicant provided the materials requested by the Commission.
43. The Zoning Commission took final action to approve the Application at its public meeting on January 12, 2015.

The Property and Surrounding Area

44. 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.
45. 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

46. As approved by the Commission in Z.C. Order Nos. 05-36A, 05-36E, and 05-36H, the Phase II Building is a fourteen-story apartment building with 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, N.E.
47. 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 Commission in Z.C. Case No. 05-36A. These affordable housing units are distributed throughout all but the top four floors of the Phase II building.
48. 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, N.E., two separate loading areas were provided.

49. In Z.C. 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.
50. 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 § 2403 of the Zoning Regulations.
51. The proposed building remains a 14-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 affordable housing component of 10% 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.
52. The Applicant's refinements to the building include a more efficient building core, yielding approximately 35,000 square feet of additional gross floor area devoted to residential units, 10% 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.
53. The Applicant proposes to relocate the public entrance to the courtyard from 2nd Street, N.E., to mid-block along K Street, N.E., 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.
54. As part of its modification request, the Applicant requests flexibility to reduce the amount of loading approved in Z.C. 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.

55. 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 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 the C-3-C Zone District (0.25).
56. 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

57. 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;
 - (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 Construction 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

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. Subsection 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.)
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 § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 6C's recommendation in support of the Application. The ANC's support was contingent on the Applicant entering into an agreement concerning the ability of residents of the Phase II Building to receive a residential parking permit ("RPP") from the District of Columbia Department of Motor Vehicles ("DMV"). The Applicant satisfied this contingency. The Commission affords the views of ANC 6C the great weight to which they are entitled.
13. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP's recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.
14. 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 Z.C. Order No. 05-36A, granting second-stage approval for the Phase II Building, as have been amended by Z.C. Order Nos. 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 Z.C. 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 Z.C. 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 December 15, 2014 marked as Exhibit 33 of the record in Z.C. 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 Z.C. 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;

- 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-foot-deep loading berth, one 30-foot-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** floor area ratio ("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, N.E., ~~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% 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, 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.
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, 2015, and construction must start no later than November 14, 2016. In order for approval of Phase II-B to remain valid, a building 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 five 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; and (iii) acknowledging that the recordation of the**

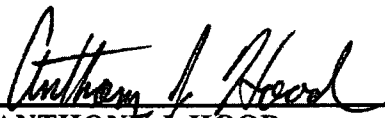
Notice of PUD Modification, which runs with the land, embodies the foregoing commitment.

- 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.**

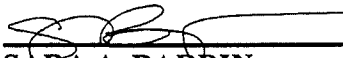
On October 30, 2014, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** the application at the close of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On January 12, 2015, upon the motion of Commissioner Miller, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt)

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on February 6, 2015.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING