

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-38B

Z.C. Case No. 05-38B
Mill Creek Residential Trust, LLC
(PUD Modification @ Square 499, Lots 855-859)
July 13, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on June 11, 2015, to consider an application from Mill Creek Residential Trust, LLC ("Applicant"), for modifications to an approved planned unit development ("PUD") for Lots 855-859 in Square 499 ("Property"). The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Property, Application, Parties, and Hearings

1. The Property is located in the southwest quadrant of the District and is bounded by K Street to the north, Square 542 to the east, M Street to the south, and 6th Street to the west. The Property is rectangular in shape, consists of approximately 135,263 square feet of land area, and is located in Ward 6. The Property has approximately 220 linear feet of frontage along K Street and M Street, and approximately 614.83 linear feet of frontage along 6th Street. Lots 856 and 858 are each presently improved with a recently renovated nine-story apartment house designed by I.M. Pei. Surface parking lots occupy the northern and southern ends of the Property. The Property is approximately 0.1 miles from the entrance to the Waterfront Metrorail station, which services the Green Line, and is in close proximity to multiple Metrobus Lines.
2. Pursuant to Z.C. Order No. 05-38, dated May 14, 2007, and effective October 26, 2007, the Commission approved a PUD and related Zoning Map amendment to rezone the Property from the R-5-D Zone District to the C-3-C Zone District (the "Initial PUD Approval"). Z.C. Order No. 05-38 authorized up to 570 residential units spread across four residential buildings, including two existing buildings on Lots 856 and 858 designed by the noted architect I.M. Pei ("Pei Towers"); a new building on Lot 859 ("North Residential Tower"); and a new building on Lot 855 ("South Residential Tower"). The North and South Residential Towers were approved at a maximum height of 112 feet each, with a total of 569 vehicle parking spaces located in below-grade structures. The

overall density approved as part of the Initial PUD Approval was 4.38 floor area ratio (“FAR”), or 592,471 square feet of gross floor area, with approximately 8,900 square feet of gross floor area devoted to ground-floor retail and residential amenities.

3. Pursuant to Z.C. Order No. 05-38A, dated December 8, 2008, and effective on January 2, 2009, the Commission approved modifications to the Initial PUD Approval (the “Modified PUD Approval”). The Modified PUD Approval authorized the following amendments to the initial PUD: (i) refinements to the approved façades and roof structures of the various buildings; (ii) removal of the previously approved for-sale residential component; (iii) relocation of a pool; (iv) an increase in the maximum number of units to 580 (256 existing units plus 324 new units); and (v) modifications to the communities amenities package. (See Z.C. Order No. 05-38A, Finding of Fact No. 2.)
4. On December 22, 2014, the Applicant filed the current application with the Commission for modifications to the approved PUD. The modified project reduces the height of the North and South Residential Towers to 85 feet each, and reduces the PUD’s overall density from 4.38 FAR to 3.40 FAR. The North and South Residential towers will contain a combined total of approximately 242,450 square feet of gross floor area, with approximately 231,385 square feet of gross floor area devoted to residential and residential amenity uses, approximately 5,220 square feet of gross floor area devoted to retail use, and approximately 5,845 square feet of gross floor area devoted to service space. The overall gross floor area for the new buildings and the Pei Towers combined is approximately 459,890 square feet. The number of residential units for the overall project will be reduced from 580 units to 516 units (256 existing units and 260 new units, plus or minus 10%). Parking will be located in three levels of below- grade parking in each of the North and South Residential Towers, and will include approximately 290 parking spaces.
5. By report dated February 27, 2015, the Office of Planning (“OP”) recommended setdown of the application. (Exhibit [“Ex”] 11.) On March 9, 2015, the Commission voted to schedule a public hearing on the application.
6. On April 7, 2015, the Applicant submitted a prehearing statement. (Ex. 14-14J.) On May 1, 2015, a description of the application and the notice of the public hearing in this matter were published in the *D.C. Register*. (Ex. 17.) On April 22, 2015, the notice of the public hearing was mailed to all property owners within 200 feet of the Property, as well as to Advisory Neighborhood Commission (“ANC”) 6D, the ANC in which the Property is located.
7. On May 5, 2015, the Applicant submitted a supplemental statement in support of the application, which provided: (i) updated architectural plans and elevations; (ii) a rationale for not providing a green roof; (iii) a transportation memorandum prepared by Gorove/Slade Associates, Inc., the Applicant’s transportation consultant; and (iv) an

update regarding the Applicant's engagement with and support from ANC 6D. (Ex. 24-24B.)

8. By report dated June 1, 2015, OP submitted its final report recommending approval of the application once the Applicant addressed the comments set forth in the OP report. (Ex. 25.) OP also noted that the proposed development is not inconsistent with the Comprehensive Plan and the Zoning Regulations.
9. By report dated June 1, 2015, the District Department of Transportation ("DDOT") submitted a report indicating that it had no objection to the application with the following conditions: (i) the Applicant should redesign the South Residential Tower such that all loading needs can be accommodated on site; (ii) the Applicant should provide at least eight short-term bicycle parking spaces in the public space; and (iii) the Applicant should offer a one time, one year Capital Bikeshare membership or one year car-share membership to all new residents of the project for the first three years that the buildings are open. (Ex. 26.)
10. By report dated June 4, 2015, the District Department of Energy and Environment ("DOEE") submitted a report that provided comments specific to the project, offered guidance on regulations and other DOEE areas of interest, and recommended areas where the Applicant could exceed guidelines as a public benefit or amenity for the project. (Ex. 27.)
11. The public hearing on the application took place on June 11, 2015. The parties to the case were the Applicant and ANC 6D. No requests for party status were filed for this case and no individuals appeared at the public hearing to testify in support of or in opposition to the application. Dennis Connors of SK+I Architecture was accepted as an expert in architecture. Josh Posnick addressed the Commission on behalf of the Applicant.
12. At the conclusion of the public hearing, the Commission voted to take proposed action to approve the application.
13. On June 22, 2015, the Applicant submitted a post-hearing filing in response to comments from the Commission made at the public hearing. (Ex. 40-40C.) The post-hearing filing included a response to the DOEE report, a summary of the existing affordability controls for the affordable units in the Pei Towers, and revised architectural sheets.
14. The application was referred to the National Capital Planning Commission ("NCPC") for review pursuant to § 492 of the District's Home Rule Act.
15. The Executive Director of NCPC, by delegated action dated July 2, 2015, found that the proposed PUD and related map amendment would not be inconsistent with the

Comprehensive Plan for the National Capitol, nor would it affect any other federal interests. (Ex. 44.)

16. The Zoning Commission took final action to approve the PUD on July 13, 2015.

PUD Modification

17. The Applicant seeks approval to modify the architectural plans and elevations approved in Z.C. Case No. 05-38 and 05-38A to construct two new residential buildings on the Property, consistent with the architectural plans and elevations (Ex. 24A1-24A5), as modified by the supplemental plans (Ex. 31, 40C) (together, the “Plans”).
18. The North and South Residential Towers will each be 85 feet in height, will contain a combined total of approximately 242,450 square feet of gross floor area, with approximately 231,385 square feet of gross floor area devoted to residential and residential amenity uses, approximately 5,220 square feet of gross floor area devoted to retail use, and approximately 5,845 square feet of gross floor area devoted to service space. The overall gross floor area for the new building and the Pei Towers combined is approximately 459,890 square feet (3.40 FAR). The project will have a combined total of 516 residential units (256 existing units and 260 new units, plus or minus 10%).
19. A total of 290 on-site vehicular parking spaces will be provided in a below-grade parking garage in each of the North and South Residential Towers. Loading facilities will include one 30-foot loading berth and one 200-square-foot loading platform in each of the North and South Residential Towers.
20. The original PUD application was approved and Z.C. Order No. 05-38 became effective prior to the August 14, 2009 effective date of the Inclusionary Zoning (“IZ”) Regulations set forth in Chapter 26 of Title 11 DCMR. Instead, the PUD included an affordable housing proffer. Pursuant to that proffer, Condition No. 12 of Z.C. Order No. 05-38 required that 16,000 square feet of gross floor within the entire PUD be reserved as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size), and consistent with the eligibility requirements and enforcement mechanisms enumerated in Exhibit G of Exhibit 26 of the record in that case. That exhibit established a 20 year control period for rental units beginning on the date that the certificate of occupancy was issued for the building in which the affordable units were located. Thus far, 10,587 square feet has been provided, all in the Pei Towers. The earliest certificate of occupancy was dated July of 2010, so that the control period for these units would expire in July 2030.

21. The Applicant does not dispute that the IZ regulations apply to this modification. Pursuant to § 2603.2 of those regulations, the North and South Residential Towers are required to set aside a minimum of eight percent of each building's residential gross floor for inclusionary units. This results in minimum set-aside requirements of 9,389 square feet of gross floor area for the North Residential Building and 7,648 square feet of gross floor area for the South Residential Building. Subsection 2603.4 requires that 100% of the inclusionary units resulting from the set-asides be reserved for essentially the same income level as was required under Z.C. Order No. 05-38.
22. As will be discussed in Finding of Fact No. 28(d), the Applicant has requested pursuant to § 2607 that it be able to use the 10,587 square feet of constructed affordable rental units in the Pei Towers to account for a portion of the IZ requirements of the North and South Residential Tower.
23. The North and South Residential Towers create two volumes on each vacant lot, which is appropriate for the scale and character of the neighborhood. Each new tower is comprised of two volumes: the first is a taller, lighter box that is supported by a tall recessed ground floor with exposed columns along the primary streets and corners; the second is a lower mass that meets the ground and is pulled back and tapered from the corners between the proposed and existing buildings along the street edge. The simple design emphasizes the importance of the surrounding streets and corners, reinforces the Pei Towers' architectural importance, and achieves a sense of openness for the green spaces between the proposed and existing buildings.
24. The North and South Residential Towers will incorporate ground-floor residential units with access directly to the street. The design provides landscaping and setbacks to ensure privacy for the street-facing units. Ground-floor retail will be located in the two-story space at the corner of M and 6th Streets in the South Residential Tower, across from the Arena Stage. The North Residential Tower will have a two-story lobby and amenity space that will visually connect from the street to the pocket parks in between the existing and proposed buildings.
25. The materials of the North and South Residential Towers will be of a contemporary palette with light and dark contrasting elements. The M and K Street façade will be a light color frame with the fenestration reading as two-story elements that stagger to add vibrancy to the streetscape.
26. In the center of the Property is a central courtyard ("Great Lawn"), which the Applicant will enhance as part of this application. The Great Lawn is presently half landscaping and half landscaping with a pool for residents. The Applicant will remove and replace portions of the existing pool deck and will improve the amenity area throughout the Great Lawn.

27. The Applicant offered a new set of conditions that would replace the conditions stated in Z.C. Order No. 05-38 as modified in Z.C. Order No. 05-38A. Several of the existing conditions were modified or eliminated. The most substantive of these modifications are stated in the table below along with the rationale for each:

Conditions from Z.C. Case No. 05-38A	Conditions from Z.C. Case No. 05-38	Current Proposed Condition for Modification Application	Explanation
2.e. Study of the Potential Renovation of the Town Center West Park: The Applicant shall engage the original designers of this park (Wallace Roberts Todd) to assess the current condition of the park and recommend steps to utilize the park as a true community amenity at a cost of \$15,000.	2.d. Study of the Potential Renovation of the Town Center West Park: The Applicant will engage the original designers of this park (Wallace Roberts Todd) to assess the current condition of the park and recommend steps to utilize the park as a true community amenity at a cost of \$15,000. The Applicant will pay for and undertake the renovations for the Town Center West Park outlined in the WRT study, up to a value of \$250,000 (\$178,500 for the proposed work with contingency funds of up to \$71,500). This work will be completed prior to the issuance of a certificate of occupancy for the new south residential tower.	B.4d. Payment for Renovation of the Town Center West Park: The Applicant shall pay Wallace Roberts Todd (“WRT”) or another landscape architecture firm selected by the Applicant to undertake the renovations for the Town Center West Park outlined in the WRT Study, included at Exhibit 33 of Z.C. Case No. 05-38B, up to a value of \$250,000 (\$178,500 for the proposed work with contingency funds of up to \$71,500).	The WRT Study was completed on December 21, 2007 (Ex. 33), and therefore the only remaining obligation is to make the contribution. Moreover, additional flexibility added to pay WRT <u>or another landscape architecture firm selected by the Applicant</u> to undertake renovations to the Town Center West Park (payment for renovation unchanged).
No discussion of Shuttle-Bug proposal in Z.C. Order No. 05-38.	e. Shuttle-Bug Proposal: The Applicant will make a financial contribution of \$50,000 to the DMPED Shuttle-Bug proposal as described in paragraph 12 in the Findings of Fact	Not included in current proposed order.	Contribution removed since Shuttle-Bug no longer exists. The value of the TDM package for the current modification application has increased due to costs associated with the Applicant’s new commitments to providing transit screens, bicycle parking spaces, electric car-charging stations, and Capital Bikeshare memberships.

14. The Applicant shall enter into a memorandum of understanding (“MOU”) with the Office of Local Business Development (“OLBD”) in substantial conformance with the memorandum of understanding submitted as Exhibit I of Exhibit 26 of the record. A fully signed MOU between the Applicant and OLBD must be filed with the Office of Zoning prior to the issuance of a building permit for the new south building.	Not included in Z.C. Order No. 05-38A.	Not included in current proposed order.	Condition removed because the Department of Small and Local Business Development (“DSLBD”) no longer accepts the forms put forth by OLBD, and the Applicant did not proffer execution of a current DSLBD agreement due to the scope of many provisions that are included in the current agreement that were not part of the old agreement.
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Flexibility under the PUD Guidelines

28. The Applicant requested flexibility in the following areas:

- a. Loading (§ 2201.1). The Applicant is providing two 30-foot loading berths and two 200-square-foot loading platforms where two 50-foot berths, two 200-square-foot platforms, and two 20-foot service/delivery spaces are required. The requested flexibility is directly in accordance with the Comprehensive Plan’s recommendations to consolidate loading areas within new developments, minimize curb cuts, and provide shared loading spaces in mixed-use buildings. Given the nature and size of the residential units, it is unlikely that the building will ever be served by 55-foot long trucks. The loading areas will be used by residents during move-ins/move-outs, and any other use by residents will be infrequent and can be restricted to times which pose the least potential conflict with retail users;
- b. Compact Parking Spaces (§ 2115.4). The Applicant requests flexibility from § 2115.4 since some of the proposed compact parking spaces will not be in groups of five or more spaces. Providing the proposed compact spaces will maximize the garage space and the number of off-site parking spaces, including spaces for vans and for persons with disabilities. The compact spaces are also necessary to permit adequate drive aisle widths and to fit the rows of parking spaces within the column structure of the buildings. Providing groupings of less than five will not result in negative impacts to the garage or its use by building residents;

- c. Roof Structures (§ 411). The project includes three roof structures on each of the North and South Residential Towers. The structures are located above the stair towers and the elevator core. Separating the structures will minimize their visibility from the street and will not result in negative impacts; and
- d. Inclusionary Zoning (§ 2607). As noted, the Applicant is requesting that the 10,587 square feet of affordable rental units already constructed in the Pei Towers be used to account for a portion of the IZ requirements of the North and South Residential Towers (five percent of each building's residential gross floor area.) The Applicant is seeking flexibility from meeting certain of the requirements of § 2607 of the IZ regulations, which permits the Board of Zoning Adjustment (or in this case the Commission) to allow some or all of the set-aside requirements of § 2603 to be constructed off-site. Ordinarily, an Applicant seeking off-site compliance pursuant to § 2607 must provide proof, based upon a specific economic analysis, that compliance on-site would impose an economic hardship. The Applicant seeks the flexibility not to make this showing and also seeks flexibility from the requirements that the off-site building consist of new construction (§2607.2 (b)) and that the off-site inclusionary units be comparable in type and number to the market-rate units being created in their place (§ 2606.2(f).) Further, although the Applicant will enter into the covenant required by § 2607.5, it did not attach an executed covenant to its PUD application. Given the fact that the Pei Towers were constructed and over 10,000 square feet of affordable housing provided prior to the effective date of the IZ regulations, the Commission considers this flexibility warranted. Condition 12 of Z.C. Order No. 15-38, which set forth the original affordable housing requirement, is therefore replaced by Condition A.3.d of this Order, which allows for the off-site compliance requested.

Flexibility under the Order.

- 29. The Applicant requests flexibility with the design of the PUD in the following areas:
 - a. To be able to provide a range in the number of residential units of plus or minus 10%;
 - b. To vary the number, location, and arrangement of parking spaces and the number of parking garage levels, provided that the total number of parking spaces is not reduced below the minimum number required by the Zoning Regulations;
 - c. To vary the sustainable design features of the buildings, provided the total number of LEED points achievable does not decrease below 50 points (LEED-Silver equivalent) under the LEED-2009 for New Construction and Major Renovations rating system;

- d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
- 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;
- 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 to comply with Construction Codes or that are otherwise necessary to obtain a final building permit; and
- g. To vary the number and location of exterior doors at street level.

Compliance with PUD Evaluation Standards

- 30. The modified PUD will continue to meet the area requirement under 11 DCMR § 2401.1(c) and the height and FAR provisions of 11 DCMR §§ 2405.1 and 2405.2. None of the proposed changes to the PUD impact the Commission's prior findings that (i) development of the Property will result in a number of benefits and amenities (*see* Z.C. Case No. 05-38, Finding of Fact No. 35, and Z.C. Order No. 05-38A, Conclusions of Law Nos. 1-6); (ii) the PUD is consistent with many of the Comprehensive Plan's major themes (*see* Z.C. Order No. 05-38, Finding of Fact No. 36); and (iii) the project will further the specific objectives and policies of many of the Comprehensive Plan's major elements, and fulfills and furthers specific objectives for Ward 6 and other District Plans. (*See* Z.C. Order No. 05-38, Findings of Fact Nos. 37 and 38.)
- 31. The OP report filed in this application indicates that because the modified project is smaller in scale than the approved PUD, and would be in conformance with the Comprehensive Plan, the project would likely have minimal impact on city services. (*See* Ex. 25, p. 10.)
- 32. Accordingly, the Commission finds that the modified PUD continues to meet the applicable PUD evaluation standards of 11 DCMR § 2405.

Updates to Approved Public Benefits and Amenities

33. The Applicant proposes the following public benefits and project amenities as part of the modified PUD application:
- a. Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a)) – The revised project will reduce the height of the new residential buildings from 112 feet to 85 feet each, and will reduce the PUD’s overall density from 4.38 FAR to 3.40 FAR. The North Residential Tower will have six stories, including a mezzanine on the ground floor and the South Residential Tower will have seven stories, including mezzanines on the ground and top floors. The North and South Residential Towers will contain a combined total of approximately 242,450 square feet of gross floor area, with approximately 231,385 square feet of gross floor area devoted to residential and residential amenity uses, approximately 5,220 square feet of gross floor area devoted to retail use, and approximately 5,845 square feet of gross floor area devoted to service space. The overall gross floor area for the new Residential Towers and the Pei Towers combined is approximately 459,890 square feet. The number of residential units for the overall project will be reduced from 580 to 516 (256 existing units plus 260 new units, plus or minus 10%);
 - b. Environmental Benefits (11 DCMR § 2403.9(h)) – The Applicant will ensure environmental sustainability through the implementation of sustainable design features and strategies to enhance the sustainable nature of the Property’s mixed-use, transit-rich location and to promote a healthy lifestyle for the project’s residents. The North and South Residential Towers will be designed to achieve the equivalent of a LEED-Silver designation, as shown on the theoretical LEED score sheet submitted with the Plans; and (Ex. 24A5.)
 - c. Transportation Benefits (11 DCMR § 2403.9(c)) – The Applicant incorporated a number of elements designed to promote effective and safe vehicular and pedestrian access to the site, convenient connections to public transit services, and on-site amenities such as bicycle parking and sufficient vehicular parking. The Applicant will provide vehicular access to the Pei Towers and the North and South Residential Towers pursuant to the Declaration of Permanent Easements and Covenants, dated August 17, 2011, and recorded in the Land Records of the District of Columbia as Document No. 20110866041. In order to mitigate concerns regarding the potential for retail curbside loading, the Applicant will abide by the Loading Management Plan, dated June 11, 2015, and included in the record at Exhibit 35. In addition, the Applicant will implement the following transportation demand management (“TDM”) strategies:

- i. Unbundle on-site parking from the costs of leasing apartments, and price it at market rates at minimum, defined as the average cost for parking in a quarter-mile radius of the Property;
 - ii. Install a transit information screen in the residential lobby of each new Residential Tower;
 - iii. Provide 248 long-term bicycle parking spaces with 124 spaces located in the garage of each new Residential Tower;
 - iv. Provide at least eight short-term bicycle parking spaces in the public space adjacent to the Property on either M, 6th, or K Streets;
 - v. Install one electric car-charging station in each of the new Residential Towers; and
 - vi. For the first three years of the North and South Residential Towers, offer either a one year Capital Bikeshare membership or a one year car-share membership to all new residents of the North and South Residential Towers.
34. First Source Employment Agreement (11 DCMR § 2403.9(j)) – The Applicant will submit to DCRA evidence that it has submitted a First Source Employment Agreement to the Department of Employment Services (“DOES”), executed by the Applicant, and in substantial conformance with the First Source Employment Agreement submitted at Exhibit 26I in Z.C. Case No. 05-38.
35. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403.9(I)) – The Applicant will make the following contributions to local community organizations:
- a. Jefferson Middle School: The Applicant will make a financial contribution of \$22,000 to Jefferson Middle School to be used for enhancement of the school’s computer and technological development capabilities;
 - b. Amidon Elementary School: The Applicant will make a financial contribution of \$22,000 to Amidon Elementary School for renovation of its library;
 - c. Friends of the Southwest Library: The Applicant will make a financial contribution of \$22,000 to the Friends of the Southwest Library to be used to expand their resource collection; and
 - d. Payment for Renovation of the Town Center West Park: The Applicant will pay Wallace Roberts Todd (“WRT”) or another landscape architecture firm selected

by the Applicant to undertake the renovations for the Town Center West Park outlined in the WRT Study, included at Exhibit 33 of Z.C. Case No. 05-38B, up to a value of \$250,000 (\$178,500 for the proposed work with contingency funds of up to \$71,500).

36. The Applicant will abide by the development and construction management plan included at Exhibit 32 in Z.C. Case No. 05-38.

Office of Planning Reports

37. By report dated February 27, 2015, OP recommended setdown of the application. (Ex. 11.) The OP report noted that the proposed development is not inconsistent with the Comprehensive Plan, would further a number of Guiding Principles of the Comprehensive Plan, and is consistent with major policies from various elements of the Comprehensive Plan. The OP report also noted that maintaining the approved C-3-C zoning for the Property is not inconsistent with the Property's designations on the Future Land Use Map and Generalized Policy Map.
38. By report dated June 1, 2015, OP recommended approval of the application, so long as the Applicant addressed the issues set forth on page 10 of the report. (Ex. 25.) At the public hearing the Applicant adequately addressed each of OP's concerns as follows: (i) the density for the project is 3.40 FAR; (ii) ground-floor units along M Street will incorporate doors and lighting that create a sense of privacy; (iii) the façades on some portions of the buildings are interspersed with dynamic façades on other portions of the buildings; (iv) the Applicant provided five color options for the upper-level terrace; (v) the Applicant will incorporate as many sustainable elements to the project as possible; (vi) the Applicant will provide 17,037 square feet of gross floor area to affordable housing units; (vii) loading and trash will be managed appropriately; and (viii) a list of proffered benefits and amenities is included at Exhibit 34 in Z.C. Case No. 05-38B. The OP report restated that the project is consistent with many of the Guiding Principles and policies of various Elements of the Comprehensive Plan, and that the existing C-3-C zoning is appropriate based on the Property's designations on the Future Land Use and Generalized Policy Maps.
39. The Commission agrees with OP's findings that the project is not inconsistent with the Comprehensive Plan and concurs with OP's recommendation to approve the application. The Commission also finds that the Applicant adequately addressed each of OP's concerns set forth on page 10 in OP's report. (Ex. 25.)

DDOT Report

40. By report dated June 1, 2015, DDOT submitted a report indicating that it has no objection to the application with the following conditions: (i) the Applicant should redesign the South Residential Tower such that all loading needs can be accommodated on site; (ii) provide at least eight short-term bicycle parking spaces in the public space; and (iii) offer a one time, one year Capital Bikeshare membership or one year car-share membership to all new residents of the project for the first three years that the buildings are open. (Ex. 26.) At the public hearing the Applicant agreed to each of DDOT's conditions. Namely, the Applicant submitted a revised ground-floor plan to include an elevator such that loading deliveries can be accommodated directly from the loading facilities to the retail space without going through the lobby. The Applicant also submitted a loading management plan to mitigate any impacts from loading operations at the Property. The Commission concurs with DDOT's finding of no objection to the application.

DOEE Report

41. By report dated June 4, 2015, DOEE submitted a report that provided comments specific to the project, offered guidance on regulations and other DOEE areas of interest, and recommended areas where the Applicant could exceed guidelines as a public benefit or amenity for the project. (Ex. 27.) The Applicant responded to the DOEE report in its post-hearing submission, by explaining its rationale for providing LEED-Silver and setting forth its sustainability goals for the design, construction, and operations of the project. (Ex. 40A.) The Commission concludes that the Applicant's response to DOEE's report adequately addresses DOEE's comments.

Community Support

42. On May 11, 2015, at its regularly scheduled, properly noticed public meeting, with a quorum present, ANC 6D voted unanimously (7-0-0) to support the application. (Ex. 21.) The Commission concurs with the ANC's recommendation to approve the project.

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 modification to a previously approved consolidated PUD. Any modifications proposed to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission. The proposed modification shall meet the requirements for and be processed as a second-stage application, except for minor modifications and technical corrections as provided for in 11 DCMR § 3030. (11 DCMR § 2409.9.) The Commission treated this modification request as a second-stage PUD application.
3. 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, or courts.
4. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
5. The PUD modification meets the minimum area requirements of § 2401.1 of the Zoning Regulations and complies with the applicable height, bulk, and density standards of the Zoning Regulations. The new buildings are fully appropriate for the Property, and the impact of the use on the surrounding area and the operation of city services is acceptable given the quality of the public benefits in the project.
6. Approval of the PUD modification is appropriate because the proposed use is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the proposed use will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
7. The Commission is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC. In this case, ANC 6D voted unanimously to support the modification application and recommended that the Commission approve the Application. The Commission has given ANC 6D's recommendation great weight in approving the modification Application.
8. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. 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.

9. The 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 to modify an approved planned unit development for Lots 855-859 in Square 499. For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner. The approval of this PUD modification is subject to the guidelines, conditions, and standards set forth below, which replace those set forth in Z.C. Order Nos. 05-38 and 05-38A.

A. Project Development

1. The PUD shall be developed in accordance with the architectural plans and elevations, marked as Exhibits 24A1-24A5 in Z.C. Case No. 05-38B, as modified by the supplemental plans marked as Exhibits 31 and 40C (together, the "Plans"), and as further modified by the guidelines, conditions, and standards of this Order. The color scheme for the 6th floor terrace on the South Residential Tower shall be that identified as Option 4 as shown on Sheets A18h and A18i of the Plans (Ex. 40C).
2. In accordance with the Plans, the North and South Residential Towers shall have a maximum building height of approximately 85 feet, not including roof structures. The North and South Residential Towers shall contain a combined total of approximately 242,450 square feet of gross floor area, with approximately 231,385 square feet of gross floor area devoted to residential and residential amenity uses, approximately 5,220 square feet of gross floor area devoted to retail use, and approximately 5,845 square feet of gross floor area devoted to service space. The overall gross floor area for the new buildings and the Pei Towers combined shall be 459,890 square feet (3.40 FAR). A total of 516 residential units shall be provided for the overall project (plus or minus 10%).
3. The Applicant shall have the flexibility in the following areas:
 - a. Loading (§ 2201.1). To provide two 30-foot loading berths and two 200-square-foot loading platforms where two 50-foot berths, two 200 square foot platforms, and two 20-foot service/delivery spaces are required. The

Commission finds that the proposed loading facilities will adequately serve the needs of the proposed uses for the Property and will not result in any adverse impacts;

- b. Compact Parking Spaces (§ 2115.4). To provide compact parking spaces in groupings of less than five spaces. The Commission finds that the layout of the garages will maximize space to provide an appropriate number of parking spaces and will not cause negative impacts to the garage or its use by building residents;
- c. Roof Structures (§ 411). To provide three roof structures on each of the North and South Residential Towers. The Commission finds that separating the structures will minimize their visibility from the street and will not result in negative impacts; and
- d. Inclusionary Zoning (§ 2607). Pursuant to § 2607 the Commission has granted the Applicant's request to account for 10,587 square feet of the combined Inclusionary Zoning set-aside requirements of the North and South Residential Towers through the existing affordable units within the Pei Tower. The Applicant is granted flexibility from complying with the § 2607 requirements that the off-site building consist of new construction (§ 2607.2 (b)) and that the off-site inclusionary units be comparable in type and number to the market-rate units being created in their place (§ 2606.2 (f)). Further, as a result of this flexibility, § 2607.8, which governs the construction of the off-site units, is inapplicable. In all other respects, compliance with all § 2607 conditions is required. Thus, among other things, each off-site unit is to be deemed an inclusionary unit as defined in § 2602. Further, pursuant to § 2607.5, this grant of off-site compliance shall not become effective until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded in the land records of the District of Columbia between the owner of the Pei Towers and the Mayor. Such covenant shall include all of the declarations required by § 2607.5, except to the extent the declarations concern construction. As a result of this approval of off-site compliance, upon the effective date of this condition, the Inclusionary Zoning set-aside requirements of the North and South Residential Towers shall be as follows:

North Residential Tower

Residential Unit Type	GFA & Percentage	Income Type	Affordable Control Period	Affordable Unit Type
Total	117,365 SF residential GFA (100%)			
Market Rate	113,817 SF residential GFA (97%)	Market Rate		
IZ Requirement Satisfied in Building	3,548 (3%)	“Moderate-income households” as defined at 11 DCMR § 2602.	For so long as the North Residential Tower exists	Rental / Ownership

South Residential Tower

Residential Unit Type	GFA & Percentage	Income Type	Affordable Control Period	Affordable Unit Type
Total	95,600 SF residential GFA (100%)			
Market Rate	92,695 SF residential GFA (97%)	Market Rate		
IZ Requirement Satisfied in Building	2,905 (3%) (3%)	“Moderate-income households” as defined at 11 DCMR § 2602.	For so long as the South Residential Tower exists	Rental / Ownership

IZ Set-Aside Requirements of the North and South Towers to be accounted for in the Pei Towers

Residential Unit Type	GFA & Percentage of combined North and South Residential Towers GFA	Units	Income Type	Affordable Control Period	Affordable Unit Type
IZ Requirement Satisfied in Building	10,587 (5%)	11	“Moderate-income households” as defined at 11 DCMR § 2602.	For so long as the Pei Towers exist	Rental

4. The Applicant shall also have flexibility with the design of the PUD in the following areas:
- To be able to provide a range in the number of residential units of plus or minus 10%;
 - To vary the number, location, and arrangement of parking spaces and the number of parking garage levels, provided that the total number of parking spaces is not reduced below the minimum number required by the Zoning Regulations;
 - To vary the sustainable design features of the buildings, provided the total number of LEED points achievable does not decrease below 50 points (LEED-Silver equivalent) under the LEED-2009 for New Construction and Major Renovations rating system;
 - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
 - 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;
 - To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other

changes to comply with the Construction Codes or that are otherwise necessary to obtain a final building permit; and

- g. To vary the number and location of exterior doors at street level.

B. Public Benefits

1. Environmental Benefits (11 DCMR § 2403.9(h)). For the life of the North and South Residential Towers, the North and South Residential Towers shall be designed to include no less than the 50 points necessary to be the equivalent of a LEED-Silver designation, as shown on the theoretical LEED score sheet submitted with the Plans. (Ex. 24A5.) The Applicant shall put forth its best efforts to design the buildings to satisfy such LEED standards, but the Applicant shall not be required to register or to obtain a certification from the United States Green Building Council.
2. First Source Employment Agreement (11 DCMR § 2403.9(j)). Prior to the issuance of a building permit for the South Residential Tower, the Applicant shall submit to DCRA evidence that the Applicant has submitted a signed First Source Employment Agreement to DOES in substantial conformance with the First Source Employment Agreement submitted at Exhibit 26I in Z.C. Case No. 05-38.
3. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403.9(I)). Prior to the issuance of a certificate of occupancy for the South Residential Tower, the Applicant shall submit to DCRA evidence that the Applicant has made contributions to the following community organizations. The Applicant shall provide proof to the Zoning Administrator that the items or services funded have been or are being provided in order to obtain a Certificate of Occupancy:
 - a. Jefferson Middle School: The Applicant shall make a financial contribution of \$22,000 to Jefferson Middle School to be used for enhancement of the school's computer and technological development capabilities;
 - b. Amidon Elementary School: The Applicant shall make a financial contribution of \$22,000 to Amidon Elementary School for renovation of its library;
 - c. Friends of the Southwest Library: The Applicant shall make a financial contribution of \$22,000 to the Friends of the Southwest Library to be used to expand their resource collection; and

- d. Payment for Renovation of the Town Center West Park: The Applicant shall pay Wallace Roberts Todd (“WRT”) or another landscape architecture firm selected by the Applicant to undertake the renovations for the Town Center West Park outlined in the WRT Study, included at Exhibit 33 of Z.C. Case No. 05-38B, up to a value of \$250,000 (\$178,500 for the proposed work with contingency funds of up to \$71,500).
4. The Applicant shall abide by the development and construction management plan included at Exhibit 32 in Z.C. Case No. 05-38.

C. Transportation Measures

1. **For the life of the North and South Residential Towers**, the Applicant shall provide vehicular access to the Pei Towers and the North and South Residential Towers pursuant to the Declaration of Permanent Easements and Covenants, dated August 17, 2011, and recorded in the Land Records of the District of Columbia as Document No. 20110866041, as may be amended or modified by the parties.
2. **For the life of the North and South Residential Towers**, the Applicant shall abide by the Loading Management Plan, dated June 11, 2015, and included in the record at Exhibit 35.
3. **Prior to the issuance of a certificate of occupancy for the South Residential Tower and for the life of the North and South Residential Towers**, the Applicant shall establish the following TDM strategies:
 - a. Unbundle on-site parking from the costs of leasing apartments, and price it at market rates at minimum, defined as the average cost for parking in a quarter-mile radius of the Property;
 - b. Install a transit information screen in the residential lobby of each new Residential Tower;
 - c. Provide 248 long-term bicycle parking spaces with 124 spaces located in the garage of each new Residential Tower;
 - d. Provide at least eight short-term bicycle parking spaces in the public space adjacent to the Property on either M, 6th, or K Streets; and
 - e. Install one electric car-charging station in each of the new Residential Towers.

4. **At the time of initial move-in, and for the first three years that the North and South Residential Towers are open,** the Applicant shall offer either a one year Capital Bikeshare membership or a one year car-share membership to all new residents of the North and South Residential Towers.

D. Miscellaneous

1. No building permit shall be issued for the PUD until the Applicant has recorded in the land records of the District of Columbia a modification to the recorded covenant required by Z.C. Order No. 05-38. The modified covenant shall be between the Applicant and the District of Columbia, satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs and bind the Applicant and all successors in title to construct and use the property in accordance with Z.C. Order Nos. 05-38 and 05-38A as modified by this Order, or any subsequent amendment thereof by the Commission. The Applicant shall file a certified copy of the modified covenant with the records of the Office of Zoning.
2. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.
3. Condition 13 of Zoning Commission Z.C. Order No. 05-38 provided that the PUD would be valid until May 14, 2009. Within such time, an application had to be filed for a building permit for the construction or renovation of one of the residential buildings as specified in 11 DCMR §§ 2404.8 and 2409.1. A building permit for renovation of the Pei Towers was filed and construction began within that time period and therefore the PUD is vested as to those two buildings. The Condition further required that an application for the final building permit completing the development of the approved PUD project must be filed within seven years of the issuance of the final certificate of occupancy for the first building. The final certificate of occupancy for the first building was issued on July 8, 2010, therefore the final building permit applications for construction of the North and South Residential Towers must be filed by July 8, 2017 or this PUD will expire as to those buildings.
4. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance,

sexual orientation, gender identity, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On June 11, 2015, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application 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 July 13, 2015, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. 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 October 16, 2015.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING