

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION CORRECTED¹ ORDER NO. 06-40C(1)
Z.C. Case No. 06-40
Gateway Market Center, Inc.
(Modification of a Consolidated PUD & Related Map Amendment
@ 340 Florida Avenue N.E.)
January 27, 2014

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on December 5, 2013, to consider applications from Gateway Market Center, Inc. (“Applicant”) for consolidated review and approval of a modification to a planned unit development (“PUD”) for Lot 8 in Square 3587 (“Property”)², and a related map amendment to rezone the PUD Site from C-M-1 to C-3-C approved by Z.C. Order No. 06-40 and extended by Z.C. Order No. 06-40A (collectively, the “Order”). The modification application proposes a mixed-use development incorporating retail and residential uses, and the removal of the office component of the project. The Commission considered the application pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearings were 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

Procedural History

1. By Z.C. Order No. 06-40 dated April 24, 2009 and effective April 28, 2009, the Commission approved a PUD and related map amendment for the Property. Z.C. Order No. 06-40 approved a mixed-use, residential, retail, and office development containing a maximum of 307,384 gross square feet (7.7 FAR) and constructed to a height of 119 feet. Z.C. Order No. 06-40 also approved a related map amendment to rezone the Property

¹ This is a corrected version of Zoning Commission Order No. 06-40C (the “Order”) published in the March 14, 2014 edition of the *D.C. Register*. This corrected version clarifies discrepancies in the Order relating to whether the project is to include a twenty (20) foot loading space. The references to the twenty (20) foot loading space have been deleted as such loading space was not intended to be included in the project described herein.

² The original application and Order dealt with Lots 5, 800, 802, and 809 and Parcels 129/9 and 129/32 in Square 3587. Those lots have been combined through subdivision into Lot 8.

from C-M-1 to C-3-C. Pursuant to Condition No. 17 of Z.C. Order No. 06-40, the PUD approval would expire if a building permit application as specified in 11 DCMR § 2409.1 was not filed on or before April 28, 2011. (Z.C. Order No. 06-40A, Finding of Fact No. 1.)

2. By Z.C. Order No. 06-40A dated May 23, 2011 and effective July 22, 2011, the Commission approved a two-year extension to Z.C. Order No. 06-40. Pursuant to Z.C. Order No. 06-40A, the PUD approval would expire if a building permit application as specified in 11 DCMR § 2409.1 was not filed on or before April 28, 2013. (Z.C. Order No. 06-40A.)
3. On April 18, 2013, the Applicant submitted an application to the Commission for an extension to the Order for good cause shown.
4. On April 18, 2013, the Applicant submitted an application to the Commission for a modification to the PUD approved by the Order. The Applicant requested a modification to the project approved by the Order to allow for the removal of the office component and the enlargement of the residential component, among other changes. As a result of this proposed change, the Applicant would need less development flexibility from loading requirements of § 2201.1 than was granted under the original PUD, but requires development flexibility from the roof structure requirements of § 411.3.
5. At the Commission's June 10, 2013 public meeting, the Commission deferred the Order extension request (Z.C. Case No. 06-40B) until December 9, 2013, or if the Commission set down the Applicant's modification request for a public hearing, the date of final action of the modification.
6. At a public meeting on July 29, 2013, the Commission voted to set the case down for a public hearing and requested the Applicant to provide additional information and drawings to address Commission concerns regarding:
 - (a) More information about the original case that was approved by the Order (such as additional drawings);
 - (b) Further refinements to the project drawings;
 - (c) Sections showing how building materials were proposed to work together;
 - (d) Further design of the western façade of the project;
 - (e) A sample materials board;

- (f) Additional information relating to the sustainability, maintenance, durability, and quality for the composite paneling originally proposed for portions of the façade by the modification;
 - (g) A more detailed roof plan; and
 - (h) The proposed amenities package, in concert with the Advisory Neighborhood Commission (“ANC”).
7. On August 13, 2013, the Applicant filed a Pre-Hearing Statement responding to the Commission’s requests. (Exhibit [“Ex.”] 13.) The Applicant removed its request relating to the size and number of residential units to respond to the Commission’s comments. The Applicant also removed the initially requested hotel option (Option C) in response to the Commission’s comments.
 8. The Applicant filed its Final Pre-Hearing Submission in response to Commission and OP requests and containing its Transportation Impact Study on November 15, 2013. (Ex. 19, 24D.)
 9. After proper notice was provided, the Commission held a hearing on the application on December 5, 2013. Parties to the case included the Applicant, ANC 5D³, the ANC within which the Property is located, and ANC 6C, the ANC for the area directly across Florida Avenue, N.E. from the Property.
 10. The witness appearing on behalf of the Applicant at the hearing was Jeff Kaufman; the expert witnesses appearing on behalf of the Applicant at the hearing were Dennis Connors of SK&I Architects and Jami Milanovich of Wells & Associates, Inc. The Applicant presented a sample materials board during the December 5, 2013 hearing, as requested by the Commission during the setdown meeting.
 11. The Office of Planning (“OP”) filed a report recommending approval of the modification request on November 25, 2013. (Ex. 21.) At the hearing, OP reiterated that they “strongly support the project” and requested that the Applicant consider a “cool roof” and further articulate the western façade of the project.
 12. The District Department of Transportation (“DDOT”) submitted a report into the record on November 27, 2013 noting that the Applicant largely mitigated its concerns and setting forth other issues. (Ex. 23.) DDOT noted that it agreed in principle to allowing the curb cut access on Florida Avenue, among other items. DDOT stated that it was working with the Applicant to address its concerns and would continue to do so. DDOT appeared at the hearing on December 5, 2013 and reiterated the contents of its report.

³ At the time of the issuance of Z.C. Order No. 06-40 and 06-40A, the Property was located within the boundaries of ANC 5B. Since that time, the Property was relocated within the boundaries of ANC 5D.

13. At the conclusion of the hearing, the Commission requested that the Applicant file a post hearing submission containing information regarding the following: further information regarding the project's sustainability (specifically its LEED point generation), further details on and articulation of the project's western party wall façade, alteration of the project's roof structures to a darker color, further details regarding the project's interior courtyard, further details regarding the venting on the façade, further information regarding the design and operation of the community room, and further information regarding Applicant's Transportation Demand Management Plan. The Applicant submitted these materials to the Commission in its post-hearing submission dated January 6, 2014. (Ex. 34.)
14. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") as required by the District of Columbia Home Rule Act on December 6, 2013. (Ex. 32.) NCPC, by delegated action dated January 2, 2014, found that the proposed PUD would not adversely affect the federal establishment or other identified federal interests in the National Capital and would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.
15. On December 5, 2013, the Commission voted to take proposed action to approve the application.
16. On December 27, 2013, the Applicant submitted its list of final proffered public benefits of the PUD, and draft conditions, pursuant to 11 DCMR § 2403.16 - 2403.18. (Ex. 33.)
17. On January 27, 2014, the Commission voted to take final action to approve the application subject to the conditions enumerated in this Order. At that same time the Commission approved the Applicant's request for a time extension of Z.C. Order 06-40B as modified by this Order. The Commission order granting that request is being issued simultaneously with this Order.

Description of Property and Surrounding Areas

18. The Property consists of approximately 38,452 square feet of land area and is currently vacant. The Property is located within the boundaries of ANC 5D (formerly ANC 5B) and abuts the boundaries of ANC 6C across Florida Avenue.
19. The Property is located in the Northeast quadrant of the District of Columbia between Morse Street, 4th Street, and Florida Avenue, N.E. in the southwest portion of the Florida Avenue Market. It is less than 350 yards from the entrance to the NoMA-Gallaudet University Metrorail station. It is in the Ivy City neighborhood, with Trinidad to the east and Eckington to the west. The burgeoning "NoMA" neighborhood is located to the south, across Florida Avenue, N.E.. The site is currently vacant. Previously, the site was occupied by the vacant and boarded-up Washington Beef warehouses, a vacated Bank of

America branch and a small “Ironworks” welding shop, all of which were demolished by the Applicant.

20. The project is within the Florida Avenue Market, a warehouse district whose history has been to accommodate the city’s food wholesalers. The Market has evolved significantly over the years and had many names over such time. Most recently, the heart of the area has been relaunched as the Union Market by affiliates of Edens. In fact, the project marks an opportunity to capitalize upon the renovation and revitalization of the DC Farmers’ Market into Union Market. Today, the Market is a conglomeration of wholesalers and retailers of foodstuffs, dry goods, jewelry, tourist souvenir items, hair care products, and general merchandise. The Gallaudet University campus is north and east of the Market.

Underlying and Previously Approved Zoning

21. The Property’s underlying zoning is C-M-1 which permits “low bulk commercial and light manufacturing uses” with a maximum density of 3.0 floor area ratio (“FAR”), maximum height of 40 feet, a maximum of three stories, and no lot occupancy limit. New residential uses are not permitted in such underlying Zone District. (11 DCMR §§ 800.1, 800.4, 840.1, and 841.1.)
22. The entire Florida Avenue Market area is zoned C-M-1. Northwest of the Market, across New York Avenue, property from the railroad right of way north to Rhode Island Avenue and east to Brentwood Road is zoned in the M Zone District. Directly to the east of the Market, the Gallaudet campus and nearby residential properties are in the R-4 one District. South of the Market, properties south of Florida Avenue to H Street, from the railroad tracks on the west to about 3rd Street on the east, are zoned in a mixture of C-M-1, C-M-3, C-2-B, C-3-A, and C-3-B Zone Districts. From 3rd Street moving east, most properties are zoned in the R-4 and R-5 Zone Districts. The property at 501 New York Avenue, NE, was rezoned from the C-M-1 Zone District to the C-3-C Zone District by Z.C. Order No. 11-25.
23. The Applicant requests the modification of a PUD-related map amendment approval rezoning the Property to C-3-C. The C-3-C Zone District permits residential use in addition to retail uses. Pursuant to 11 DCMR § 2405.1, 2405.2, and 2405.6, the Applicant also requests application of the PUD standards for C-3-C which allow a maximum height of 130 feet, rather than the C-3-C matter-of-right maximum of 90 feet, and a maximum density of 8.0 FAR, rather than the C-3-C matter-of-right maximum density of 6.5 FAR, and flexibility from the loading requirements set forth at 11 DCMR § 2201.

Previously Approved Project

24. The previously proposed project was approved by the Commission in 2008 pursuant to Z.C. Order No. 06-40. The previously approved project included a retail/office/residential structure, named the “Gateway Market and Residences”. The design of the building consisted of three distinct elements: a two-story retail market hall-inspired masonry base; a glass curtain wall office middle and a glass and metal panel residential and office tower above; and vertical embellishments at the corner of New York and Florida Avenues and at the ends of each residential wing. The project had a building area of 307,384 gross square feet, for an effective density of 7.7 FAR. The building included 134,237 square feet of residential use, 69,704 square feet of office use, 26,026 square feet of retail use, and 71,381 gross square feet for common, support, and circulation areas. The lot coverage was 93% and the maximum height of the building was 119'-4" (10 stories on the Florida Avenue side, stepping down to 40 feet and four stories on the Morse Street side).

Modified Project Overview

25. The Applicant is requesting the modification of the approved PUD in order to create an exciting mixed-use retail and residential project that will provide a catalyst for future development of the 44-acre Florida Avenue Market area consistent with the goals of the Florida Avenue Market Study – Small Area Plan and the DC Comprehensive Plan. In total, approximately 170 to 216 residential units (containing approximately 153,310 square feet of residential space), with a significant affordable housing component, and approximately 27,410 square feet of retail, will be created as a result of the modified project. The total square footage of the project is approximately 189,036 square feet. The project will contain approximately 5.0 FAR and have a height of approximately 80 feet. (Ex. 2, 19, 24D, 29, and Applicant’s presentation at the December 5, 2013 hearing (“Applicant’s Presentation”).)
26. The modified PUD eliminates the office component, increases the residential use, proposes a redesign of the retail and below-grade space, and shifts the construction type from concrete to wood frame over a concrete podium in order to respond to current and shifting market fundamentals. The design is intended to present the structure as a cohesive whole, with a residential component rising above a retail platform engaging pedestrians on all street frontages. (Ex. 2, 19, 29, and Applicant’s Presentation.)
27. The proposed PUD modification utilizes and augments the previously approved amenities package as its base despite the reduction in the previously approved building square footage. Further, with the set-aside of 20% affordable units and the increase in size of the residential component of the project, the amount of affordable residential space will increase from 26,847 gross square feet to approximately 30,662 gross square feet. The project also will produce a greater amount of transportation benefits, as further described herein. (Ex. 2, 19, 24D, 29, and Applicant’s Presentation.)

28. The residential component is arranged with a U-shaped configuration with façades on all three street frontages. This arrangement provides an appropriate urban edge to the Project and allows the entrance to the Florida Avenue Market to be strongly enunciated, while providing the greatest number of units with spectacular views to the south and east. These facades surround an inviting, landscaped courtyard for the use of the residents. The three wings of the tower frame the outdoor courtyard over the retail space below. The residential component is comprised of five stories. Amenity space for the residential use is located on the second floor. The residential lobby is completely separated from the retail functions. (Ex. 2 and Applicant's Presentation.)
29. The project's retail component has been redesigned to provide a much more robust consumer street retail experience. The retail spaces are entered through the unique tenant storefronts that will ring the exterior of the building on the Florida Avenue, 4th Street, and Morse Street sides. The development team aimed to provide the maximum amount of street-life activating retail space on the ground floor of the Project. The building's retail base is primarily comprised of glass and metal, while underscoring the industrial/commercial feel of the Market. (Ex. 2, 19, 29, and Applicant's Presentation.)
30. The slope of 4th Street provides an opportunity for the anchor tenant to have significant 27 foot floor to ceiling heights. The retail located along 4th and Morse Streets is envisioned as an interactive zone that will be filled with smaller shops and restaurants, and include the energy created through sidewalk patios and seating. The ceiling clearance in such areas will be 16 feet. (Ex. 2, 19, 29, and Applicant's Presentation.)
31. A 2,422 square foot community room will be provided on the first floor of the project. The primary user of the space, and the organization that will control and manage the space, will be ANC 5D (or the ANC within which the property sits in the event of a redistricting). The space will be primarily accessed from Morse Street, N.E. The community room will be finished and furnished by the Applicant. In addition, at the Applicant's cost, address information identifying the location of the community space will be placed on the exterior of the building at the request of the ANC, giving the ANC a permanent meeting place. (Ex. 34, 34F, 34G.)
32. The residential courtyard provides the "extended outdoor living" concept that the development team proposes to introduce into the site. The proposed courtyard is envisioned as a series of open rooms designed for different aspects of outdoor living, with particular attention to the enjoyment of food, given the project's adjacency to Union Market. In addition to these specific issues, each space is also designed for maximum flexibility for varied programming and multiple uses throughout the year. (Ex. 2 and Applicant's Presentation.)
33. The modified design of the building alludes to the industrial cast iron façades from the turn of the 19th century that can be found in mixed-use warehouse districts such as New York and Chicago. The Northeast Gateway of Washington contains many similar

existing industrial warehouses of brick and steel; however, there is no presence of that architecture to create an identity for the entry point of the Florida Avenue Market area. Since this particular site is the visible entry to the Market from the Metro, the design team deemed it a highly desirable location for such an architectural expression. The revised design keeps the massing concept of a solid background with three separate forms – one for each street with frontage. (Ex. 19.)

34. The Applicant incorporated the selected materials to strengthen the “loft-like” design motifs of the project. The white outer frame is a metal industrial frame made of piers, channels, metal panels, and with expansive glass similar to period cast iron buildings, while the solid frame behind is a dark brick façade with single punched windows similar to the warehouses found in the surrounding area. In addition to drawing heavily from brick and steel, the Project utilizes a large degree of glass to accentuate the warehouse feel. The light metals and dark brick contrast creates a sense of visual interest and depth that accentuates the different characteristics of each type of materials. (Ex. 19.)
35. Parking for approximately 215 cars is provided on two underground levels, with approximately 108 spaces reserved for residential use and the remainder reserved for retail use. The modification increased the 188 parking spaces approved under the Order. Parking on site is accessed from Florida Avenue, as far removed from the intersection with Fourth Street as practicable. Multiple retailers who have expressed interest in the retail space have indicated their requirement that the Florida Avenue frontage be utilized for the curb cut so that customers can more easily find their business. In addition, since the site has a significant slope, such entrance takes advantage of a lower topographical point and greatly reduces the amount of ramping necessary while improving efficiency and functionality. (Ex. 2, 19, 29, and Applicant’s Presentation.)
36. The loading dock is located off Morse Street, at the first floor level, so truck maneuvering will not adversely impact Florida Avenue or Fourth Street. Space for trucks, delivery vans, and loading docks are provided similar to that provided in the project by the Order. This location was chosen due to its greater relative safety profile and as the result of its location away from the heaviest anticipated degree of pedestrian activity on Florida Avenue, N.E. and away from the Project’s ingress/egress point for passenger vehicles. (Ex. 2.)
37. The Transportation Impact Study, included in Tab C of the Applicant’s November 15, 2013 Prehearing Statement, concluded that the proposed project would have only a marginal impact on traffic operations. It also confirms that the modified project’s access plan, with its primary use of Florida Avenue, N.E., for passenger vehicles, and Morse Street for loading, will be suitable. The Study made suggestions for minor public space and traffic pattern modifications to mitigate traffic impacts in the area. The number of proposed curb cuts would be reduced from seven to two at the Property. (Ex. 19C.)

38. The Applicant will design the project to achieve 40 LEED (Leadership in Energy and Environmental Design) points for New Construction v 2.2 Project Checklist. (Ex. 34A.) Such point total is significantly higher than the 20 LEED points previously approved under the Order. Such 40 point total is the same as the number of points required to achieve a LEED certified project; however, LEED certification is at Applicant's discretion. Further, the project incorporates a "cool roof" (i.e., a white roof), at the request of OP. (Ex. 33, 34.)
39. The Commission finds that the project's energy and environmental design features are superior to what would be provided in a matter-of-right development at the PUD Site.

Development Incentives and Flexibility

40. Z.C. Order No. 06-40 allowed a combined loading area for the retail and residential uses, rather than separate, compliant loading facilities for each use. In addition, the Order allowed the Applicant to provide two less 30-foot loading berths and three fewer 20-foot loading spaces than what would have been required for the proposed uses. Thus condition number 2 of Z.C. Order No. 06-40 required one 30-foot loading berth, one 55-foot loading berth, and one 20-foot delivery vehicle space. The Applicant proposes to provide one 30-foot loading berth and one 55-foot loading berth as part of this modified PUD.
41. In addition, the Applicant now seeks zoning flexibility from 11 DCMR § 411.3 to allow the construction of two roof structures where one connected roof structure would be required.

Public Benefits and Project Amenities

42. In addition to the sustainability features discussed in Paragraph 38 above, the following benefits and amenities will be created as a result of the PUD project:
 - (a) *Affordable Housing (§ 2403.9(f))* – The Applicant will set aside 20% (approximately 30,662 gross square feet) of the residential units as affordable housing in perpetuity. These units will be made affordable to households earning no more than 80% of the Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for household size). Such amount of affordable housing exceeds the amount of affordable residential space that would be required under Inclusionary Zoning. The affordable units will be equitably dispersed among the market-rate units in the project on all floor of the project, and will be of a size and type comparable to the market-rate units. The Commission finds that the provision of affordable housing is a valuable community benefit of the PUD that should be recognized;

- (b) *ANC Office, Community Meeting Facilities, MPD Work Station (§ 2403.9(i))* – The Applicant will provide a community meeting room and related amenities, an ANC office for ANC 5D, and a Metropolitan Police Department work station comprising a total of approximately 2,422 square feet of gross floor area (100 seat capacity), and the furnishings for such uses. This space will be provided to the community without charge for the life of the project. The Applicant will coordinate with ANC 5D on the final design of the community room. The ANC office will be assigned to ANC 5D, or any successor ANC which may be designated to represent the PUD Site by redistricting legislation enacted by the Council of the District of Columbia and signed by the Mayor. If the Metropolitan Police chooses not to use the work station, the Applicant may use the space for building security purposes;
- (c) *Urban design, architecture and landscaping (§ 2403.9(a))* - The project exhibits the characteristics of exemplary urban design, architecture, and landscaping. The project provides a superior urban design response that fully responds to the site location and topography, efficiently integrating a variety of uses of direct interest to the community. The design creates a sense of scale and visual interest, incorporating elements from the Market's industrial past, while tying it to an exciting and reenergized future. The building as a whole employs traditional, time-tested materials in new and modern ways in a design that is aesthetically enduring and which adds to the fine urban texture of the District. The design is also fully responsive to the environment of the Florida Avenue Market, providing a defining urban edge to both Florida Avenue and Fourth Street to help define the primary Market entrance. The project will also improve the public space surrounding the Property as it upgrades the streetscapes, both the hardscaping and landscaping, adjacent to the Property as shown on the plans submitted into the record, in coordination with DDOT;
- (d) *Benches in public space (§ 2403.9(i))* – The Applicant will provide two to four benches in public space adjacent to the project, subject to the public space permitting process. The final number and location of such improvements in public space shall be implemented in coordination with DDOT;
- (e) *Site planning, and efficient and economical land utilization (§ 2403.9(b))* - The project reflects creative design and engineering, and careful use of height and density, to accommodate residential and retail uses on a relatively small plot of land with significant grade changes. Overcoming the challenges of a difficult slope, the Applicant's development team succeeded in providing both underground parking as well as retail space that will be experienced as one continuous platform to pedestrians. Further, the design leverages the slope of the site to allow for the ground floor retail facing Florida Avenue to achieve a dramatic ceiling height of 27 feet. The Applicant team was also able to design

pedestrian and vehicular entrances that keep residential and commercial traffic safely separate from each other. Specifically, the project's loading will be located on Morse Street, the street with the lowest amount of vehicular and pedestrian traffic, and the Applicant will implement the Loading Management Plan described as on Page 18 of Exhibit 19C of the record along with requiring residential and retail tenants to schedule loading activities with the loading coordinator and including loading requirements and obligations as exhibits or rules incorporated into retail and residential leases. Perhaps most importantly, the project will introduce a significant amount of community-anchoring retail space to an area that is currently underserved;

- (f) *Effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts (§ 2403.9(c))* – The Applicant shall implement measures to promote the use of public transit and bicycle transportation, and discourage the use of motor vehicles, as set forth in the Applicant's Transportation Demand Management Plan described on Page 19 of Exhibit 19C of the record (the Applicant's Transportation Impact Study) and the supplemental and additional elements described by Applicant in Exhibit 32. In addition, the Applicant will introduce traffic infrastructure upgrades adjacent to the Property described in the Applicant's Transportation Demand Management Plan;
- (g) *Bike racks (§ 2403.9(i))* – The Applicant will provide bike racks in public space adjacent to the project for at least 16 short-term bicycle parking spaces, subject to the public space permitting process. The final number and location of such improvements in public space shall be implemented in coordination with DDOT;
- (h) *Car-sharing service space (§ 2403.9(i))* – The Applicant shall reserve at least one parking space for a car-sharing service in the underground parking garage. If the reserved space is not desired by any car-sharing service, then it shall revert to the Applicant's general use;
- (i) *Infrastructure for car charging stations (§ 2403.9(i))* – The Applicant shall provide the electrical wiring and disconnects to allow for the subsequent outfitting, at the request of retail tenants or as market demand otherwise dictates, of two parking spaces with 208/240-volt electric car charging stations in the parking garage accessible to residents and visitors;
- (j) *First-Source Employment Agreement (§ 2403.9(e))* – The Applicant entered into a First-Source Employment Agreement with the Department of Employment Services ("DOES") on May 29, 2008 to achieve the goal of utilizing District of Columbia residents for at least 51% of the new jobs created by the PUD project. (Ex. 55 in the record for Z.C. Case No. 06-40.); and

- (k) *CBE Contracting Commitment (§ 2403.9(e))* – As approved under the Order, the Applicant entered into a Certified Business Enterprise (“CBE”) Agreement with the D.C. Department of Small and Local Business Development (“DSLBD”) dated September 9, 2004 in order to achieve the goal of 35% participation by D.C.-certified local, small, and disadvantaged businesses in the project development and construction contracts. (Ex. 17 in the record for Z.C. Case No. 06-40.)
43. The Commission finds that the Applicant’s public benefits and project amenities provide value to the District and the community surrounding the Property and are sufficient to justify the relief requested.

Compliance with the Comprehensive Plan

44. The Commission finds that the proposed modification to the approved PUD is not inconsistent with the Comprehensive Plan (10 DCMR) and promotes the policies of its Land Use, Transportation, Housing, and Urban Design Citywide Elements and its Upper Northeast Area Element.
45. The project as modified carries out Land Use Element policies that designate the area around the New York Avenue-Florida Avenue-Gallaudet University Metrorail station for future growth and encourage infill development and development near Metrorail stations. The PUD and map amendment as modified bring growth and revitalization to a long-vacant and underutilized industrial site.
46. The modified project carries out Transportation Element policies that promote transit-oriented development and urban design improvements to major thoroughfares such as Florida Avenue. The modified PUD brings new housing and retail uses within walking distance of the Metrorail station and, through its Transportation Management Plan, provides effective incentives to discourage motor vehicle use.
47. The modified project carries out Housing Element policies that encourage expansion of the city’s supply of high-quality market-rate and affordable housing. The modified PUD brings 170 to 216 new residential units to an underserved neighborhood, with a 20% of the total, or approximately 30,662 gross square feet, set aside as affordable units in perpetuity.
48. The modified project carries out Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves the appearance of a once-blighted site bordering Florida Avenue.

49. The project carries out Upper Northeast Area Element policies stating that the Capital City Market area should be a regional destination that could include housing and retail uses.

Government Reports

50. OP noted in its November 25, 2013 report (“OP Report”) that it recommended approval of the proposed modification. OP noted that the modification to the project “conforms to the Comprehensive Plan’s objectives for the area and to the Generalized Land Use and Policy Maps, and would contribute to the redevelopment of the Florida Avenue Market area.” The OP Report noted that there “have also been extensive discussions and meetings with the community and OP, which have led to improvements in the proposal since its original submission, including the incorporation of façade elements alluding to an “industrial warehouse” character. OP noted that it desired greater articulation along the western wall of the project. The OP Report noted that “[g]enerally, the Comprehensive Plan provisions applicable in the earlier approval for this site also apply to this proposal. The proposal would particularly further the following Guiding Principles of the Comprehensive Plan.” The OP Report also stated that “The development proposal would particularly further the Land Use, Housing, Economic Development, Transportation, Historic Preservation, and Urban Design Citywide Elements, as well as the Upper Northeast Area Elements and policies.” Further, OP noted that the “Project is in accordance with the Small Area Plan, adopted by Council on October 6, 2009.” The OP Report stated that the project is in compliance with Chapter 24 of the Zoning Regulations. (Ex. 21.) At the December 5, 2013 Commission hearing, OP voiced “strong support” for the modification to the Project.
51. DDOT submitted a report into the record on November 27, 2013 noting that the Applicant is largely mitigating its concerns and setting forth other issues. (Ex. 23.) DDOT noted that it agreed in principle to allowing the curb cut access on Florida Avenue, among other items. DDOT stated that it is working with the Applicant to address its concerns. DDOT appeared at the hearing on December 5, 2013 and reiterated the contents of its report.
52. DDOT submitted a supplemental report into the record on January 13, 2014. (Ex. 36.) The report stated that DDOT had reviewed the Applicant’s proposed traffic demand management measures (“TDM”), and that with one exception, DDOT agreed with all of the proposed TDM measures. The one exception was the Applicant’s proposal to provide \$40 to each new resident at the time of initial sale or lease for a period of three years for use towards membership in a carshare or bikeshare program. DDOT stated that it believed the subsidy was insufficient, and that the amount should be raised to \$75. DDOT’s report also clarified DDOT’s position with respect to the Applicant’s expected responsibilities for upgrading the intersection of 4th and Morse Streets, N.E.

53. The Commission finds that the Applicant's proposed TDM measures are adequate to mitigate any potential adverse effects on the surrounding area from the development that relate to traffic, and that these measures have been incorporated into the conditions of this Order. With respect to DDOT's comment regarding the carshare or bikeshare subsidy, the Commission does not believe it is necessary to increase the subsidy amount in order to sufficiently mitigate any potential adverse effect on the surrounding area from the development.

Advisory Neighborhood Commission Reports

54. ANC 5D submitted a letter in support of the requested modification to the project noting that, "On November 12, 2013, at the duly-noticed, regularly scheduled monthly meeting of Advisory Neighborhood Commission 5D, with a quorum of 6 commissioners and the public present", ANC 5D voted "unanimously to support this application." (Ex. 25.) At the hearing, the Commission noted that the ANC letter had been received and would be given great weight.
55. ANC 6C submitted a letter in support of the requested modification to the project noting that, "On November 13, 2013, at the duly-noticed, regularly scheduled monthly meeting of ANC 6C, with a quorum of 6 out of 6 commissioners and the public present", ANC 6C voted "unanimously to support this application" with conditions. The conditions included exterior bike racks, public benches, and additional efforts to provide safer and cleaner sidewalks and public spaces. (Ex. 20.) At the hearing, the Commission noted that the ANC letter had been received and would be given great weight.

Parties in Support or Opposition

56. No other parties appeared at the hearing to support or oppose the Project.

Persons in Support or Opposition

57. The Trinidad Neighborhood Association submitted a letter in support dated October 1, 2013 noting that it supports the application for a modification of the Order. The letter noted that the Applicant presented the project to the Trinidad Neighborhood Association at its June 2013 meeting and the project was well received by residents. (Ex. 8 in the record for Z.C. Case No. 06-40B and Ex. 18.)
58. Two Rivers Public Charter School, located directly across Florida Avenue from the Property, submitted a letter in support dated December 3, 2013 noting that it supports the application for a modification of the Order. (Ex. 26.)

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 Commission has the authority to consider these applications as a consolidated PUD. The Commission may impose development guidelines, conditions, 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.
3. The Property still meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
4. The PUD, as approved by the Commission, still complies with the applicable height, bulk, and density standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential and retail uses for this modified project are appropriate for the Property. The impact of the modified project on the surrounding area is acceptable given the quality of the public benefits of the project, and the modification application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
5. The Applicant's request for flexibility from the Zoning Regulations, as modified, is consistent with the Comprehensive Plan. Moreover, the modified project’s public benefits and amenities strike a reasonable balance with the requested development flexibility.
6. Approval of the modification to this PUD and related map amendment is appropriate because the proposed development is consistent with the present and future character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the modified project 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.
7. The PUD-related rezoning of the PUD Site to C-3-C is still consistent with the purposes and objectives of zoning as set forth in the Zoning Act of 1938, approved June 20, 1938.
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 the recommendations of OP in all zoning cases. The Commission carefully considered the OP report and found OP’s reasoning persuasive in recommending approval of the modification application.

9. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the ANC 5D position supporting approval of the modification application and concurred in its recommendation of approval. The Commission also gave careful consideration to the ANC 6C position supporting approval of the modified project concept with recommendations for project improvements. The Commission concluded that the Applicant satisfactorily addressed the ANC 6C recommendations.
10. The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the ANC, OP, and to owners of property within 200 feet of the site in accordance with the Zoning Regulations and applicable case law.
11. Based upon the record before the Commission, having given great weight to the views of the ANC and having considered the reports and testimony of OP and DDOT provided in this case, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under Chapter 24. The Commission finds that the Project as modified fully satisfies the goals and objectives of the PUD Regulations of Chapter 24 to encourage the development of well-planned developments which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development. The Commission finds that the Property is subject to exceptional conditions as outlined in the Applicant’s application. The Commission agrees that the Applicant faces practical difficulties satisfying the strict application of the Zoning Regulations with regard to the loading requirements of § 2201.1 and the roof structure requirements of § 411.3. The Commission agrees with the Applicant’s written statements and testimony at the public hearing that it would be unnecessarily burdensome for the Applicant to satisfy these requirements.
12. The application for a PUD 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 a modification to the approval of a consolidated review of a Planned Unit Development and a related Zoning Map amendment from C-M-1 to C-3-C for the Property.

The following conditions replace conditions 1 through 6 and 8 through 11 of Z.C. Order No. 06-40:

1. The PUD shall be developed in accordance with the plans prepared by SK&I Architects, Bohler Engineering, and Landscape Architecture Bureau, dated April 12, 2013, in the record as Exhibit 2A, as modified by the plans dated November 14, 2013, in the record as Exhibits 19A and 24D and the plans dated January 6, 2014, in the record as Exhibit 32, and as modified by the guidelines, conditions, and standards herein (collectively, the “Plans”).
2. The PUD shall be a mixed-use residential and retail project, containing approximately 189,036 square feet of gross floor area and including approximately 170-216 residential units. Approximately 27,410 square feet of gross floor area, located on the ground and first floors, shall be devoted to retail and approximately 153,310 square feet of gross floor area, located on the second through sixth floors, inclusive, shall be devoted to residential use. The maximum density of the project shall be 5.0 FAR.
3. The maximum height of the building shall be approximately 80 feet as shown on the Plans.
4. The project shall include approximately 215 vehicle parking spaces in the below-grade parking garage. The project shall provide one 30-foot loading berth and one 55-foot loading berth, as shown on the Plans.
5. Prior to the issuance of a certificate of occupancy for the residential component of the project, the Applicant shall demonstrate that it has set aside 20% (approximately 30,662 gross square feet) of the residential units as affordable housing in perpetuity. The affordable units shall be equitably dispersed among the market-rate units in the project on all floors of the project, and shall be of a size and type comparable to the market-rate units.
6. The affordable housing units shall be available to households with an annual income of no more than 80% of the Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for household size).
8. Prior to the issuance of a certificate of occupancy for the residential component of the project, the Applicant shall provide evidence that the building has been designed to achieve the equivalent of 40 LEED points. However, the Applicant shall not be required to obtain LEED Certified or any other certification level from the United States Green Building Council. In addition, the project will provide a “cool roof” as requested by the Office of Planning.
9. Prior to the issuance of a certificate of occupancy for the residential component of the project, the Applicant shall provide, at no cost and for the life of the project, a community meeting room and related amenities, an ANC office, and a Metropolitan Police Department work station comprising a total of approximately 2,422 square feet of gross floor area (100 seat capacity), and the furnishings for such uses, as shown on the Plans

and in accordance with Exhibit 32 of the record. If the Metropolitan Police Department chooses not to use the work station, the Applicant may use the space for building security purposes.

10. The ANC office shall be assigned to ANC 5D, or any successor ANC which may be designated to represent the Property by redistricting legislation enacted by the Council of the District of Columbia and signed by the Mayor.
11. The Applicant shall implement measures to promote the use of public transit and bicycle transportation and discourage the use of motor vehicles by:
 - (a) Providing garage parking for approximately 72 bicycle spaces;
 - (b) Providing a \$40 subsidy for a car sharing program or bike share program upon move-in for each new resident for the first three years after the issuance of the Certificate of Occupancy for the building's residential use;
 - (c) Providing complementary SmarTrip cards with a Metro fare value of \$20 per person to the initial residential occupants upon move-in;
 - (d) Providing links to CommuterConnections.com and goDCgo.com websites on the property management and developer websites;
 - (e) Designating a Property Transportation Coordinator;
 - (f) Developing an employer outreach program to encourage the use of non-auto means of transportation by employees of the project's retail tenants and providing information about non-auto transportation options via welcome packets;
 - (g) Reserving at least one parking space for a car-sharing service in the underground parking garage. If the reserved space is not desired by any car-sharing service, then it shall revert to the Applicant's general use;
 - (h) Providing an electronic message screen displaying real-time transportation information in the building's lobby; and
 - (i) Providing the electrical wiring and disconnects to allow for the subsequent outfitting, at the request of retail tenants or as market demand otherwise dictates, of two parking spaces with 208/240-volt electric car charging stations in the parking garage accessible to residents and visitors.

Condition 7 of Z.C. Order No. 06-40 is deleted.

Condition 14 of Z.C. Order No. 06-40 is revised to read as follows:

14. The Applicant shall have flexibility with the design of the PUD in the following areas:

- (a) To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration or appearance of the building;
- (b) To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Plans do not change;
- (c) To vary the final selection of the exterior materials within the color ranges and material types as proposed, without a reduction in quality, based on availability at the time of construction;
- (d) To make minor refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and
- (e) To make refinements to the garage configuration, including layout, location, and design of parking spaces and/or other elements, so long as the total number of vehicle and bicycle parking spaces provided complies with the PUD approval.

In addition to such flexibility and the flexibility noted in the Plans, Applicant shall have the following flexibility to revise the design of the project:

- (i) To revise the design of the public space surrounding the Property and the exterior design of the project to the extent necessary to obtain approvals from District agencies and/or service to the Property from utilities;
- (ii) To vary the final streetscape design and materials subject to review and approval by the appropriate District permitting authorities;
- (iii) To vary the number of residential units between 170 to 216 residential units;
- (iv) To vary the number, size, location, and design features of retail entrances, including the size, location, and design of windows, doors, awnings, canopies, and similar features, to accommodate the needs of specific retail tenants and storefront design and market requirements; and
- (v) To vary the number, size, location, and other features of proposed building signage, provided that such signage is otherwise permitted under the applicable provisions of the Building Code.

Conditions 12, 13, 15, 16, and 18 of Z.C. Order No. 06-40 remain as originally approved.

The following conditions are added:

19. Prior to issuance of a certificate of occupancy for the residential component of the project, unless other timing results from the public space permitting process, and subject to approval by DDOT, the PUD shall provide public space improvements along the street frontages of the building, which shall include the following:
 - (a) The public space streetscape adjacent to the Property shall be improved in accordance with Exhibit 19A, Pages C-3.0 and L-1.01 through L-1.03 and Exhibit 28, Pages 42 through 44. The final streetscape design in public space shall be implemented in coordination with DDOT;
 - (b) The Applicant shall make the following traffic network improvements:
 - (i) A stop bar on Morse Street for eastbound traffic;
 - (ii) A new stop sign for eastbound traffic located adjacent to the stop bar and two feet behind the curb; and
 - (iii) A no parking sign placed such that no on street parallel parking is permitted within 25 feet of the stop bar or 40 feet from the edge of 4th Street (whichever is greater).

The final design of any such improvements in public space shall be subject to final approval from DDOT and the Applicant shall have flexibility to modify such improvements in response to DDOT direction as well as modify the corresponding elements in private space to align with the final design of streetscape improvements in public space;

 - (c) The Applicant shall provide benches in public space adjacent to the project for the life of the Project. The final number and location of improvements in public space shall be implemented in coordination with DDOT; and
 - (d) The Applicant will provide bike racks in public space adjacent to the project for at least 16 short-term bicycle parking spaces. The final number and location of improvements in public space shall be implemented in coordination with DDOT.
20. The project shall provide loading consistent with the Plans, provided that the Applicant shall have flexibility to modify such plans in response to continued coordination efforts with DDOT. The Applicant shall implement the Loading Management Plan described as on Page 18 of Exhibit 19C of the record (the Applicant's Transportation Impact Study) and the supplemental and additional elements described by Applicant in Exhibit 32 for the life of the Project. Such additional elements are as follows:
 - (a) Requiring residential and retail tenants to schedule loading activities with the loading coordinator; and

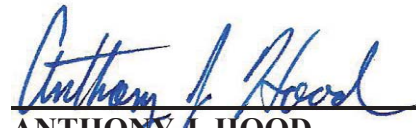
- (b) Including loading requirements and obligations as exhibits or rules incorporated into retail and residential leases.

For this reason stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that the applications be **GRANTED**.

On December 5, 2013, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at the conclusion 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 27, 2014, upon the motion of Commissioner Turnbull, as seconded by Chairman Hood, the Zoning Commission **APPROVED** the application 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 Corrected Order became final and effective upon its publication in the *D.C. Register* March 14, 2014.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING