

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



**ZONING COMMISSION OF THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 07-13G  
Z.C. Case No. 07-13G  
Lowe Enterprises  
(Modification of Consolidated PUD @ Square 643-S, Lot 801)  
April 30, 2018**

Pursuant to proper notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on March 29, 2018, to consider an application by Lowe Enterprises (“Applicant”) for review and approval of a modification to an approved planned unit development (“PUD”) (“Modification”) for property located in Square 643-S, Lot 801 (“Property”). The Commission considered the Modification pursuant to Subtitle Z, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11-Z DCMR §408. The Commission approves the Modification, subject to the conditions below.

**FINDINGS OF FACT**

**Application, Parties, and Hearing**

1. By Z.C. Order No. 07-13, dated January 14, 2008 (“Original PUD Order”), the Commission approved a consolidated PUD and related amendment to the Zoning Map to permit the redevelopment of the former Randall Junior High School with nonresidential, arts-related uses and a new multi-story residential building (“Project”):
  - a. The Original PUD Order authorized the construction of a mixed-use building with approximately 76,043 square feet devoted to exhibition, studio, and classroom space for the Corcoran College of Art and Design, and another 423,800 square feet of residential space with approximately 440 to 490 residential units (“Original PUD”); and
  - b. The Original PUD Order approved the rezoning of the Property to the C-3-C Zone District and evaluated the impacts of the Original PUD, the sufficiency of the benefits and amenities package, and the consistency of the application with the Comprehensive Plan.
2. The Original PUD was modified and extended pursuant to the following actions by the Commission:

- a. Pursuant to Z.C. Order No. 07-13A, dated June 9, 2008 and effective September 26, 2008, the Commission approved a minor modification to the Original PUD to allow construction of the project in phases;
  - b. Pursuant to Z.C. Order No. 07-13B, dated February 10, 2010 and effective March 17, 2010, the Commission granted a two-year extension for the Original PUD;
  - c. Pursuant to Z.C. Order No. 07-13C, dated May 14, 2012 and effective March 19, 2010, the Commission granted another two-year extension for the Original PUD; and
  - d. Pursuant to Z.C. Order No. 07-13E, dated March 10, 2014 and effective May 9, 2014, the Commission granted another extension for the limited purposes of maintaining the Original PUD in effect until Z.C. Order No. 07-13D became effective.
3. By Z.C. Order No. 07-13D, effective May 9, 2014 (“Amended PUD Order”), the Commission approved significant revisions to the Original PUD:
- a. The Amended PUD Order approved a number of significant changes to the Project including substantially revised architecture, a change in the nonresidential program from an arts school to a contemporary arts museum and other complementary nonresidential uses, an increase in the height of the residential portion of the building, an increase in the number of residential units, and modifications to the public benefits package to reflect the revised uses (“Amended PUD”); and
  - b. The Amended PUD Order addressed the Amended PUD’s impacts, benefits and amenities package, and consistency with the Comprehensive Plan, which included significant changes to the program and uses in the Original PUD.
4. Pursuant to Z.C. Order No. 07-13F, dated May 8, 2017 and effective August 11, 2017, the Commission granted a two-year extension such that a building permit application for the Amended PUD must be filed no later than May 9, 2019 and construction must commence May 9, 2020.
5. On September 11, 2017, the Applicant<sup>1</sup> submitted the application for the Modification of the Project in order to request certain changes to the approved plans and conditions. The Project continued to reflect the same uses, height, massing, and configuration as approved in the Amended PUD, including a new contemporary art museum and complementary nonresidential uses in the renovated historic school and new residential units in a new building behind the school, with 20% of the units set aside as affordable

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<sup>1</sup> As explained in the Applicant’s filing, the Property is currently owned by the Trustees of the Corcoran Gallery of Art. TR SW LLC (“TR SW”) is the contract purchaser of the Property. TR SW 2m LLC, an affiliate of TR SW, was the applicant under the Amended PUD. Lowe and TR SW have entered into a Co-Development Agreement, pursuant to which Lowe became the lead developer of the Project. (Exhibit [“Ex.”] 2.)

for households earning up to 80% of the Area Median Income (“AMI”). However, the Applicant requested:

- a. Modifications to the building design, including enhancement and enlargement of the central courtyard, improved building access and circulation, enhanced preservation of the historic school, and refined architectural design of the residential component;
- b. Adjustments to the proposed nonresidential component of the Project, including expanding the museum use into the east wing of the historic school and introducing a mezzanine level into the west wing;
- c. Adjustments to the residential program, including the introduction of two-level townhouse style units on the ground floor, replacement of Juliet balconies with full balconies, and an overall reduction in the number of residential units
- d. Removal of the need for flexibility from all development requirements<sup>2</sup>; and
- e. Substitution of a new public benefit to replace previous proffers tied to the now-defunct Corcoran Gallery.

In addition to the foregoing changes, the Applicant requested revisions to the conditions of approval to reflect the modified design and uses in the Project as well as incorporate updated commitments made during the processing of the Modification. The Modification does not affect the overall height or mix of residential and nonresidential uses in the building, and it reduces the mass and bulk approved by the Commission in the original PUD. (Ex. 2.)

6. On December 1, 2017, the Office of Planning (“OP”) submitted a report recommending that the Modification be set down for a public hearing. (Ex. 10.)
7. At a public meeting on December 11, 2017, the Commission voted to set down Z.C. Case No. 07-13G for a public hearing. At this meeting, the Commission requested that the Applicant consider an increase in the number of private balconies at the Project, clarify the building and façade design details as well as details on the uses within the Project; explain the proposed public benefit that would replace the Corcoran benefits; clarify the relationship between the original affordable housing proffer and the current inclusionary zoning regulations; and consider an increase in the LEED commitment. The Commission also asked the Applicant to provide additional information regarding the relationship of the Project to the adjacent Randall Recreation Center and the capacity of local schools to accommodate with the new residents associated with the Project. (12/11/2017 Transcript (“Tr.”) at 15-22.)

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<sup>2</sup> The Applicant initially maintained its request for penthouse height requirements, but in subsequent filings removed this request. (Ex. 22.)

8. Notice of the public hearing was published in the *D.C. Register* and was mailed to owners of all property within 200 feet of the subject property, Advisory Neighborhood Commission (“ANC”) 6D (the ANC in which the property is located), and the parties to the original application.
9. The application was updated by prehearing submissions dated January 23, 2018, February 27, 2018, and March 8, 2018. (Ex. 11, 20, 22.) The prehearing submissions included a Transportation Report on the Project prepared by the Applicant’s traffic expert, which was submitted in the January 23, 2018 prehearing submission and updated on February 27, 2018. In the March 8, 2018 prehearing submission, the Applicant detailed the flexibility requested as part of the Modification, summarized the final benefits and amenities of the Project as modified, and addressed the impacts of the Modification on public safety and facilities, transportation, and the environment. (Ex. 22.)
10. ANC Reports. ANC 6D submitted three written reports in this case. The first stated that pursuant to a resolution adopted at a regularly-scheduled and duly-noticed public meeting on February 12, 2018, with a quorum present, the ANC voted 6-0-0 to support the Modification because it was consistent with the Amended PUD, maintains the approved benefits package, and delivers an increase in sustainability. The ANC’s report also commented on the affordability for the inclusionary zoning (“IZ”) units. (Ex. 18.) The second stated that pursuant to an additional resolution adopted at a regularly-scheduled and duly-noticed public meeting on March 19, 2018, with a quorum present, ANC 6D voted 5-0-0 to support the proposed Modification with the affordable housing commitment remaining at the originally-approved level of affordability. (Ex. 26.) The third was also in support of the Modification and rebutted several assertions made by DC for Reasonable Development: Ward 6 Study Group in its written opposition to the Modification. (Ex. 36.)
11. OP Report. By report dated March 19, 2018 and by testimony at the public hearing, OP recommended approval of the Modification, with a recommendation that additional information regarding balconies, canopies, and lights over ground-floor units, building articulation, and unit mix be provided. OP further acknowledged the Modification was consistent with the Amended PUD and that it was not inconsistent with the Comprehensive Plan, including the FLUM and GPM, and would further the objectives of the Land Use, Housing, Urban Design, Historic Preservation, Arts and Culture, and Lower Anacostia Waterfront/Near Southwest Plan Elements. OP evaluated the Modification under the standards set forth in the Zoning Regulations and concluded that the Modification satisfies the standards. OP acknowledged that the benefits and amenities for the Amended PUD were accepted by the Commission as part of the Amended PUD approval. OP acknowledged that the new benefits and amenities proffered, specifically free admission for District residents to the museum and increased sustainability, remain equivalent to, or are superior to, the benefits approved in the Amended PUD. (Ex. 23.)
12. DDOT Report. By report dated March 19, 2018 and by testimony at the public hearing, DDOT expressed no objection to the Modification, subject to the Applicant’s agreement

to conditions. Such conditions were: (1) fund and construct the installation of a second curb ramp on the southeast corner of the intersection of I Street and Half Street, S.W.; (2) implement the Loading Management Plan, and (3) strengthen the Transportation Demand Management Plan (“TDM”). DDOT agreed that the Modification would be consistent with the Amended PUD and the applicable conditions from that approval. DDOT reviewed and concurred with the Applicant’s Transportation Memorandum conclusions. DDOT acknowledged that a Comprehensive Transportation Review (“CTR”) was not required due to the minor revisions of the Modification. DDOT stated that the CTR from the Amended PUD remained valid. (Ex. 24.)

13. Other Public Agency Reports and Comments. On February 28, 2018, the Metropolitan Police Department (“MPD”) filed comments regarding the impacts of the Modification on traffic and public safety. (Ex. 19.)
14. On March 29, 2018, Robert Hall filed a letter in support of the Modification on behalf of the Capitol Park IV Condominium. (Ex. 27.)
15. On March 29, 2018, DC for Reasonable Development: Ward 6 Study Group (“DC4RD”) filed comments on the case, raising general concerns regarding impacts of the Project as a whole. (Ex. 30.)
16. On March 29, 2018, the Commission held a public hearing on the application which included the following:
  - a. On behalf of the Applicant, the Commission accepted Hany Hassan and Jessica Anderson as experts in architecture, Lisa Delplace as an expert in landscape architecture, and Daniel VanPelt as an expert in traffic engineering. (Ex. 11-11B). The Applicant provided testimony from these experts as well as from a representative of the Applicant, Mark Rivers;
  - b. In addition to the Applicant, ANC 6D was automatically a party in this proceeding, and Cara Shockley, the authorized representative of ANC 6D and the representative for the single-member district in which the Project is located, testified in support of the Modification. (3/29/18 Tr. at 43-46.) There were no other parties to the Modification; and
  - c. One individual, Coy McKinney, testified at the public hearing as undeclared, meaning he was neither in support or opposition to the Modification. McKinney, who had co-signed the DC4RD written submission, expressed support for the Project as a whole and urged the Commission to move it forward but raised concerns regarding affordable housing. (3/29/2018 Tr. at 48.)
17. At the public hearing, the Applicant submitted a TDM plan and a Loading Management plan, each addressing the issues raised in the DDOT Report, supplemental drawings addressing the issues raised in the OP Report, and proposed conditions of approval memorializing the changes and commitments associated with the Modification, including items requested by OP and DDOT in their reports as follows: (Ex. 29.)

- a. At the hearing, OP testified in support of the Modification and acknowledged the acceptability of the proposed revisions to the building's design and other information submitted by the Applicant, and expressed that it believed that two aspects of the building's design deserved further study by the Applicant, namely, that the Applicant should study additional balconies and further refinements to the window reveal and mullions; (3/29/2018 Tr. at 41-42.)
  - b. DDOT also testified in support of the application and acknowledged the acceptability of the proposed TDM and loading plans submitted by the Applicant; and (3/29/2018 Tr. at 42-43.)
  - c. At the public hearing, the Applicant addressed the security issues raised by MPD in its report and stated it would continue to work with MPD regarding security at the Property. (3/29/2018 Tr. at 39-41.)
18. At the close of the public hearing, the Commission requested that the Applicant respond to some outstanding comments and questions from the Commission and OP regarding the roof and building design. (3/29/2018 Tr. at 63.)
  19. The Applicant responded to the Commission's comments and questions in a post-hearing filing that it submitted on April 12, 2018. The Applicant's post-hearing submission included a revised penthouse design and additional balconies, which addressed the outstanding issues raised by OP and the Commission. The post-hearing submission also provided a written rebuttal to the comments and concerns submitted by DC4RD. The submission did not address the window reveal and mullion issue. (Ex. 32).
  20. At a regular public meeting on April 30, 2018, the Commission deliberated on the merits of the Application and the material contested issues, decided that it believed that no further study of the design of the building's window reveals and mullions was necessary, and it took final action to approve the application.

## **THE MERITS OF THE APPLICATION**

### **Overview of the Property**

21. The Property is located at 65 I Street, S.W. and has a land area of approximately 115,724 square feet. (Ex. 2.)
22. The Property is located in the Southwest neighborhood and is bounded by I Street on the south, former First Street on the west, partially closed H Street on the north, and former Half Street on the east. (Parts of former Half Street and H Street are now part of the Randall Recreation Center.) (Ex. 2.)
23. The Property is presently improved with the former Randall Junior High School, a historic landmark listed in the D.C. Inventory of Historic Places. (Ex. 1.)

## **Overview of the Proposed Modification**

24. The Modification maintains the same scale, massing, building form, and character approved under the Amended PUD, but refines the Project design in the following ways:
- a. *Enlargement of the Central Courtyard:* The Modification increases the size and appearance of the central courtyard through the elimination of a rear addition to the historic building as well as upper-level wings of the residential building that cantilevered over the courtyard;
  - b. *Building Access and Circulation:* The Modifications improves building access and circulation through the relocation of the primary museum entrance to the east wing of the historic building, the relocation of the primary residential entrance to the center of the building at H Street, and the relocation of the parking access to the northeast corner of the site; and
  - c. *Refined Architectural Design:* The Modification includes material and design refinements that simplify the façade of the residential building in order to accentuate its form and allow it to serve as a backdrop for the historic school. The Modification also improves the renovation of the historic school because it allows the central entrance to be restored without extensive ramps and it allows the rear façade to be maintained rather than blocked by a rear addition.

(Ex. 2.)

25. The Modification maintains the same general mix of uses but adjusts the character and location of those uses within the Project as follows:
- a. *Central and East Wings of the Historic School:* The Modification proposes to utilize the east wing of the historic school for museum and ancillary retail space, with a large gallery space to hold larger pieces of art. The Amended PUD originally called for a restaurant in this space. The central wing continues to contain museum use;
  - b. *West Wing of the Historic School:* The Modification continues to include art-related nonresidential uses within the west wing of the historic school, but incorporates a mezzanine level to improve the functionality of this space. The wing will be devoted to uses that fit within the arts/design/creation, office, and institutional use categories. Overall, the net amount of commercial use in the historic school decreases from 23,303 square feet in the Amended PUD to 18,602 square feet in the Modification; and
  - c. *Residential Building:* The Modification reduces the total unit number in the residential building from 520 to 489 units and incorporates ground-floor two-level “townhouse-style” units along the Project’s street frontage.

(Ex. 2.)

26. The Modification is within the height, density, and lot occupancy previously approved by the Commission. The Project maintains the building height at 110 feet and lot occupancy at 60%, but lowers the overall density from 4.32 floor area ratio (“FAR”) to 4.25 FAR, including a reduction in nonresidential use from 0.48 FAR to 0.44 FAR. (Ex. 29D.)
27. The Modification reduces the amount to vehicular parking to 249 vehicular parking spaces as well as 175 long-term and 36 short-term bicycle parking spaces. These amounts align with the amount of parking required by the Zoning Regulations. Finally, the Modification includes the required loading for the proposed mix of uses. (Ex. 29D.)

### **Modifications to PUD Flexibility**

28. The Modification continues to request rezoning to the C-3-C Zone District, which the Commission previously concluded was appropriate. The Project no longer requires flexibility from the requirements of the Zoning Regulations. (Ex. 22.)
29. The Modification brings forward and updates requests for flexibility to adjust the nonresidential uses within the Project to accommodate tenants that would be complementary to the museum use. (Ex. 22.) The Modification also brings forward and updates requests for design flexibility as well as flexibility in the final number of residential units and parking spaces and flexibility to phase implementation of the Project. (Ex. 22.)

### **Modifications to the Project Amenities and Public Benefits**

30. The Modification carries forward the same public benefits and amenities as the Amended PUD (with only minor changes related to three benefits related to the Corcoran Gallery of Art, which is no longer in existence) which the Commission previously found to be commensurate with the flexibility requested and not inconsistent with the Comprehensive Plan. (Ex. 2, 22.)
31. To replace the conditions from the Amended PUD related to the Corcoran, the Applicant has proffered to provide free admission to the museum for all residents of the District. This benefit is of great value to the District and will promote access to and engagement with the arts. (Ex. 2, 22, 29C.)
32. The Applicant proffered its revised architectural design and enlarged courtyard for the residential building as continuing to provide superior urban design and architecture as well as superior landscaping and site planning. (Ex. 2, 22.)
33. The Applicant also increased its sustainability benefit. Under the Amended PUD, the Applicant was required to achieve the equivalent of a Silver rating under LEED-2009. The Modification includes a commitment to achieve a Gold certification for the residential component and a Silver certification for the museum component, both under the more current LEED v.4 standard. The Modification also includes the incorporation of solar panels on the roof of the residential building, which will provide renewable energy for the Project. (Ex. 11, 22.)



34. Finally, the Applicant has increased the value of the housing and affordable housing benefits. The Project will now contain approximately 19 “townhouse-style” units geared toward families. The Project will maintain the same affordable housing component as previously approved by the Commission, but will now extend the duration of affordability from 50 years to the life of the Project and will include at least 20% of the larger units in that affordable housing set-aside. (Ex. 11, 22, 29C.)

**Modification – Evaluation of Compliance with the Comprehensive Plan and Other Planning Guidance**

35. The applicable portions of the Comprehensive Plan (“Comprehensive Plan”), including the Future Land Use Map (“FLUM”), Generalized Policy Map (“GPM”), and written policies and goals, remain the same as the provisions reviewed and evaluated by the Commission when it analyzed the Original PUD and the Amended PUD and concluded each were not inconsistent with the Comprehensive Plan.
36. The Modification includes minimal changes to the Amended PUD as it relates to the Comprehensive Plan, and the changes proposed by the Applicant are not inconsistent with the Comprehensive Plan. These changes include:
- a. An enlarged courtyard that is consistent with the Land Use Element’s focus on infill development that complements the area (LU-1.4.1);
  - b. Additional housing and affordable housing opportunities geared toward families which fulfill goals in the Housing Element (H-1.3.1);
  - c. Improved treatment and preservation of the historic Randall School, furthering provisions of the Historic Preservation Element (HP-2.4.1; HP-2.4.3);
  - d. Free admission to the contemporary art museum for District residents, which furthers the Comprehensive Plan’s goals of distributing arts facilities and promoting cultural amenities for District residents (AC-1.1.2; AC-1.1.3; AC-4.2.1); and
  - e. Commitment to Gold certification for the residential component and Silver certification for the museum component under the LEED v.4 standard as well as the incorporation of solar panels, which address sustainability goals of the Comprehensive Plan (E-2.2.1; E-2.2.4; E-2.2.5; E-3.1.2; E-3.2.1).
37. The Modification is also not inconsistent with the recently-adopted Southwest Small Area Plan, which specifically calls for the development of an I Street cultural corridor. (Ex. 2.)

### **Standard of Review for a PUD Modification**

38. When reviewing a PUD modification, the Commission limits its analysis to the impact of the modification. The Commission does not revisit its original decision. (11-Z DCMR § 704.4.)
39. Moreover, when the Commission is reviewing modifications to a second-stage PUD, the modification is processed as a second-stage PUD application. (11-Z DCMR § 704.3.) Accordingly, a modification focuses on revisions to the detailed building and landscape plans as well as transportation management and mitigation measures. (11-X DCMR § 302.2(b).) Issues such as the appropriateness, character, scale, height, mix of uses, proposed rezoning, and compatibility of the proposed development with the Comprehensive Plan are all first-stage PUD issues that are not revisited in the modification of a second-stage PUD. (*See Randolph v. D.C. Zoning Commission*, 83 A.3d 756, 761-63 (D.C. 2014); *see also* 11-X DCMR § 302.2(a) (outlining components reviewed in a first-stage PUD application).)
40. Here, the Commission undertook a thorough and complete evaluation of the Project during its processing of the Original PUD, where the Commission judged, balanced, and reconciled the relative value of the Project's benefits and amenities against the degree of development incentives requested and its potential adverse impact. The Commission also evaluated and found that the Project was not inconsistent with the Comprehensive Plan, did not result in unacceptable project impacts on the surrounding area or on public facilities, and included acceptable public benefits and project amenities. The Commission then undertook a similar comprehensive review of the Amended PUD, which incorporated a number of changes to fundamental aspects of the PUD, such as the increased height and size of the residential component, the change in use of the nonresidential component to an art museum and related uses, and the current proposed benefits package. Accordingly, the Commission cannot and will not re-evaluate them in this Modification.

### **Compliance with Standards for a PUD Modification**

41. As explained above, in evaluating a PUD modification, the Commission's review is "limited to impact of the modification on the subject of the original application." Here, the Commission finds that Project is consistent with Commission's previous approvals of the Original PUD and the Amended PUD, which concluded that the Project satisfied its burden of proof under the Zoning Regulations regarding the satisfaction of the PUD standards and guidelines. The design modifications and other refinements proposed by the Applicant do not alter the fundamental aspects of the Project, including its rezoning, height, density, massing, appropriateness, character, scale, impacts, benefits, and consistency with the Comprehensive Plan. The Modification does not request additional flexibility for the project, and in fact reduces the areas of flexibility required for the overall development of the Property. (Ex. 22.) The Modification also maintains the same mix of uses and reduces the overall density and number of units, yet increases the size of

the publicly-accessible courtyard and the extent of preservation of the historic school. (Ex. 2, 22.)

42. The Commission credits the testimony from the Applicant and OP that the proposed modifications to the design and use of the Project are consistent with the intent and purpose of the approved PUD and continue to provide superior architecture, landscaping, and site planning.
43. The Commission credits testimony from the Applicant and OP and finds that the additional benefits proffered by the Applicant, including free museum admission, enhanced sustainability, and family-sized housing units, all constitute acceptable public benefits and project amenities that offset the elimination of the modest amenities related to the now-defunct Corcoran Gallery of Art. The Commission also finds that the proposed Modification's adjustments to the public benefits package are appropriate and remain commensurate with the development incentives and effects of the Project. The Project as a whole will provide a host of public benefits, including superior architecture and landscaping, site planning, safe vehicular and pedestrian access, environmentally sustainable features, employment opportunities, historic preservation, and housing and affordable housing, which continue to be acceptable project amenities and public benefits.
44. The Commission credits the testimony of the Applicant's traffic consultant and DDOT and finds that the traffic, parking, and loading impacts of the Modification on the surrounding area will not be unacceptable and are capable of being mitigated through the TDM plan, loading management plan, and other measures proposed by the Applicant. The Commission also finds that the impacts of the Project, as modified, on the surrounding area and on public facilities remain acceptable. The Project remains consistent with the size, scale, and mix of uses in the Amended PUD and accordingly imposes no greater impact than the Commission already concluded was acceptable. Indeed, the Modification reduces the number of residential units and amount of nonresidential use in the Project and therefore will be likely to have less impact than the previously-approved version.
45. The Commission credits the testimony of the Applicant and OP that the Modification remains consistent with the Comprehensive Plan. Again, the Project's density, character, scale, and mix of uses are comparable to or less than what the Commission already concluded was not inconsistent with the Comprehensive Plan's FLUM and GPM in the Amended PUD, and the Project otherwise promotes the same goals and policies in the citywide and area elements of the Comprehensive Plan.

### **Contested Issues**

46. DC4RD filed comments outlining four concerns: (1) the Commission did not undertake an appropriate study of the impacts of the PUD; (2) the PUD does not provide a statutorily-compliant proffer of affordable housing and harms existing levels of affordability (raised in multiple points); (3) the PUD does not include enough family-sized units; and (4) the PUD does not include support for local businesses or

organizations. The letter also alludes to “referenced” Comprehensive Plan policies, though they are listed by number only at the end of the document, and the document does not provide any explanation of how the Project is not inconsistent with these “referenced” Comprehensive Plan policies. (Ex. 30.)

47. Broadly, the issues raised by DC4RD are unsubstantiated generalized grievances. They do not relate to the specific changes proposed in the Modification but instead raise issues regarding affordable housing and overall impacts of the PUD as a whole. With respect to the Comprehensive Plan, DC4RD included in its letter a listing of several policies that it “references” as applicable to the Project, but DC4RD fails to assert any claim that the Project is inconsistent with these policies and does not explain their relevance to the Commission’s evaluation of the Modification as discussed below:
  - a. As a threshold matter, the issues raised by DC4RD regarding the impacts of the overall PUD, the housing, affordable housing, and other benefits of the PUD, and consistency of the Project with the Comprehensive Plan, are all beyond the scope of this PUD modification proceeding. The Commission previously conducted two thorough reviews of the Project and concluded—twice—that the Project met the standards for approval. The sole issue before the Commission is whether the Modification, which is focused on building design and other refinements, warrants approval; and
  - b. Furthermore, as this Commission has previously found, an applicant is not obligated to respond to such generalized and unsupported assertions. (*See, e.g.* Z.C. Order No. 11-03J(1) (2018).) For a party or witness to raise issues for which a response is required, the party or witness must have some factual basis for the claim and draw a nexus between the claimed deficiency and the current application. DC4RD’s letter did not do so with respect to these issues; it simply presented a list of blanket complaints and Plan provisions, without any explanation of how the items related to the Modification or, in some cases, the Project at all. Indeed, as the Applicant pointed out in its post-hearing submission, DC4RD filed a letter raising the same generalized arguments and Comprehensive Plan provisions regarding another PUD proceeding in Southwest one week later. (Ex. 32.)
48. Nevertheless, at the hearing on March 29<sup>th</sup> and in its post-hearing submission, the Applicant provided detailed rebuttal to each of the issues described above, and the Commission therefore addresses each DC4RD claim in turn. (Ex. 32.)
49. DC4RD alleges that the PUD’s impacts on infrastructure, city services, gentrification, and the environment were not properly reviewed; those allegations are addressed as follows:
  - a. These impacts were all thoroughly examined and evaluated in connection with the Original PUD as well as the Amended PUD, which included not only multiple submissions from the Applicant but also extensive agency reviews by OP and DDOT as well as comments from other District agencies and utilities, including

the Department of Housing and Community Development, the Metropolitan Police Department, and DC Water. (Z.C. Order No. 07-13D at 20 [FOF 63].) The Original PUD also included a detailed economic impact analysis of the housing and other aspects of the Project on the surrounding neighborhood as well as the District as a whole. (Ex. 32 at 4.) In both proceedings, the Commission's conclusion that the impacts of the Project would not be unacceptable was based on extensive evidence that addressed the specific impacts raised by DC4RD;

- b. In this Modification, the proposed changes to the Amended PUD were reviewed in detail not only by multiple divisions within OP and DDOT but also by multiple other District agencies as well as the Historic Preservation Review Board and the Public Space Committee. (Ex. 32 at p. 5-6.) Accordingly, the Commission finds that the impacts of the Modification were adequately reviewed; and
  - c. The Modification includes the same general amount and type of residential and nonresidential uses as the Commission approved in the Amended PUD. Again, given that the Project is now somewhat smaller in size than the Amended PUD and yet provides the same or greater level of benefit, the Modification's impacts are materially the same, so the Modification does not alter the Commission's previous conclusions.
50. DC4RD alleges that the PUD's affordable housing is unacceptable, fails to comply with the IZ and other District law, and harms existing levels of affordability. The Commission disagrees:
- a. DC4RD misrepresents what constitutes affordable housing under District law and policy. Broadly, the Comprehensive Plan calls for the production of low- and moderate-income affordable housing (H-1.2.1) and ties production goals to the delivery of housing affordable to households earning up to 80% of the AMI (H-1.2.2);
  - b. Here, the amount and type of affordable housing provided for the Project was established through legislation enacted by the Council for the District of Columbia in connection with the disposition of the Property over a decade ago. (*See* Randall School Sale Approval Resolution of 2004 (R15-0818), 52 D.C. Reg. 250 (Dec. 21, 2004); Randall School Disposition Restatement Congressional Review Emergency Declaration Resolution of 2011 (R19-0011), 58 D.C. Reg. 779 (Jan. 28, 2011).) Accordingly, the Project's affordable housing embodies the clear legislative intent of the Council and remains valid, even if District law may now require a different affordable housing allocation; (Ex. 32.)
  - c. The Commission approved the amount and type of affordable housing within the Project in connection with the Original PUD a decade ago. At that time, the Project exceeded significantly the amount of affordable housing otherwise required by IZ. This affordable housing component was maintained through the 2014 Amended PUD and it continues to be maintained in the Modification; the

Project's affordable housing is grandfathered under the requirement in the Original PUD; (Ex. 32.)

- d. Although the Modification does not propose a change in the Project's affordable housing component, the Applicant voluntarily explored certain alternatives and explained in detail its efforts to do so, even though it was under no obligation to make such changes because of the scope of this proceeding was limited to the aspects of the PUD design being modified. (Ex. 11, 22.) OP and the ANC each expressly supported the Applicant's efforts as well as the ultimate determination to maintain the existing affordable housing program; and (Ex. 23, 26.)
  - e. Finally, all of the housing in this project will be new housing. No existing housing will be eliminated and no existing residents will be displaced. Rather, the Project will create a new supply of both market-rate and affordable housing with a variety of unit types (studios to townhouse style three-bedrooms) that will satisfy many demands. (Ex. 32.)
51. DC4RD alleges that the project does not provide enough family-sized units. There is no requirement in the Zoning Regulations, the Original PUD, or the Amended PUD to provide such units; nevertheless, the Applicant has agreed to provide 19 two-level, three-bedroom units on the ground level of the Project. Moreover, the Applicant has agreed to include 20% of these units in the Project's affordable housing program. As a result, the effect of the Modification is to increase the number of family-sized units. (Ex. 32.)
  52. DC4RD alleges that the project does not support entrepreneurs and local residents. Again, no such support is required; nevertheless, the Amended PUD included multiple benefits that will support local artists and construction workers in ANC 6D and beyond, including an annual exhibit of artwork by residents of ANC 6D, resources to support an annual ANC 6D visual arts project; a First Source Employment Agreement, and a Certified Business Enterprise Agreement. These benefits are retained in the Modification. (Ex. 32.)

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "higher quality development." 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 protects and advances the public health, safety, welfare, and convenience." (11 DCMR X § 300.1.)
2. Development of the Property included in this application carries out the purposes of Subtitle X, Chapter 3 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. As was the case for the Original PUD and the Amended PUD, the Commission concludes that the Modification continues to promote the purposes of the PUD process.

3. When reviewing a PUD modification, the Commission limits its analysis to the impact of the modification on the original application. The Commission does not revisit its original decision. (11-Z DCMR § 704.4.) Moreover, when the Commission is reviewing modifications to a second-stage PUD, the modification is processed as a second-stage PUD application and focuses on revisions to the detailed building and landscape plans as well as transportation management and mitigation measures. (11-Z DCMR §§ 302.2(b), 704.3.) The appropriateness, character, scale, height, mix of uses, proposed rezoning, and compatibility of the proposed development with the Comprehensive Plan are not revisited in the modification of a second-stage PUD. (*See Randolph v. D.C. Zoning Commission*, 83 A.3d 756, 761-63 (D.C. 2014).) Accordingly, the Commission has already determined that the Project was not inconsistent with the Comprehensive Plan, did not result in unacceptable project impacts on the surrounding area or on public facilities, and included acceptable public benefits and project amenities. All of these issues are settled as a matter of law, and the Commission cannot and will not re-evaluate them in this Modification.
4. The Original PUD and the Amended PUD were both reviewed and approved under the previous version of the Zoning Regulations, which were updated and replaced by the current version of the Zoning Regulations in 2016. Pursuant to Subtitle A § 102.4, this Modification is reviewed under the 2016 Zoning Regulations.
5. The Modification, as approved by the Commission, does not affect the overall height, bulk, density, character, scale, mix of uses, or appropriateness of the Project approved by the Commission in the Original PUD, as amended by the Amended PUD. The designs and uses for this Project, as refined by the Modification, are appropriate for the Property. The Modification retains virtually all of the public benefits proffered in the Amended PUD and incorporates additional public benefits that are acceptable to the Commission.
6. Based on the Applicant's expert testimony and transportation reports, agency reports, and the Findings of Fact, the Commission concludes that the transportation impacts of the Modification on the surrounding area are not unacceptable and are capable of being mitigated through the measures proposed by the Applicant and concurred with by DDOT. Moreover, the impact of the overall Project on the surrounding area and the operation of city services continues to be acceptable given the quality of the public benefits in the Project, and the Commission concludes that the Project will not result in unacceptable impacts on land density, housing and affordable housing, infrastructure, public services, and the environment.
7. Based on the character of the proposed changes, the Commission concludes that the Modification is consistent with the intent of and achieves the same goals as the previously approved PUD. The Commission concludes that its decision to approve the Modification is in the best interests of the District of Columbia and is consistent with the intent, purpose, and integrity of the Zoning Regulations and Zoning Map.
8. Based on evidence submitted by the Applicant and OP and the Findings of Fact, the Commission concludes that the Modification is not inconsistent with the Comprehensive

Plan. The Commission previously concluded that the Project as a whole was not inconsistent with the Comprehensive Plan, including the Property's designation on the FLUM and GPM as well as with many policies and goals of the Plan, as discussed in the Original PUD Order and Amended PUD Order. The Modification does not alter the underlying facts that supported the Commission's original conclusions regarding the Comprehensive Plan. The Modification further expands free access to the Museum, creates additional housing and affordable housing for families, furthers District sustainability and renewable energy goals, and otherwise builds upon the Project's consistency with the goals and policies of the Comprehensive Plan.

9. The Commission is required under Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to issues and concerns raised in the affected ANC's written recommendation. Great weight requires the acknowledgement of the ANC as the source of the recommendations and explicit reference to each of the ANC's concerns. The written rationale for the decision must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In doing so, the Commission must articulate specific findings and conclusions with respect to each issue and concern raised by the ANC. D.C. Official Code § 1-309.10(d)(3)(A) and (B). As described in Finding of Fact No. 10 above, there were two written submissions by the affected ANC in this case. The first stated that ANC 6D supported the Modification because it was consistent with the Amended PUD, maintained the approved benefits package, and delivered an increase in sustainability. The ANC's report also commented on the affordability for the inclusionary zoning units. (Ex. 18). The second report stated that ANC 6D continued to support the proposed Modification with the affordable housing commitment remaining at the originally-approved level of affordability. (Ex. 26.) The third was also in support of the Modification and rebutted several assertions made by DC for Reasonable Development: Ward 6 Study Group in its written opposition to the Modification. (Ex. 36.) Because in sum the reports expressed no issues or concerns, there is nothing for the Commission to give great weight to. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The Commission nonetheless carefully considered the ANC's reports and statements in making its decision.
10. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP reports in this case and, as explained in this decision, finds its recommendation to grant the application persuasive.

### **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 this application for modification of a PUD approved pursuant to Z.C. Order No. 07-13 and subsequent related Z.C. Order Nos. 07-13A-07-13F, subject to the following Conditions:



**A. Project Development**

1. The PUD shall be developed in accordance with the plans and materials submitted by the Applicant, dated March 8, 2018 and marked as Exhibit 22B1-22B7 of the record, as supplemented by Exhibit 29D (“Plans”), Exhibit 32C, and as modified by the guidelines, conditions, and standards of this Order.
2. In accordance with the Plans, the project shall be developed as a mixed-use project as follows, with a maximum density of 4.25 FAR (“Project”):
  - a. The east and center wings of the historic building shall include approximately 31,389 square feet of gross floor area devoted to museum and ancillary retail and event uses;
  - b. The west wing of the historic building shall include approximately 18,602 square feet of gross floor area devoted to uses in the office, institutional, and arts/design/creation use categories; and
  - c. The residential building shall include approximately 489 units. The ground floor of the east wing of the residential building shall be used for either residential uses or for uses in the retail, service, eating/drinking establishment, and arts/design/creation use categories, as shown on pages A09–A10 of the Plans. (Ex. 29D.)
3. The PUD shall be constructed to a maximum height of 110 feet as shown on the Plans. Roof structures shall be permitted to exceed the building height by a maximum of 20 feet as shown on the Plans.
4. The PUD shall provide a minimum of 249 parking spaces as shown on the Plans. Loading facilities shall be provided as shown on the Plans.
5. 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 partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
  - b. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the final plans;
  - c. To make minor refinements to exterior details and dimensions that do not significantly alter the exterior design as shown on the plans, including without limitation to sills, bases, mullions, coping, railings and trim, or any other changes: (1) to comply with Construction Codes that are

otherwise necessary to obtain a final building permit, (2) to comport with final design comments from District historic preservation officials, or (3) to address the structural, mechanical, or operational needs of the building uses or systems;

- d. To vary the final number of residential units plus or minus 10%, and accordingly adjust the number and location of affordable units to reflect the final unit mix of the Project, provided that the distribution of affordable units by floor shall remain consistent with the plans;
  - e. To vary the final number of parking spaces between 249 and 275 parking spaces;
  - f. To vary the final streetscape design and materials in the public right-of-way, in response to direction received from District public space permitting authorities;
  - g. To vary the final landscaping materials of the Project based on availability and suitability at the time of construction or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DCRA, or other applicable regulatory bodies;
  - h. To vary the location and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements; and
  - i. To implement the alternate ground-floor plan shown on page A10 of the Plans, which will allow for the conversion of residential units to commercial retail/service/restaurant uses. (Ex. 29D.)
6. The Applicant shall have the option to construct the Project in phases, as shown on the Plans, as follows:
- a. Phase I shall include the renovation of the historic school, the delivery of the art museum, the underground parking, the proposed courtyard, the east wing of the residential building, and the perimeter improvements around the entire PUD site, all as shown on page A41 of the Plans (“Phase I”), and Phase II shall include the west wing of the residential building (“Phase II”); and
  - b. The Applicant shall improve the temporary exposed west façade of the Phase I residential building as shown on page A42 of the Plans with a mural or other artwork as shown on the precedent image, and the Applicant shall be permitted to enclose the Phase II site with a security perimeter fence as shown on the precedent image on Page A41 of the Plans. (Ex. 29D.)

**B. Public Benefits**

1. Housing and Affordable Housing:
  - a. The Applicant shall provide approximately 441,110 square feet of gross floor area to be devoted to residential uses, which shall include a minimum of approximately 19 two-story “townhouse” style units as shown on the Plans; and
  - b. **For the life of the Project**, the Applicant shall set aside a minimum of 20% of the residential gross floor area, or approximately 88,222 square feet of gross floor area, as Inclusionary Zoning Units in accordance with Subtitle C, Chapter 10 of the Zoning Regulations, except that pursuant to Z.C. Order No. 07-13, such units shall be set aside for households earning up to 80% of the Median Family Income, with preferences for residents of ANC 6D to the extent permitted by law. In addition, the Applicant shall ensure that a minimum of 20% of each of the two-bedroom and “townhouse” units are set aside as inclusionary zoning units.
2. Museum. The Applicant shall provide approximately 31,839 square feet of gross floor area of the PUD for museum uses, as shown on the Plans.
3. Courtyard. The courtyard will be open to the public from 8:00 a.m. to 5:00 p.m., Monday through Friday.
4. Private Space Improvements and Public Access Easement. **Prior to the issuance of a certificate of occupancy for the residential component of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has provided streetscape and roadway improvements as shown on the Plans, extending the length of the Project’s 1<sup>st</sup> Street and H Street frontage, and recorded an easement that grants public pedestrian and vehicular access along the private portions of 1<sup>st</sup> Street and H Street within the PUD site.
5. Randall Recreation Center Drop-off/Turn-Around. If approved by the District and the Department of Parks and Recreation, **prior to the issuance of a certificate of occupancy for the residential component of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has created a vehicular drop-off and turn-around point to serve both the Randall Recreation Center and the east portion of the PUD, as shown on the Plans.
6. Sustainability:
  - a. **Prior to the issuance of a certificate of occupancy for the residential portion of the Project**, the Applicant shall provide the Zoning Administrator with evidence that the residential portion of the Project is on track to secure LEED-Gold certification or higher from the U.S. Green Building Council under the LEED v.4 rating system. **Within 12 months**

**after the issuance of such certificate of occupancy**, the Applicant shall submit evidence to the Zoning Administrator that it has secured such LEED-Gold certification. In the event that the residential portion of the Project is phased pursuant to Condition A.6, compliance with this condition shall be evaluated based on the residential building as a whole, and the Applicant shall not be required to submit evidence of LEED-Gold certification until issuance of the certificate of occupancy for the second and final phase of the Project;

- b. **Prior to the issuance of a certificate of occupancy for the historic school portion of the Project**, the Applicant shall provide the Zoning Administrator with evidence that the historic school portion of the Project is on track to secure LEED-Silver certification or higher from the U.S. Green Building Council under the LEED v.4 rating system. **Within 12 months after the issuance of such certificate of occupancy**, the Applicant shall submit evidence to the Zoning Administrator that it has secured such LEED-Silver certification; and
- c. **For the life of the Project**, the Applicant shall provide solar panels as shown on the Plans.

7. **Benefits of Special Value to the Neighborhood:**

- a. *Museum Admission Policy:* The Applicant shall provide free general admission to the art museum to all District of Columbia residents as long as the museum is open to the public. In its discretion, the Applicant may implement this free-admission policy by issuing membership cards to residents or by accepting another form of residential identification;
- b. *Meeting Space:* The Applicant shall provide meeting space on the lower level of the museum, or other suitable meeting space, at no charge for one neighborhood town meeting per calendar month and for one small-room meeting per calendar month;
- c. *Art Exhibits:* The Applicant shall organize an annual exhibit of artwork by residents of ANC 6D, including at least one public-school student. The art will be displayed in the local artists' gallery shown on page A08 of the Plans; (Ex. 22B2.)
- d. *Art Projects:* The Applicant shall designate an annual ANC 6D neighborhood visual arts project and provide the resources needed to make that project a reality. The Applicant will designate a community outreach coordinator to work with ANC 6D to create and annual visual arts project, and to supply, directly or through a third parties, the art materials, display location and funding for the project;

- e. *Art Festival*: The Applicant will designate a community outreach coordinator to work with ANC 6D and the Washington Project for the Arts to organize, sponsor, and provide resources for an annual public, free admission outdoor Arts Festival in ANC 6D;
  - f. *ANC 6D Volunteers*: Applicant shall establish a program of recruiting museum volunteers from ANC 6D, who will receive free admission to at least one paid event at the museum;
  - g. [deleted]
  - h. [deleted]
  - i. [deleted]
  - j. *Southwest Historic District Study*: **Prior to the issuance of a certificate of occupancy**, the Applicant shall contribute \$20,000 to Southwest Neighborhood Assembly to support the study and development of a Southwest Washington historic district;
  - k. *Arts Program at Randall Recreation Center*: **Prior to the issuance of a certificate of occupancy**, the Applicant shall contribute to the Southeast Southwest Community Benefits Coordinating Council (“CBCC”) \$1,000 per month, for a period of five years, to help fund arts programming at the Randall Recreation Center. CBCC will create a plan for arts programming in consultation with Washington Project for the Arts and others, including the Applicant. The Applicant may accelerate payments in order to obtain a certificate of occupancy;
  - l. *Construction Management Plan*: **Prior to the issuance of a building permit**, the Applicant shall submit a construction management plan to the ANC; and
  - m. *RPP Restrictions*: **Prior to the issuance of a certificate of occupancy for the residential portion of the PUD**, the Applicant shall provide evidence that restrictions will be included in the residential leases or condominium documents prohibiting a RPP from the Department of Motor Vehicles. The Applicant shall also provide evidence that it has requested that the building be removed or excluded from the RPP program.
8. **First Source Employment Agreement. Prior to the issuance of a building permit and if approved by the Department of Employment Services**, the Applicant shall execute a First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing D.C. residents for at least 51% of the jobs created by the construction of the PUD. The Applicant shall give residents from ANC 6D special consideration for employment to the extent permitted by law.

9. CBE Agreement. Prior to issuance of a building permit, the Applicant shall execute a Certified Business Enterprise agreement with the Department of Small and Local Business Development and submit a copy to the Office of Zoning. The CBE Agreement shall commit the Applicant to achieve, at a minimum, the goal of 35% participation by local, small, or disadvantaged businesses in the contracted development costs in connection with the design, development, and construction for the project created as a result of the PUD.

C. **Mitigation Measures**

1. Public Space Improvements. If approved by DDOT, **prior to the issuance of a certificate of occupancy for the residential component of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has provided public space improvements as shown on the Plans, extending the length of the Project's I Street and H Street frontage. Subject to approval by DDOT, the improvements shall include the missing curb ramp on the southeast corner of I Street and Half Street, S.W., if such ramp has not yet been constructed.
2. Transportation Demand Management ("TDM") Measures. For the life of the Project, the Applicant shall implement the following TDM measures:
  - a. *TDM Leaders:* The Applicant shall identify TDM Leaders (for planning, construction, and operations). The TDM Leaders shall work with goDCgo staff to create free customized marketing materials and a TDM outreach plan for residents, employees, and patrons, including development of a site-specific transportation. The TDM Leaders shall act as a point-of-contact for DDOT;
  - b. *TDM Reporting:* The building management shall provide updated contact information for the TDM Leaders and report TDM efforts and amenities to goDCgo staff once per year;
  - c. *TDM Information for Museum Patrons:* The museum's website shall provide links to godcgo.com, information on alternative modes of travel, instructions for event patrons, and it shall discourage parking on-street in residential permit parking zones;
  - d. *TDM Information for Tenants and Residents:* The Applicant shall distribute new-tenant and new-resident packages with materials provided by DDOT including site-specific transit-related information to all persons or entities signing leases;
  - e. *Transportation Information Centers:* **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has provided a transportation information center located in each residential, office, and museum lobby, maintained by the TDM Leader(s). The transportation information centers

shall be stations located within each building in a visible location and shall contain information, either printed, electronic, or both, regarding non-automotive travel options for employees, residents, and museum patrons;

- f. *Transportation Information Board:* **Prior to the issuance of a certificate of occupancy for the residential component of the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has installed an electronic message board displaying relevant transportation information, such as transit estimated arrival times at nearby stops/stations and Capital Bikeshare availability at nearby stations in the residential lobby;
- g. *Residential Parking Pricing:* The Applicant shall unbundle all residential parking costs from the cost of lease or purchase. Residential parking shall be priced to limit demand in a way to help achieve the parking ratios goals;
- h. *Office and Museum Parking Pricing:* The Applicant shall price office and museum parking at market cost, defined as no less than the charges of the lowest fee garage located within a quarter-mile mile;
- i. *Electric Vehicle Parking:* **For the life of the Project,** the Applicant shall provide a minimum of six electric car charging stations within the Project or on the Property;
- j. *Carshare Spaces:* **Prior to the issuance of a certificate of occupancy for the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has reserved two carshare spaces on-site in a location of its choosing. If carshare providers do not locate a vehicle in one of these two spaces on-site, then the Applicant shall provide one annual carshare or bikeshare membership to each residential **for one year after initial occupancy.** This shall be in an addition to the two years of carshare or bikeshare memberships should such be required in lieu of a Capital Bikeshare station;
- k. *Bicycle Parking and Facilities:* **Prior to the issuance of a certificate of occupancy for the residential component of the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has provided a minimum of 175 long-term spaces within the PUD as shown on the Plans and, subject to approval by public space officials, a minimum of 36 short-term parking spaces on the public and private streets surrounding the perimeter of the PUD as shown on the Plans. The Applicant shall also demonstrate that it has provided a minimum of two showers and four lockers within the museum component of the PUD as shown on the page A08 of the Plans; and (Ex. 29B2.)

1. *Bikeshare Station:* **Prior to the issuance of a certificate of occupancy for the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has paid for the cost of installation and one year of operating costs for a 19-dock Capital Bikeshare station in the immediate vicinity of the Property at a location to be selected by DDOT. If another station is installed within 750 feet prior to the Applicant installing a 19-dock station, then the Applicant shall instead provide one annual carshare or bikeshare membership for each residential unit for the initial two years after occupancy.
  
3. **Loading Management Plan.** **For the life of the Project,** the Applicant shall implement the following loading management measures:
  - a. *Residential Component:*
    - i. A loading manager will be designated by the property management for the residential component of the site;
    - ii. All residential tenants must schedule move-ins/move-outs with the loading manager. Residents will be required to reserve their requested loading time slot with the loading manager;
    - iii. The loading manager will schedule deliveries such that the loading capacity is not exceeded. If an unscheduled delivery vehicle arrives while the loading area is full, that driver will be directed to return at a later time so as not to impede traffic flow; and
    - iv. The loading management plan will be included in the residential leases;
  - b. *Commercial and Museum Component:*
    - i. A loading manager will be designated by the property management for the commercial and museum components of the site;
    - ii. The loading manager will coordinate commercial and museum deliveries such that the loading capacity is not exceeded. If the loading area is full, that driver will be directed to return at a later time so as not to impede traffic flow;
    - iii. The loading manager will be responsible for meeting deliveries made by tractor-trailer (WB-50, 55'). The loading manager will keep the designated loading areas and maneuvering space clear for deliveries and manage any potential conflicts between vehicles, pedestrian, etc. during arrival and departure;



- iv. Tractor-trailer trucks that access the site will be directed to enter from I Street, S.W. and then back into the loading area within the private portion of First Street, S.W. Upon departure, tractor-trailer trucks will be directed to exit to the north, travel through the H Street/Delaware Avenue circle, and exit via Delaware Avenue/I Street;
- v. Building management will be responsible for disseminating routing information, particularly as it relates to museum deliveries using tractor-trailer trucks, which are expected to occur infrequently every one to two months;
- vi. If parking is provided along the private portion of First Street, S.W., it will be restricted when tractor-trailer trucks are scheduled to access the site in order to accommodate necessary turning maneuvers; and
- vii. The loading management plan will be included in commercial and museum leases;

c. *General:*

- i. Trucks using the loading docks will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT’s Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System; and
- ii. Loading Managers will be responsible for disseminating DDOT’s Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with District laws and DDOT’s truck routes. The loading managers will also post these documents in a prominent location within the service areas.

**D. Miscellaneous**

- 1. No building permit shall be issued for the PUD until the owner of the Property has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owner of the Property and all successors in title to construct and use the Property in accordance with this Order and any amendment thereof by the Commission.


2. The PUD shall be governed by the timeframes established in Z.C. Order No. 07-13F as follows:
  - a. As set forth in that Order, the PUD shall remain valid until May 9, 2019; within such time, an application must be filed for a building permit for the construction of the Project (or Phase I of the Project as described in A.6 above if the Applicant elects to phase the Project) as specified in 11-Z DCMR. Construction of the Project (or Phase I of the Project, if the Applicant elects to phase the Project) must commence prior to May 9, 2020 for the PUD to remain valid; and
  - b. If the Applicant elects to phase the Project, the Applicant shall file for a building permit for Phase II of the PUD within two years after the issuance of a certificate of occupancy for the residential building constructed in Phase I of the PUD, or by May 9, 2024, whichever is sooner. The Applicant shall start construction of Phase II within three years after the issuance of a certificate of occupancy for the residential building constructed in Phase I of the PUD, or by May 9, 2025, whichever is sooner.
3. 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.
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 or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On April 30, 2018, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro and Michael G. Turnbull to approve; Peter G. May to approve by absentee ballot).

In accordance with the provisions of 11 DCMR Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on July 6, 2018.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
\_\_\_\_\_  
**SARA A. BARDIN** for  
**DIRECTOR**  
**OFFICE OF ZONING**