

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**

**ZONING COMMISSION ORDER NO. 08-07A**

**Z.C. Case No. 08-07A**

**Four Points, LLC and Curtis Properties, Inc.**

**(Second-Stage PUD and PUD Modifications @ 2255 Martin Luther King Jr. Avenue, S.E.)**

**[Date of Final Action]**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on December 18, 2014, to consider an application from Four Points, LLC and Curtis Properties, Inc. (together, the "Applicant") for approval of a second-stage planned unit development ("PUD") and modifications to an approved first-stage PUD at 2255 Martin Luther King Jr. Avenue, S.E. (Lot 839 and part of Lot 906 in Square 5785) (the "PUD Site"). The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

**FINDINGS OF FACT**

**The Application, Parties, and Hearing**

1. On March 31, 2008, the Applicant filed an application and supporting materials with the Commission for review and approval of a first-stage PUD and related zoning map amendment to rezone (i) Lots 984 and 1019 in Square 5772 from C-3-A/C-M-1 to C-3-A; (ii) Lots 829 and 1018 in Square 5783 from C-2-A to C-3-A; (iii) Lots 898, 899, and 900 in Square 5784 from C-2-A to C-3-A; and (iv) Lot 906 in Square 5785 from C-2-A/C-3-A to C-3-A (the "Overall PUD Site"). The Overall PUD Site has a combined land area of approximately 340,467 square feet (approximately 7.8 acres), and is generally bounded by U Street to the north, Martin Luther King Jr. Avenue to the east, Chicago Street to the south, and Interstate 295 to the west, all located in the southeast quadrant of the District. Pursuant to Z.C. Order No. 08-07, dated September 9, 2013, and effective October 25, 2013, the Commission granted approval of the first-stage PUD and zoning map amendment.
2. The approved PUD is a mixed-use project consisting of approximately 1,570,000 square feet of gross floor area comprised of seven new buildings and two renovated existing buildings. The Commission approved the development of approximately 481,000 square feet of gross floor area for residential use; approximately 144,000 square feet of gross floor area for retail, service, arts, and limited types of office use; and approximately 945,000 square feet of gross floor area for office use. *See* Z.C. Order No. 08-07, p. 23.
3. On June 27, 2014, the Applicant filed an application with the Commission for review and approval of a second-stage PUD and modifications to the approved first-stage PUD for development of the PUD Site. The PUD Site is zoned C-3-A. The PUD Site was not rezoned as part of the 2008 application. The PUD Site is generally bounded by private

property to the north, Martin Luther King Jr. Avenue to the east, Chicago Street to the south, and a public alley to the west.

4. The approved first-stage plans for the PUD Site authorized development of a six-story, mixed-income residential building (“Building 1”), with approximately 65,000 square feet of gross floor area devoted to residential use comprised of 65 dwelling units (plus or minus 10 percent), 33 off-street parking spaces, and 22 bicycle parking spaces. Building 1 was approved with a maximum density of 2.57 floor area ratio (“FAR”) and a maximum building height of 60 feet, not including roof structures.
5. The Applicant requests modifications to the approved first-stage PUD to develop the PUD Site with a modified design for Building 1. The modified building would contain approximately 68,263 square feet of gross floor area devoted to residential use comprised of 71 residential units (plus or minus 10 percent), 26 below-grade parking spaces, 37 secure bicycle parking spaces, and various tenant amenities. Live/work units for local artists will be located on the ground floor. Eighty percent of the residential units would be devoted to households earning up to 60 percent of the area medium income (“AMI”). The building would have a maximum density of 2.85 FAR and a maximum height of 65 feet, not including roof structures, at its highest point.
6. At its public meeting held on July 28, 2014, the Commission voted to schedule a public hearing on the application.
7. On August 13, 2014, the Applicant submitted a prehearing statement (Exhibit 16). The prehearing statement set forth information requested by the Commission, including additional information on the live/work units; details on Building 1’s compliance with the Enterprise Green Communities rating system; an explanation of why a larger green roof could not be provided; an explanation of the safety features on the roof deck; clarification on Applicant’s commitment to enter into a First Source Employment Agreement; additional renderings of how Building 1 relates to the height of the adjacent row dwellings on Chicago Street; and an explanation as to why the Green Area Ratio requirements do not apply to Building 1. The submission also included updated architectural drawings and materials required pursuant to section 3013 of the Zoning Regulations.
8. On November 14, 2014, the Applicant submitted a supplemental prehearing statement (Exhibit 22). This submission included (i) further revised architectural drawings, which demonstrated how the Applicant refined Building 1’s facades to provide better integration with the surrounding community and to respond to feedback from the Office of Planning (“OP”), the Commission, and the community; and (ii) a transportation impact study, dated October 20, 2014, prepared by Gorove/Slade Associates, Inc., the Applicant’s transportation consultant, which was submitted to the District Department of Transportation (“DDOT”).
9. On November 20, 2014, the Concerned Citizens of Anacostia (“CCA”) filed a Party Status Request (Exhibit 23) to participate at the hearing in opposition to the application.

The Party Status Request raised issues regarding Building 1's height, massing, and design incompatibility with the character of the historic neighborhood; Building 1's non-compliance with the principles approved under the first-stage PUD with regard to the housing type mix; the absence of retail; the absence of a community benefits agreement or a clear presentation of the public benefits and amenities related to the project; and the project's potential impact on the historic view of the Capitol and downtown DC.

10. On November 24, 2014, OP submitted a report (Exhibit 24) recommending approval of the application. The OP report stated that the project conforms to the Comprehensive Plan's objectives for the area and to the Generalized Land Use and Policy Maps. *See* OP Report, p. 1. OP expressed its support for the design of Building 1, which "would positively add to the character and activity along MLK Avenue" (*id.* at p. 5), and stated that the proposed changes to Building 1 would not make the development inconsistent with the Comprehensive Plan, the C-3-A zone, or the overall concept of the first-stage PUD. *Id.* at p. 8. Furthermore, OP stated its support for "granting all the areas of flexibility requested." *Id.* at p. 7. Overall, the OP report recommended approval of the application.
11. On November 24, 2014, DDOT also submitted a report (Exhibit 25) that assessed the potential safety and capacity impacts of the project on the District's transportation network. The DDOT report made the following conclusions: (i) vehicle, loading, and trash access is in keeping with DDOT's approach to site access; (ii) the Applicant utilized sound methodology and travel assumptions and developed an appropriate mode split; (iii) the project is projected to minimally increase travel delay in the area; (iv) existing transit service, pedestrian infrastructure, and bicycle infrastructure has capacity to accommodate future demand; and (v) the Applicant proposes an adequate number of long-term bicycle parking spaces in bicycle storage rooms. *See* DDOT Report, pp. 1-2. The DDOT report also concluded that there are no direct mitigations necessary as part of the development of Building 1 beyond the Transportation Demand Management ("TDM") plan proposed in Exhibit 25 and as set forth on page 21 of this Order. Given the complexity of the project, DDOT requested that the Applicant continue to work with DDOT staff on the following matters: (i) installation of at least four short-term bicycle parking spaces; (ii) for each subsequent second-stage application, the Applicant's evaluation of consistency with the first-stage analysis and the first second-stage analysis; (iii) public space approvals, including curbs and gutters, street trees and landscaping, street lights, sidewalks, and other features within the public rights of way; and (iv) potential modifications to traffic signals in future second-stage applications. *Id.* at p. 2.
12. On December 3, 2014, Advisory Neighborhood Commission ("ANC") 8A, the ANC in which the PUD Site is located, submitted a letter requesting postponement of the public hearing (Exhibit 33), which was originally scheduled for December 4, 2014. On December 3, 2014, the Commission granted the request for postponement and rescheduled the case to December 18, 2014, for a public hearing.
13. On December 18, 2014, the Applicant submitted a letter opposing the party status request submitted by CCA (Exhibit 72). The Applicant's letter asserted that CCA did not

demonstrate that its interests would be more significantly, distinctively, or uniquely affected than those of other persons in the general public, as required under section 3022.4 of the Zoning Regulations. The Applicant's letter stated that CCA's alleged representation of homeowners and tenants within the entire Ward, and members of three distinct neighborhood organizations with different boundaries and purposes, demonstrates that CCA's interests are not unique and instead apply to residents of all of the neighborhoods surrounding the PUD Site.

14. On December 18, 2014, the Applicant also submitted a letter responding to the issues raised in the CCA's party status request (Exhibit 73). The Applicant's letter stated that (i) the PUD Site is not within the Anacostia Historic District and is therefore not subject to review by the Historic Preservation Office ("HPO") or the Historic Preservation Review Board ("HPRB"); (ii) the proposed modifications to Building 1 are minor in nature and will not cause adverse effects to the neighborhood; (iii) residential development is an appropriate use for Building 1, particularly because retail development is planned for adjacent lots within the Overall PUD; and (iv) the proposed amount of affordable housing is appropriate for Building 1 and will not result in an over concentration of subsidized, income-capped housing at the PUD Site. The Applicant's letter also set forth the proposed public benefits and project amenities associated with the second-stage application for Building 1.
15. On December 18, 2014, the Applicant submitted a Construction Management Plan (Exhibit 75), which sets forth the actions the Applicant will take to minimize any impacts from construction of the proposed development on the adjacent communities.
16. After proper notice, the Commission held a hearing on the application on December 18, 2014. The parties to the case were the Applicant and ANC 8A.
17. At the public hearing, the Commission denied CCA's party status request based on the Commission's findings that: (i) CCA stated that it represented numerous other community groups and organizations, including ANC 8A, the Historic Anacostia Preservation Society ("HAPS"), and the Chicago Shannon Civic Association ("CSCA"), but provided no letters of authorization from those groups agreeing to the representation; (ii) CCA did not provide a list of individual members whom it represented, and further testified that none of CCA's members live within 200 feet of the PUD Site; and (iii) members of CCA are not significantly, distinctively, or uniquely affected by the proposed development on the PUD Site. However, the Commission granted CCA representatives additional time at the public hearing to present its case.
18. Two principal witnesses testified on behalf of the Applicant at the hearing: Stan Voudrie of Four Points, LLC; and Fernando Bonilla of Grimm + Parker Architects, who the Commission accepted as an expert in architecture. At the public hearing, the Applicant submitted its PowerPoint presentation (Exhibit 77).
19. Forty-three individuals and local organizations also submitted letters in support of the application (Exhibits 26, 27-30, 34-68, 70, 71, and 76).

20. OP and DDOT testified in support of the application at the public hearing. At the request of the Commission, OP indicated that it would work with the Applicant to establish appropriate conditions to approval.
21. At the public hearing, Commissioner Gretta Fuller of ANC 8A presented testimony and cross examined the Applicant's witnesses regarding the application. Commissioner Fuller's questions related to the lack of ground floor retail in Building 1, the insufficient amount of brick on the building façade, the need to address lighting and safety in the adjacent public alley, the use of the side yard, on-street parking restrictions for Building 1 residents, and the Applicant's commitment to a community benefits package. *See* Transcript, 12/18/2014, pp. 96-119.
22. At the public hearing, the Commission stated that there was nothing in the case record from ANC 8A that authorized Commissioner Fuller to represent the ANC regarding the application, as required pursuant to 11 DCMR § 3012.5(h). The Commission requested that ANC 8A submit a letter confirming that Commissioner Fuller is authorized to represent the ANC. *See* Transcript, 12/18/2014, pp. 188-189. However, ANC 8A did not subsequently submit documentation confirming Commissioner Fuller's representation. Therefore, the Commission treated Commissioner Fuller's testimony as that of an individual.
23. At the public hearing, five persons testified in support of the application and two persons testified in opposition to the application. The persons in support of the application were Kamal Freeman, Darren Davis, Ronald Moten, Anthony McDuffy, and Anthony Gualtier. The persons in opposition to the application were Camille Bourguigon, on behalf of CCA (*see* Transcript, 12/18/2014, pp. 144-158) and David White of CSCA (*see* Transcript, 12/18/2014, pp. 140-144).
24. On January 12, 2015, the Applicant submitted a post-hearing submission (Exhibit 80). The post-hearing submission included (i) revised architectural drawings (Exhibit 80A) showing the following, as requested by the Commission at the public hearing: updated fiber cement and metal panels; additional brick on the building's façade and on the Chicago Street sidewalk; plans and elevations of the roof structure and solar panels; additional details of the design and layout of the live/work units; updated layout and furniture for the side yard; perspectives of the revised roof deck; and multiple street level perspectives; (ii) a list of the additional proffers that the Applicant offered at the public hearing; (iii) an explanation of the phasing plan for the Overall PUD; (iv) an explanation of the Applicant's outreach with community members following the public hearing; and (v) a Community Benefits Agreement (Exhibit 80B) that the Applicant presented to the ANC and neighborhood stakeholders.
25. At its public hearing held on February 9, 2015, the Commission took proposed action by a vote of \_\_\_\_\_ to approve the applications and the architectural plans and elevations (the "Plans") that were submitted to the record (Exhibit 80A).

26. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") on \_\_\_\_\_ under the terms of the District of Columbia Home Rule Act. Exhibit \_\_. NCPC, by action dated \_\_\_\_\_, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital. Exhibit \_\_\_\_.
27. The Commission took final action to approve the application on \_\_\_\_\_, by a vote of \_\_\_\_\_.

### **The PUD Project**

28. The PUD Site is situated in Ward 8, just outside of the Anacostia Historic District, and is zoned C-3-A. The PUD Site is bounded by private property to the north, Martin Luther King Jr. Avenue, S.E. to the east, Chicago Street to the south, and a public alley to the west.
29. The Applicant proposes to develop the PUD Site with Building 1, a six-story residential building with approximately 68,263 square feet of gross floor area devoted to residential use, comprised of 71 residential units (plus or minus 10 percent), 26 below-grade parking spaces, 37 secure bicycle parking spaces, and various tenant amenities. Live/work units for local artists will be located on the ground floor. The building will have a maximum density of 2.85 FAR and a maximum height of 65 feet, not including roof structures, at its highest point.
30. The building will include a total of 71 units. Eighty percent of the residential units (i.e. 57 units) will be devoted to households earning up to 60 percent of the AMI. The income mix includes eight units at 30 percent of the AMI, 26 units at 50 percent of the AMI, and 23 units at 60 percent of the AMI. The remaining 20 percent of the units (i.e. 14 units) will be market-rate units. The building will contain a variety of unit sizes, including studios, one-bedroom units, and two-bedroom units.

### **Development Incentives and Flexibility**

31. With respect to development of Building 1, the Applicant requested the following areas of flexibility from the Zoning Regulations:
  - a. *Flexibility from the Loading Requirements* – Section 2201.1 of the Zoning Regulations requires that Building 1 include one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. The Applicant requests flexibility to provide one loading berth at 30 feet deep and one loading platform at 100 square feet, located outside of the building. The flexibility is necessary due to the limited area on the PUD Site to provide loading facilities. The project cannot accommodate a 55-foot truck due to the narrow width of the PUD Site and the grade change. However, the Commission finds that the proposed loading facilities are sufficient to serve the needs of the prospective residents of Building 1. Given the proposed unit mix, the

Commission finds that a 30-foot loading berth will adequately accommodate smaller-sized moving trucks that are anticipated to serve studios, one-bedroom, and two-bedroom rental units. The Commission further finds that the Applicant will be able to manage and schedule use of the loading berth and provide an organized process for residential move-ins and move-outs and contemporaneous deliveries.

- b. *Flexibility from the Side Yard Width Requirements* - Pursuant to Section 775.5 of the Zoning Regulations, no side yards are required for apartment houses in the C-3-A District. If a side yard is provided, it must be at least two inches wide for each foot of height of building, but not less than six feet. In this case, a minimum width of 10.8 feet is required. The Applicant proposes to provide a side yard on the northeast side of the building that has a minimum width of 30 feet, and a side yard on the southwest side of the building that has a minimum width of 6.7 feet, thus necessitating flexibility. The Commission finds that this proposed configuration is necessary to provide adequate space to accommodate the proposed amenities on the ground floor of the building. Moreover, despite full compliance with Section 775.5, there is ample open space, light, and air surrounding Building 1 in all directions. In addition to the compliant 30-foot side yard on the northeast side of the PUD Site, the PUD Site also has a front yard that varies between 3.86 feet and 6 feet deep and a rear yard that has an average depth of 38.76 feet. The PUD Site also has a significant amount of open space in its northeast corner. In addition, the southwest side yard complies with Section 775.5 for most of the building's width, providing additional light and air on this side of the PUD Site. Thus, the Commission finds that providing a side yard on the southwest side of the PUD Site that does not fully comply with the Zoning Regulations will not result in any adverse impacts to the open space on the PUD Site or on the enjoyment and comfort of building residents.
- c. *Flexibility from the Off-Street Parking Requirements* - Section 2101.1 of the Zoning Regulations requires one parking space for each two dwelling units, or in this case, a minimum of 36 parking spaces. The Applicant proposes to provide 26 parking spaces located in the below-grade garage, thus requiring flexibility. The Commission finds that 26 off-street parking spaces is sufficient to meet the anticipated parking demand for the building. The PUD Site is located in close proximity to multiple public transportation options. The Anacostia Metrorail Station, which services the Green Metrorail line, is located approximately one-quarter of a mile (a seven minute walk) from the PUD Site, and a bus stop is located directly in front the PUD Site, which services seven different Metrobus lines (90, A42, A46, A48, B2, P6, and U2) with three additional Metrobus stops located 0.1 mile away from the PUD Site (and servicing the 93, W2, and the DC Potomac Avenue/Skyland Avenue routes). There are also multiple car- and bike-share stations located within easy walking distance of the PUD Site, plus on-site bicycle parking for 37 bicycles, which will together provide additional alternative transportation options and reduce the need for residents of Building 1 to own a car. The Commission agrees with the DDOT report, which states that “it is not

anticipated [that] demand from this building will lead to needed on-street parking” (see DDOT Report, p. 5), and finds that the proposed number of parking spaces is a reasonable supply of parking for the land use and location of the PUD Site. Furthermore, the Commission finds that Building 1 is consistent with the Comprehensive Plan's goals of investing in transit-oriented development, improving pedestrian facilities, and transforming key District arterials into multi-modal corridors that incorporate and balance a variety of mode choices.

- d. *Flexibility from the Compact Parking Space Requirements* - The Applicant requests flexibility from the compact parking space requirements of Section 2115.4 of the Zoning Regulations. Section 2115.4 provides that compact parking spaces must be placed in groups of at least five contiguous spaces; however, the eight parking spaces proposed to be compact are not located in groups of at least five contiguous spaces. The Commission finds that providing the compact parking spaces is necessary in order to maximize the efficiency of the garage, provide as many parking spaces as possible, and maintain a drive aisle width of 20 feet. Furthermore, the compact spaces are clustered in the eastern corner of the garage to allow this space to be used efficiently, rather than as a underutilized dead-space. Thus, the Commission finds that no adverse impacts will result due to the proposed number and configuration of the compact parking spaces.

32. The Applicant also requests the following flexibility from Z.C. Order No. 08-07:

	Approved during First-Stage	Proposed Modifications for Second-Stage	Permitted in Zone C-3-A
<b>Lot size</b>	25,300 sf	23,976 sf	N/A
<b>Building footprint</b>	10,850 sf	11,366 sf	N/A
<b>Lot Occupancy</b>	43%	47%	75% (80% for projects subject to IZ)
<b>Building height</b>	60 feet (not including roof structures)	65 feet (no roof structures over 4 feet)	65 feet (90 feet for PUD)
<b>Residential use</b>	65,000 sf	68,263 sf	95,904 sf (4.0 FAR) (4.5 FAR for a PUD; 4.8 FAR for projects subject to IZ)
<b>Retail/office use</b>	0 sf	0 sf	59,940 (2.5 FAR)
<b>Number of residential units</b>	65 (plus or minus 10 percent)	71	N/A



<b>FAR</b>	2.57	2.85	4.0 FAR matter-of-right; 4.5 FAR for a PUD; and 4.8 FAR for projects subject to IZ
<b>Number of parking spaces</b>	33	26	36 (1 for 2 units)
<b>Number of bicycle parking spaces</b>	22	37	24 (1 for 3 units)
<b>Loading berth length (ft.)</b>	30	30 (no change)	55
<b>Loading platform area (sq. ft.)</b>	200	100	200
<b>Number of delivery/loading spaces</b>	None	None	1 at 20 ft.
<b>Rear Yard</b>	N/A	38.76 feet	13.5 feet minimum
<b>Side Yard</b>	N/A	Min. 6.7 feet S.W. side 30 feet N.E. side	10.8 feet minimum

33. Additional Areas of Flexibility – The Applicant requests flexibility in the following areas:
- To be able to provide a range in the number of residential units of plus or minus 10 percent from the 71 depicted on the Plans;
  - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - To vary the number, location, and arrangement of parking spaces, provided that the total is not reduced below the number required under the Zoning Regulations;
  - To vary the sustainable design features of the building, provided the total number of points achievable for the project does not decrease below 46 points under the Enterprise Green Communities standard.
  - To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases,

cornices, railings and trim; and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit.

### **Public Benefits and Amenities**

34. The Commission found in Z.C. Order No. 08-07 that a number of public benefits and amenities will be created as a result of the approved PUD. *See* Z.C. Case No. 08-07, Finding of Fact No. 33. The Commission finds that approval of the PUD, as modified, will continue to result in a number of public benefits and amenities, including:
- a. *Housing and Affordable Housing* – Building 1 will include approximately 68,263 square feet of gross floor area devoted to residential uses comprised of 71 new residential units (plus or minus 10 percent). The Applicant will devote 80 percent of the residential units, which constitutes 57 units and 41,644 square feet of gross floor area, to affordable units reserved for households earning at or below 60 percent of the AMI. The remaining 14 units will be market-rate. Under matter-of-right zoning in the C-3-A District, the Applicant would only have to dedicate eight percent of the residential gross floor area (i.e, 5,461 square feet of gross floor area) to households earning up to 80 percent of the AMI. Thus, the Applicant's proposal to provide 36,183 square feet of gross floor area over what the Zoning Regulations require, and at a significantly deeper subsidy, is a substantial amenity for this project. The creation of the new housing is also consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative.
  - b. *Partnership with Teach for America* - The Applicant has reached an agreement with Teach for America ("TFA"), where TFA will assist the Applicant in preparing residential marketing plans tailored to attracting teachers to become residents of Building 1. Through this partnership, TFA will be able to leverage its professional network to reach out to local teachers and encourage them to apply for affordable housing at the PUD Site. Based on this mutually-beneficial arrangement, the Applicant created a custom designed common area on the ground floor of Building 1 to incorporate a teacher work area where tenants can make copies of lesson plans at their convenience, among other amenities.
  - c. *Roof Deck Access* - The Applicant will permit ANC 8A, CSCA, and the Historic Anacostia Block Association ("HABA") to each access the roof terrace on Building 1 no less than two times per year for ANC, CSCA, and HABA events. Scheduling will be mutually agreed to by Building 1's tenant's association, property manager, and the ANC, CSCA, or HABA.
  - d. *Live/Work Studios* – Building 1 will include six ground floor live/work units to accommodate and attract resident artists. These flexible spaces will address the need for both housing and work space for local artists. Providing this type of space will retain the creative industry and entrepreneurial spirit of artists within

the community and will spur business development, encourage mixed income housing growth, and aid arts-related business and services in the area. Live/work units specifically designed and developed for local artists will encourage community development, neighborhood revitalization, and economic stimulation.

- e. *CBE and First Source Employment* - Expanding employment opportunities for residents and local businesses is a priority of the Applicant. Both Audubon (the project's financing consultant) and Four Points, LLC are Certified Business Enterprises (“CBEs”). In addition, a minimum of 35 percent of the eligible project costs will be contracted with CBE-certified firms. The Applicant will also enter into a First Source Employment Agreement with the Department of Employment Services in conjunction with development of Building 1.
- f. *Transportation and Public Space Improvements* – Building 1 will include a number of elements designed to promote effective and safe vehicular and pedestrian access, TDM measures, and connections to public transit services. For example, the Applicant located vehicular access in the public alley in order to limit potential conflicts with pedestrians and to maximize the pedestrian experience along Martin Luther King Jr. Avenue and Chicago Street. The proposed TDM measures are listed on page 21 of this Order. The Applicant also proposes a number of public space improvements adjacent to the PUD Site, including new street trees, bicycle racks, streetlight enhancements, and brick paving. In addition, the Applicant will ensure that Building 1 has a Chicago Street, S.E. address and will include in its residential leases a provision that prohibits tenants from obtaining residential parking permits for the PUD Site.
- g. *Environmental Benefits* - The Applicant is fully committed to providing high-quality housing in the District of Columbia. Through the development of Building 1, the Applicant will expand its commitment by ensuring the environmental, economic, and social sustainability of the residents through the implementation of sustainable design features. A number of strategies will be implemented to enhance the inherently sustainable nature of the site's location and to promote a healthy, desirable, and comfortable lifestyle that will fully benefit the project's residents while minimizing the impact on the environment. The proposed development provides a number of environmental benefits and includes street tree planting and maintenance, landscaping, methods to reduce stormwater runoff, and sustainable engineering practices. Building 1 is designed to meet rigorous energy and environmental design standards using the Enterprise Green Communities rating system as a guide and performance metric. A Green Communities checklist indicating the sustainable features of the project is included at pages 30-33 of the Plans. Green Communities is a nationally-recognized sustainability strategy designed specifically for affordable housing projects, and the program's sustainability requirements are equivalent to LEED for Homes Mid-Rise.

- h. Construction Management Plan – The Applicant will abide by the terms of the Construction Management Plan (Exhibit 75).

### **Compliance with the Comprehensive Plan**

35. The Commission finds that the proposed PUD, as modified, continues to: (i) be consistent with the District of Columbia Comprehensive Plan Future Land Use Map and the Generalized Policy Map; (ii) help implement many of the guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, connecting the city, and building green and healthy communities; and (iii) further the objectives and policies of the Comprehensive Plan's major elements, as set forth in the OP report (Exhibit 24) and as previously found by the Commission in Finding of Fact No. 39 of Z.C. Order No. 08-07 (Exhibit 4A). For example, the Commission finds that the project will support Policies LU-1.3.4 and T-1.1.4, since Building 1 is designed to encourage transit use and will help to enhance the safety, comfort, and convenience of passengers walking to the Anacostia Metrorail Station or transferring to and from local buses, since the project incorporates streetscape improvements, including lighting and landscaping. *See* Z.C. Order, Finding of Fact No. 39(a)(iii) and 39(b)(i). The Commission also finds that the project advances Policy LU-2.1.3 by balancing the area's housing supply with the parallel goals of protecting the neighborhood character and restoring the environment. *See* Z.C. Order, Finding of Fact No. 39(a)(iv). Furthermore, the Commission finds that the project promotes Policy LU-2.2.3 because it incorporates a number of elements designed to serve as buffers between the adjacent lower density and residential areas, including landscaping, height step-downs and set-backs, and other architectural and site planning measures that avoid potential conflicts. *See* Z.C. Order, Finding of Fact No. 39(a)(viii). The Commission further finds that the project also fosters Policies T-2.4.1 and UD-3.1.1/3.1.2 by promoting the city's streetscape design and sidewalk management goals by installing street trees, sidewalks, and plantings adjacent to Building 1 that will enhance the visual character of the street and provide a buffer to reduce the impacts of vehicle traffic; development of Building 1 will also help improve the city's sidewalk system to form a network that links residents across the District. *See* Z.C. Order, Finding of Fact No. 39(b)(iv) and 39(f). With respect to environmental protection, the Commission finds that the project is consistent with Policy E-1.1.1: Street Tree Planting and Maintenance, Policy E-1.1.3: Landscaping, and Policy E-2.2.1: Energy Efficiency. *See* Z.C. Order, Finding of Fact No. 39(d)(i)-(iii). Finally, the Commission finds that the project advances the Far Southeast and Southwest Area Element of the Comprehensive Plan, specifically by strengthening the Martin Luther King Jr. Avenue corridor with live/work units that will function in a similar fashion to traditional retail uses and will help to activate and facilitate pedestrian movements.
36. In addition, the Commission specifically finds that the modified PUD is consistent with *Policy H-1.2.3: Mixed Income Housing*, since the project is mixed-income and disperses affordable housing throughout the city, rather than concentrating such units in economically depressed neighborhoods. The Commission also finds that the project is consistent with *Policy H-1.2.5: Workforce Housing* because the pricing for the affordable

units will be set at a level that is affordable to teachers, firefighters, police officers, nurses, and members of the other occupational categories listed in Policy H-1.2.5. Finally, the Commission finds that the project is consistent with *Policy H-1.1.5: Housing Quality*, since the affordable units will meet the same high quality architectural standards provided for the market-rate housing on the overall PUD and will be indistinguishable from market rate housing in their exterior appearance.

### **Office of Planning Reports**

37. By report dated July 21, 2014 (Exhibit 13), OP stated that it supported the application and that the second-stage PUD, as modified, is not inconsistent with the first-stage PUD approval, the Comprehensive Plan, or the Zoning Regulations. Therefore, OP recommended that the Commission schedule a public hearing on the application.
38. By report dated November 24, 2014 (Exhibit 24), OP submitted a report recommending approval of the application. The OP report stated that the project conforms to the Comprehensive Plan's objectives for the area and to the Generalized Land Use and Policy Maps. *See* OP Report, p. 1. OP expressed its support for the design of Building 1, which "would positively add to the character and activity along MLK Avenue" (*id.* at p. 5), and stated that the proposed changes to Building 1 would not make the development inconsistent with the Comprehensive Plan, the C-3-A zone, or the overall concept of the first-stage PUD (*id.* at p. 8). Furthermore, OP stated its support for "granting all the areas of flexibility requested." *Id.* at p. 7. Overall, the OP report recommended approval of the application.

### **DDOT Report**

39. By report dated November 24, 2014 (Exhibit 25), DDOT indicated its support for the PUD. DDOT's report stated that: (i) the application is projected to minimally increase travel delay in the area, (ii) existing transit service, pedestrian infrastructure, and bicycle infrastructure has capacity to accommodate future demand, and (iii) the Applicant proposes to provide an adequate number of long-term bicycle parking spaces in bicycle storage rooms. *See* DDOT Report, p. 2. DDOT's report also indicated that the TDM measures proposed by the Applicant, if implemented as planned, would encourage the use of alternative modes of transportation and are largely adequate. *Id.* at 10. In addition to the TDM measures proposed by the Applicant, DDOT requested that the Applicant also install at least four short-term bicycle parking spaces for public access. *Id.* at 11. With this insertion, DDOT found that the TDM plan was sufficient to encourage non-auto travel and supported the high non-auto mode split assumed in the Applicant's transportation analysis. *Id.*

### **Contested Issues/Party in Opposition**

40. Commissioner Fuller and representatives of CCA raised concerns at the public hearing and in written testimony. The concerns raised by Commissioner Fuller included the following issues: materials and design of Building 1, obstruction of views, additional

traffic and reduced on-street parking availability, and disturbances during construction. *See* Exhibit 78 and Transcript, 12/18/2014, pp. 124-127. The concerns raised by CCA included the following issues: excessive height and density, obstruction of views, inappropriate design and character of the building, disturbances during construction, an over-concentration of housing and affordable housing at the PUD Site, and inadequate public benefits and amenities. *See* Transcript, 12/18/2014, pp. 140-158.

41. The Commission has carefully reviewed and considered each of the points made both in writing and orally at the public hearing, and makes the following findings:
  - a. Materials and Design of Building 1: There was testimony that Building 1 did not fit in with the character of the Anacostia Historic District and did not include sufficient brick on the building facades or an adequate number of windows. The Commission finds that the PUD Site is not within the Anacostia Historic District and is therefore not required to be submitted for review by HPO or the HPRB. The Commission finds that D.C. Code §§ 6-1105(a) and 1107(a) (2012 Repl.) provide that building permits for construction or alteration need only be reviewed under the historic preservation regulations when the construction or alteration is “in an historic district or on the site of an historic landmark” (D.C. Code § 6-1107(a)). The Commission finds that the PUD Site and most of the land area within the overall PUD are located outside of the boundaries of the Anacostia Historic District; that only two buildings within the overall PUD are located within the Historic District; and that those buildings will go through appropriate historic review processes during their second-stage PUD applications. The Commission therefore finds that the historic review process is inapplicable to Building 1. Furthermore, the Commission finds that the Applicant significantly changed the façade of the building to address concerns expressed by the ANC, CCA, and community members, adding substantial amounts of brick and additional windows, as specifically requested. *See* Plans at Exhibit 80A. Therefore, the Commission finds that the Applicant has adequately addressed all of the concerns raised relating to the materials and design of Building 1.
  - b. Views, height, and density: There was testimony that Building 1, at a height of 65 feet and at a density of 2.85 FAR, would obstruct views into the city and would be too dense. The Commission finds that the proposed height and density of Building 1 are well within the zoning parameters permitted in the C-3-A District, are appropriate for the PUD Site, and respond to the scale, orientation, and urban fabric of the surrounding area. The height of Building 1 serves as a transition between the existing low and mid-rise structures in the surrounding neighborhood to the east and south, and to the taller buildings approved as part of the first-stage PUD. Building 1 is only five stories along Chicago Street in order to make the scale transition more significant. Furthermore, the Commission finds that the first-stage PUD application did not change the underlying zoning for the PUD Site. The C-3-A District permits a matter-of-right building height of 65 feet (11 DCMR § 770.1), which is the exact height requested. As a PUD, the C-3-A District permits a maximum building height of 90 feet (11 DCMR § 2405.1), which is significantly taller than the height requested. Moreover, portions of the

building are shorter than the approved building height under the first-stage PUD, which permitted a maximum height of 60 feet plus roof structures, which could be constructed to a maximum height of 18 feet, 6 inches, resulting in a perceived building height of almost 80 feet. However, the building as currently proposed is 65 feet and only includes a three foot overrun.

Furthermore, the Commission finds that it is well settled in the District of Columbia that a property owner is not entitled to a view, light, or air across another person's property without an express easement. *See Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004) ("American courts have wisely refused to allow the acquisition by prescription of easements of light and air"); *see also Ash v. Tate*, 73 F.2d 518 (D.C. Cir. 1934) (no injunction under District of Columbia law to prevent adjoining landowner from erecting structure that cuts off light and air); Z.C. Order No. 11-03, Finding of Fact No. 91 ("[t]he Commission finds that the viewsheds and property values ... are not protected by any restrictive covenants or by the Zoning Regulations)."

Moreover, the Commission finds that the height and density of Building 1 is consistent with the Comprehensive Plan designations for the PUD Site. The Future Land Use Map designates the PUD Site for mixed use Medium Density Residential and Medium Density Commercial development. The corresponding Districts for these designations allow maximum building heights of 60 to 90 feet. 10A DCMR §§ 225.5 and 225.10. In contrast, the Future Land Use Map designates the surrounding neighborhoods to the east and south of the PUD Site as Moderate Density Residential, which generally defines areas characterized by single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings. 10A DCMR § 225.4. The Moderate Density Residential designation provides less intense corresponding zone districts, which include the R-3, R-4, R-5-A Districts and the R-5-B District in some locations. *Id.* Thus, the Commission finds that the Comprehensive Plan designation for the existing residential neighborhoods adjacent to the PUD Site is consistent with the low-rise row dwellings that currently exist in this location. Similarly, the Commission finds that development of the PUD Site is consistent with the District's vision for the area, with taller buildings along Martin Luther King Jr. Avenue. *See generally* 10A DCMR § 1807.2(d).

- c. *Traffic and Parking*: The Commission finds that the modified application provides a reasonable supply of parking for the land use and location of Building 1, given its close proximity to the Anacostia Metrorail station and numerous Metrobus routes. The Commission finds that the Applicant utilized sound methodology and travel assumptions in developing its traffic and parking assessments, and developed an appropriate mode split that indicates no adverse impacts to traffic and parking in the study area. *Id.* at p. 2. The Commission finds that there are no direct mitigations necessary as part of the development of Building 1 beyond the TDM plan proposed in Exhibit 25 and as set forth on page 21 of this Order. Based on the Applicant's Transportation Impact Study (Exhibit 22B) and the DDOT Report, the Commission finds that project will minimally

increase travel delay in the area, and that the existing transit service, pedestrian infrastructure, and bicycle infrastructure has capacity to accommodate future demand. *Id.* at p. 2.

- d. *Over-Concentration of Housing and Affordable Housing*: There was also testimony that Building 1 should include a mix of uses (e.g. ground floor retail) and a revised percentage of affordable and market-rate units. With respect to ground floor retail, the Commission finds that future second-stage applications for other buildings within the Overall PUD will include significant amounts of ground floor retail space along Martin Luther King Jr. Avenue and throughout the overall PUD, which will help revitalize the neighborhood's economic viability and improve the pedestrian experience. The Commission approved the development phasing in Z.C. Order No. 08-07, and the development of Building 1 is consistent with this approval. Furthermore, Building 1 will contain ground floor live/work units for local artists to present their arts and crafts. The Commission finds that the Applicant designed the live/work units and the ground floor building façade such that the live/work units will activate the street in a manner similar to that of ground floor retail. Therefore, the Commission finds that there will not be an overconcentration of housing on the PUD Site.

With respect to affordable housing, the Commission finds that the proposed amount of affordable housing for Building 1 will not result in an overconcentration of subsidized, income-capped housing. The proposed affordable housing is consistent with the city's housing and affordable housing goals, and implements numerous policies of the Comprehensive Plan, including *Policy 1.1.5: Housing Quality*; *Policy H-1.2.1: Affordable Housing Production as a Civic Priority*; *Policy H-1.2.3: Mixed Income Housing*; *Policy H-1.2.5: Workforce Housing*; and *Policy H-1.4.3: Focusing Housing Investments*. Moreover, the Commission finds that affordable housing will be spread throughout the Overall PUD and will not be overly concentrated in Building 1. The Commission also finds that the proposed provision of affordable housing achieves the Comprehensive Plan's overall housing goal of developing and maintaining a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia. 10A DCMR § 501.1. More specifically, the Commission finds that there is a critical need for affordable housing in Ward 8 and the Far Southeast and Southwest area in particular, the area of the city in which the PUD Site is located. As set forth in the Applicant's letter in response to the party status request (Exhibit 73), the medium income for residents of the Far Southeast and Southwest area, as defined in Chapter 18 of the Comprehensive Plan, is one-half of the city's medium income. 10A DCMR § 1805.1. In addition, the unemployment rate for this same area is more than three times the average rate for the Washington region. *Id.* at § 1805.1. Thus, the Commission finds that there is a great need for affordable housing in this area of the city and that the development of Building 1 will help to satisfy that demand.

- e. *Construction Mitigation* - The Commission finds that the Applicant adequately addressed the community's concerns related to construction impacts through its



Construction Management Plan (Exhibit 75). The Commission notes that a Construction Management Plan is not required as part of the PUD process.

42. Overall, based upon the written evidence of record, combined with the testimony presented at the public hearing on this application, the Commission finds that the materials and design of Building 1 are compatible with the surrounding neighborhood; that the height and density of Building 1 are consistent with the underlying zoning, the approved first-stage PUD, and the Comprehensive Plan; that the project will not adversely affect neighborhood traffic or on-street parking availability; that the project will not result in an over-concentration of affordable housing at the PUD Site; and that the Construction Management Plan will adequately mitigate the community's concerns regarding construction-related impacts.

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to modify the approved first-stage PUD and to consider the application for approval of a second-stage PUD. Because the modifications proposed by the Applicant could not be approved by the Zoning Administrator pursuant to § 2409.6, the Applicant submitted the proposed modifications to the Commission for approval, and because the modifications were not so minor as to permit their review under the Commission's Consent Calendar procedure, 11 DCMR § 3030, they were processed as a second-stage application. 11 DCMR § 2409.9.
3. As was the case for the original approval, the Commission, as part of its approval of a modification may grant or impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, or any other applicable zoning requirement.
4. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
5. The modified PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations and complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area and on the operation of city services is acceptable given the quality of the public benefits in the project.

6. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable tradeoffs for the requested development flexibility.
7. Approval of this modified PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Commission is required under § 3(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) (2001) to give great weight to the issues and conditions expressed in the written report of an affected ANC. ANC 8A did not submit a written report in this case.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.
10. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.* (2007 Repl.)

## 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 second-stage PUD and modifications to a first-stage PUD approved pursuant to Z.C. Order No. 08-07 subject to the following guidelines, conditions, and standards, which modify those contained in Z.C. Order No. 08-07 that relate to the PUD Site. For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the PUD Site. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the PUD Site, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner. Whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in bold and underlined text.

### A. PROJECT DEVELOPMENT

1. Building 1 shall be developed in accordance with the architectural plans and elevations prepared by Grimm + Parker, dated January 12, 2015 (Exhibit 80A) as modified by the guidelines, conditions, and standards herein.

2. In accordance with the Plans, Building 1 shall have a maximum density of 2.85 FAR and a gross floor area of 68,263 square feet devoted to 71 residential units (plus or minus 10 percent).
3. The maximum height of Building 1 shall be 65 feet, not including roof structures.
4. Building 1 shall include a minimum of 26 off-street parking spaces.
5. The Applicant is granted flexibility from the development parameters approved in Z.C. Order No. 08-07. The Applicant is also granted the specific flexibility from the loading requirements (§ 2201.1), the side yard width requirements (§ 775.5), the off-street parking requirements (§ 2101.1), and the compact parking space requirements (§ 2115.4), consistent with the approved Plans, including the Zoning Tabulation chart on Sheet 2 of the Plans, and as discussed in the Development Incentives and Flexibility section of this Order.
6. The Applicant shall also have flexibility with the design of Building 1 in the following areas:
  - a. To be able to provide a range in the number of residential units of plus or minus 10 percent from the 71 depicted on the Plans;
  - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - c. To vary the number, location, and arrangement of parking spaces, provided that the total is not reduced below the 26 spaces depicted in the Plans;
  - d. To vary the sustainable design features of the building, provided the total number of points achievable for the project does not decrease below 46 points under the Enterprise Green Communities standards.
  - e. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings and trim; and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit.

**B. PUBLIC BENEFITS**

1. **For the life of the project**, the Applicant shall dedicate 80 percent of the residential units in Building 1 as affordable dwelling units for households earning up to 60 percent of the AMI.
2. **For the life of the project**, the Applicant shall permit ANC 8A, CSCA, and HABA to each access the roof terrace of Building 1 no less than two times per year for ANC, CSCA, and HABA events, with scheduling to be mutually agreed to by Building 1's tenant association, property manager, and the ANC, CSCA, or HABA.
3. **For the life of the project**, the Applicant shall dedicate a minimum of six live/work units on the ground floor of Building 1.
4. **Prior to the issuance of a Certificate of Occupancy for Building 1**, the Applicant shall submit to DCRA an executed agreement with TFA or a similar organization, wherein that organization will assist the Applicant in preparing residential marketing plans tailored to attracting teachers to become residents in Building 1.
5. **For the life of the project**, the Applicant shall designate a common area on the ground floor of Building 1 as a teacher work area where tenants can make copies of lesson plans at their convenience.
6. **Concurrently with the construction of Building 1 and for the life of the project**, the Applicant shall install and maintain the landscaping and other public space improvements adjacent to the PUD Site as shown on the Plans (Exhibit 80A) subject to final approval by the Public Space Division of DDOT.
7. **Prior to the issuance of a building permit for Building 1 and for the life of the project**, Building 1 shall have a Chicago Street, S.E. address and the Applicant shall include in its residential leases a provision that prohibits tenants from obtaining residential parking permits for the property from the D.C. Department of Motor Vehicles.
8. **Prior to the issuance of a building permit for Building 1**, the Applicant shall submit to DCRA an executed First Source Employment Agreement with the Department of Employment Services, and an executed Certified Business Enterprise Utilization Agreement with the District's Office of Small and Local Business Development.
9. **The Applicant shall submit with its building permit application** for Building 1 a checklist indicating that Building 1 includes sustainable design features such that the building would be able to achieve a minimum of 46 points under Enterprise Green Communities standards.
10. **During construction of Building 1**, the Applicant shall abide by the terms of the Construction Management Plan (Exhibit 75).

11. **During the life of the project**, the Applicant shall implement the following TDM measures:

- a. A member of the property management group will be a point of contact and will be responsible for coordinating, implementing, and monitoring the TDM strategies. This would include the development and distribution of informational and promotional brochures to visitors, patrons, and employees regarding transit facilities and services, walk and bicycle facilities and linkages, and car sharing.
- b. The project website will provide links to existing resources such as [www.goDCgo.com](http://www.goDCgo.com), which provides transportation information and options for getting around the District. In addition, an electronic message board will be placed in the lobby that displays information such as real-time transit information for the closest bus or rail stops and bikes available at nearby Capital Bikeshare stations.
- c. Residents will be offered a SmarTrip card pre-paid with \$20 to encourage the use of transit to be distributed when moving in. This program will be limited to one card per unit, and will only be employed on the initial move-in.
- d. The Applicant will provide a secure room inside the garage for long-term resident bicycle parking, and some racks outside for visitor or short-term bicycle parking. The development will provide a total of 37 secure bicycle parking spaces for use by residents in the parking garage.
- e. The Applicant will install at least four short-term bicycle parking spaces for public access. The exact location of short-term bicycle parking spaces will be determined during the public space permitting process.

### **C. MISCELLANEOUS**

1. The project, as now modified by the Commission, shall be valid until \_\_\_\_\_, within which time, an application must be filed for a building permit for Building 1 as specified in 11 DCMR § 2409.1. Construction must commence no later than \_\_\_\_\_.
2. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
3. 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 which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On \_\_\_\_\_, 2015, upon the motion of Commissioner \_\_\_\_\_, as seconded by Commissioner \_\_\_\_\_, the Zoning Commission **APPROVED** the application at its public meeting by a vote of \_-\_- (NAMES OF COMMISSIONERS, to approve).

On \_\_\_\_\_, 2015, upon the motion of Commissioner \_\_\_\_\_, as seconded by Commissioner \_\_\_\_\_, the Zoning Commission **ADOPTED** the Order at its public meeting, by a vote of \_-\_- (NAMES OF COMMISSIONERS, to approve).

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