

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-08
Z.C. Case No. 11-08

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**Consolidated Approval for a Planned Unit Development, Zoning Map
Amendment Plan Amendment of Il Palazzo LLC (Square 2578, Lot 26)**

Pursuant to notice, the Zoning Commission for the District of Columbia (“**Commission**”) held a public hearing on September 8, 2011, to consider an application from Il Palazzo LLC (the “**Applicant**”) for consolidated review and approval of a planned unit development (“**PUD**”) and related Zoning Map amendment. The Zoning Commission considered the application pursuant to Chapters 4, 24 and 30 of the District of Columbia Zoning Regulations; Title 11 of the District of Columbia Municipal Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR Section 3022. For the reasons stated below, the Zoning Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties and Hearing

1. The project site consists of Square 2578, Lot 26, more commonly known as 2700 16th Street, NW (“**Property**” or “**Subject Property**”). (Exhibit 4, p. v; Exhibit 15, p. v)
2. The Subject Property consists of approximately 42,494 square feet of land area. The Subject Property is bounded by 16th Street, NW to the east, Mozart Place, NW to the west, Fuller Street, NW to the south and property of the Scottish Rite Temple to the north. The Property is located just south of Columbia Road. (Exhibit 4, pp. 1,4; Exhibit 15, pp. 1,4)
3. The Subject Property is currently improved with the former Italian Embassy on the eastern portion of the lot. The western portion of the lot is unimproved. The Subject Property is located in the Mount Pleasant neighborhood. (Exhibit 4, p. 4; Exhibit 15, p. 4.)

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4. The Applicant initially filed its application on March 24, 2011. The application requested consolidated review and approval of a Planned Unit Development (“PUD”) and PUD-Related Map Amendment to rezone the portion of the Property located in the D/R-5-B Zone to the R-5-D Zone. The Office of Planning provided its report on April 14, 2011, and the case was set down for a public hearing on April 25, 2011. (Exhibits 4, 11; April 25, 2011 Transcript, p.76.)

5. The Applicant provided its prehearing statement on May 26, 2011 and a public hearing was timely scheduled for September 8, 2011. (Exhibits 15, 16.)

6. A public hearing was held on September 8, 2011. Testimony was presented by the Applicant’s project team, including the architect and transportation consultant. The Applicant also submitted its proposed community amenities, a supplemental transportation analysis in support of the proposed circulation of the site, as well as a letter from a trash consultant supporting the proposed circulation of the project. (September 8, 2011 Transcript (“Transcript”), p. ____).

7. There were no requests for party status.

8. At the close of the hearing, the Commission asked for a detailed roof plan, a LEED Checklist, a sun study, additional information on parking and an updated property owners list and corresponding labels. The Applicant submitted the requested information on September 15, 2011. The ANC was provided until October 6, 2011, to respond to the Applicant’s filing. (Transcript, p. ____)

9. The Zoning Commission took proposed action to approve the application at its public meeting on September 26, 2011 by a vote of _____. It requested additional information regarding the courtyard in the northwest corner of the site and asked the Applicant to evaluate

unit placement along the courtyard in the event the adjacent property were to be developed in the future. The Applicant timely submitted the requested information on October 6, 2011. (September 26, 2011 Transcript, p. ____)

10. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to the District of Columbia Home Rule Act. NCPC, by action dated October 5, 2011, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

11. The Commission took final action to approve the application in Case No. 11-08 on October 17, 2011 by a vote of _____. (October 17 Transcript, p. ____)

The Subject Property and Surrounding Area

12. The Subject Property consists of approximately 42,494 square feet of land area and is bounded by 16th Street, NW to the east, Mozart Place, NW to the west, Fuller Street, NW to the south and property of the Scottish Rite Temple to the north. The Property is located just south of Columbia Road. (Exhibit 4, p. 4; Exhibit 15, p. 4.)

13. The Property is currently improved with the former Italian Embassy on the eastern portion of the lot. The western portion of the lot is unimproved. (Id.)

14. The Subject Property is located in the same square as the Scottish Rite Temple and the Unification Church of Washington, D.C. It is located across Fuller Street from the Embassy of Poland and the Embassy of Lithuania, which are located further south on 16th Street. The Property is directly across the Street from the former site of the Embassy of Spain. ~~The Property is located along a strip of 16th Street that is dedicated primarily to institutional~~ uses, the majority of which have religious or government affiliations. (Id.)

15. The site is approximately six blocks to the west of the Columbia Heights Metrorail Station located at the intersection of 14th and Irving Streets, NW. (Id.)

Existing and Proposed Zoning

16. The Property is split-zoned: the eastern portion of the Property is located in the R-5-D Zone District and the western portion is located in the D/R-5-B Zone District in the Diplomatic Overlay. All of the properties along 16th Street, to the north, south and east, are all located in the R-5-D Zone District. The property immediately to the north, the Scottish Rite Temple, is located entirely in the R-5-D Zone District for the entire depth of the lot between 16th Street, NW and Mozart Place, NW. The western portion of the Property is the only parcel in Square 2578 that is not located in the R-5-D Zone District. (Id.)

17. The Applicant requested approval of a PUD-related map amendment for the portion of the Property located in the D/R-5-B Zone District to the R-5-D Zone District. (Exhibit 4, Tab B.)

Description of the PUD Project

18. The Applicant plans to renovate the former Italian Embassy building, which is designated as a historic landmark on the District of Columbia Inventory of Historic Sites. The Applicant will construct an eight-story addition on the rear of the Property, which will be connected to the historic resource via an above-grade corridor to the north of the building. The development will be dedicated entirely to residential use and will include approximately 60-90 spaces of below-grade parking. (Exhibit 4, p. 6; Exhibit 15, p. 6.)

19. The development will include 110-135 residential units, including six affordable units, ~~at least five of which will be two-bedroom family units, which will be reserved for~~ households with an annual income no greater than 80% of the Annual Median Income. (Id.; Exhibit 30.)

20. The project will consist of 123,061 square feet of gross floor area, or a 2.8 floor area ratio ("FAR"), which is well within what is permitted for a PUD in the R-5-D Zone District. The building will have a lot occupancy of 58% and a rear yard of 80 feet, as measured from the centerline of 16th Street. (Exhibit 4, p. 6; Exhibit 15, p.6; Exhibit 30)

21. There will be four curb cuts on the Property. The garage entrance will be accessed via a right-hand turn from Fuller Street, a one-way roadway with westbound traffic. Vehicles will exit the garage with a right-hand turn onto Mozart Place, another one-way roadway with northbound traffic. Loading will be accessed via Mozart Place. Vehicular access to the Property will also be permitted via the circular driveway on 16th Street, NW. The use of the circular drive, however, will not be used as a primary point of vehicular access to the site. Three of the four proposed curb cuts for the project currently exist on the site. (Exhibit 30, Tab A.)

22. The design of the project can be broken into two components: the existing building and the addition to the rear. The addition consists of an eight-story, L-shaped tower with a shorter five-story component at the corner of Mozart Place and Fuller Street. The intentional stepping down of the building responds to the scale of the apartment building across Fuller Street and townhouses across Mozart Place from the development. The maximum height of the building is 83 feet, 4 inches, which steps down to 56 feet, 10 inches across the street from the townhouses on Mozart Place. (Exhibit 15, p. 7; Exhibit 30, Tab A.)

23. The Applicant will renovate the existing building and convert it to residential units. It will preserve many of the grand common spaces in the building. (Exhibit 30, Tab A.)

Applicant's Testimony

24. At the public hearing, Will Lansing of Valor Development, testified on behalf of the Applicant. Mr. Lansing provided a background of Valor Development and an overview of

the proposed project's history and development team. He also testified to his community outreach efforts. (Transcript, p. _____.)

25. Patrick Cooke of Trout Design Studios testified as a project designer. He testified to the overall massing, design, and materials of the proposed building. Daniel Van Pelt was accepted as an expert in traffic engineering and he testified to the traffic impacts of the project. He also testified to the importance of maintaining a garage entrance off of Fuller Street and a garage exit and loading off of Mozart Place. He testified that it was not feasible to eliminate the curb cut on Mozart Place to provide only one curb cut from Fuller Street to serve as both the garage entry and exit. Not only would this have impacts on the efficiency of parking in the building, it would eliminate on-site loading facilities, including a service room. One of the greater implications of this would be that trash would need to be wheeled from the building to sit on the curb for pick-up. It would also increase vehicular traffic traversing the Mozart Place and Fuller Street intersection, increasing the potential for vehicular and pedestrian conflicts. Van Pelt testified that he was in fact brought on to the project team as a peer reviewer to confirm the findings of the Applicant's initial traffic consultant. A. Morton Thomas. A. Morton Thomas reached a similar conclusion regarding the curb cuts and the Applicant retained Gorove/Slade to confirm the findings in light of comments from DDOT. (Transcript, p. ____; Exhibits 25, 26, 27.)

Density Proposed and Flexibility Requested

26. The total gross floor area included in the proposed PUD project is approximately 123,061 square feet of residential gross floor area for a total Floor Area Ratio ("FAR") of approximately 2.83. Building heights range from 56 feet to 84 feet. The proposed FAR and building heights are significantly less than those permitted for a PUD in the R-5-D Zone District. (T

27. The Applicant requested flexibility from the court requirements for the court located in the northwest corner of the Property. The Applicant also sought flexibility from the penthouse requirements for a uniform roof to the penthouse and for providing a single penthouse. The Zoning Commission has the authority to grant this flexibility pursuant to Sections 2405.5, and 2405.7 of the Zoning Regulations. (Exhibit 19, p. 18)

28. The Applicant also sought flexibility to provide mechanical parking in place of conventional parking. (Transcript, p. _____.)

29. Finally, the Applicant requested flexibility to respond to any comments initiated by the Historic Preservation Review Board or Historic Preservation Office in connection with their final review of the project. (Transcript, p. _____.)

30. The Applicant, in its written submissions and testimony before the Commission, noted that the following benefits and amenities will be created as a result of the project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403. (Transcript, p. ____; Exhibit 4, pp.16-18; Exhibit 15, pp. 16-18; Exhibit 21, pp.2-3; Tabs B, C.)

(a) Housing and Affordable Housing: Pursuant to Section 2403.9(f) of the Zoning Regulations, the PUD guidelines state that the production of housing and affordable housing is a public benefit that the PUD process is designed to encourage. This project will create approximately 110-135 residential units, with 6 units reserved for households earning up to 80% of the Area Median Income. At least five of the affordable units will be two-bedroom units and at least one of the affordable units will be located in the historic landmark.

(b) Urban Design, Architecture, Landscaping, or Creation of Open Spaces: Section 2403.9(a) lists urban design and architecture as categories of public benefits and

project amenities for a PUD. The project exhibits all of the characteristics of exemplary urban design and architecture. The project will invigorate a vacant site along a major District corridor. The superior architecture of the addition complements the landmark and highlights the historic resource rather than overpowering it. The Applicant is incorporating high quality materials and a quality design that is consistent with the surrounding neighborhood as well as the landmark.

(c) Site Planning, and Efficient and Economical Land Uses: Pursuant to Section 2403.9(b) of the Zoning Regulations, “site planning, and efficient and economical land utilization” are public benefits and project amenities to be evaluated by the Zoning Commission. The creation of this significant residential project on the Subject Property and the preservation of a historic landmark is an example of appropriate site planning and efficient and economical land use as a project amenity. The landmark is currently vacant and its conversion to residential use will return an underutilized site to a contributing part of the community and will enhance greatly the 16th Street corridor.

(d) Effective and Safe Vehicular and Pedestrian Access: The Zoning Regulations, pursuant to Section 2403.9(c), state that “effective and safe vehicular and pedestrian access” can be considered public benefits and project amenities. The Applicant is proposing a simple circulation plan for the Project, which will diminish vehicular and pedestrian conflicts at the intersection of Mozart Place and Fuller Street. All vehicular traffic will enter the parking garage from Fuller Street and, similarly, all vehicular traffic will exit the garage from a single exit onto Mozart Place.

A. Morton Thomas and Associates prepared a Transportation Impact Study for the Project. Based on its findings, the Project is contextually appropriate and will not

exacerbate existing conditions. In fact, the analysis concludes that only half of the residents will use their personal vehicle for travel to and from work. Accordingly, the Project will have a limited effect on the road network during peak times.

(e) Uses of Special Value: According to Section 2403.9(i), “uses of special value to the neighborhood or the District of Columbia as a whole” are deemed to be public benefits and project amenities. The Applicant has agreed to provide the following project amenities as a result of this project:

(i) Employment Agreement: the Applicant shall hire a minimum of 12 District of Columbia residents for construction positions for the duration of the development of a construction project in the District of Columbia. The positions are not limited to the development of Il Palazzo. The Applicant shall also host job fairs for District residents at least once every 90 days.

(ii) Renovation of Commercial Kitchen at Festival Center: The renovation of the kitchen shall include the demolition and moving of the men’s restroom, demolition and building of the new kitchen space and installation of the new kitchen equipment. In the event the Festival Center is not ready to move forward with its renovations at the time the Applicant is ready to secure a certificate of occupancy, the Applicant shall work with the ANC to revise the timeline of the renovation.

(iii) Tree Fence Buy-In Program: the Applicant shall establish a tree fence buy-in program with the Reed-Cooke Neighborhood Association and the Applicant shall contribute \$50,000 to the program. Once the program is established, the Applicant shall be responsible for selling and installing up to 625 tree fences. The tree fences shall be sold at-cost.

(iv): Sarah's Circle Repairs: the Applicant shall survey and repair all visible damage to units in Sarah's Circle caused by the August 2011 earthquake.

(v): HD Cooke Elementary School Investments: the Applicant shall provide the following materials to the HD Cook Elementary School: library books that reflect the IB learner profile, key concepts and attitudes in Spanish and English, choral sheet music to support the choral program, and musical instruments to support the band program. The Applicant shall also establish the following prior to commencement of construction of the Project: scholarship for H.D. Cooke Elementary School Students to attend classes at the SITAR art center also located in the Adams Morgan Area, and funding to support training parents with local community agency. Training to be focused in one of the areas of job readiness, computer basics, educational advocacy, life skills, and language acquisition.

(f) Revenue for the District: Section 2403.9(i) states that "uses of special value to the neighborhood or the District of Columbia as a whole" are deemed to be public benefits and project amenities. The creation of approximately 110-135 new households will result in the generation of significant additional tax revenues for the District.

(g) Employment and Training Opportunities: According to Section 2403.9(e), "employment and training opportunities" are representative public benefits and project amenities. The Employment Agreement that the Applicant has entered into with the ANC will guarantee that at least 12 District residents will be hired at construction job sites throughout the city and that job fairs will be held at least every 90 days for the duration of the Il Palazzo project.

(h) Comprehensive Plan: According to Section 2403.9(j), public benefits and project amenities include “other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.” The proposed PUD is consistent with and furthers many elements and goals of the Comprehensive Plan.

(i) Public Benefits of the Project: Sections 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. This PUD project will include many, if not all, of the attributes of PUD projects that have been recently approved by the Zoning Commission, including:

- Superior architecture;
- Affordable housing;
- Transit-oriented development;
- Job creation;
- Low impact design features;
- Financial support for local schools;
- Job preparedness training; and
- Preservation and renovation of a historic landmark.

Comprehensive Plan

31. The proposed PUD is consistent with and fosters numerous policies and action items enumerated in the Comprehensive Plan. The Subject Property is located in the Moderate Density Residential land use category on the Future Land Use map. The Framework Element provides guidelines for using the Future Land Use Map. This Element states that the Future Land Use map should be interpreted “broadly” and that zoning for an area should be guided by the Future Land Use Map interpreted in conjunction with the text of the Comprehensive Plan. The Element also clearly provides that density and height gained through the Planned Unit

Development process as bonuses that may exceed the typical ranges cited for each land use category. Despite the Property's designation as appropriate for moderate density residential development under the Future Land Use Map, by the Plan's own terms, it should be used only as guidance and not as a definitive source for appropriate uses. In this case, it is significant that the property immediately adjacent to the Property is located in the R-5-D Zone District and it shares the same Comprehensive Plan designation. (Exhibit 4, p. 18; Exhibit 15, p. 19.)

32. The Plan cites the importance of transit-oriented development and the redevelopment of underutilized properties. The project is consistent with the following policies: (Exhibit 4, p. 19; Exhibit 15, pp. 19-20.)

- ***Policy LU-1.2.7: Protecting Existing Assets on Large Sites:*** Identify and protect existing assets such as historic buildings, historic site plan elements, important vistas, and major landscape elements as large sites are redeveloped.
- ***Policy LU-1.3.2: Development Around Metrorail Stations:*** Concentrate redevelopment efforts on those Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. Ensure that development above and around such stations emphasizes land uses and building forms which minimize the necessity of automobile use and maximize transit ridership while reflecting the design capacity of each station and respecting the character and needs of the surrounding areas.
- ***Policy LU-2.1.1: Variety of Neighborhood Types:*** Maintain a variety of residential neighborhood types in the District, ranging from low-density, single family neighborhoods to high-density, multi-family mixed use neighborhoods. The positive elements that create the identity and character of each neighborhood should be preserved and enhanced in the future.
- ***Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods:*** Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to "create successful neighborhoods" in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others.
- ***Policy LU-2.1.4: Rehabilitation Before Demolition:*** In redeveloping areas characterized by vacant, abandoned, and underutilized older buildings, generally encourage rehabilitation and adaptive reuse of existing buildings rather than demolition.

- ***Policy LU-2.2.4: Neighborhood Beautification:*** Encourage projects which improve the visual quality of the District's neighborhoods, including landscaping and tree planting, façade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements.

The Project is consistent with the land use element as it is renovating an underutilized structure on an underutilized site and returning it to contributing part of the community. The development will provide additional housing options for residents of the District and it is improving property that is proximately located to both a Metrorail station and several bus lines.

33. The Project furthers several of the Housing policies of the Comprehensive Plan as well: (Exhibit 4, p. 20; Exhibit 15, p. 20.)

- ***Policy H-1.1.1: Private Sector Support:*** Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives.
- ***Policy H-1.1.5: Housing Quality:*** Require the design of affordable housing to meet the same high-quality architectural standards required of market-rate housing. Regardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance and should address the need for open space and recreational amenities, and respect the design integrity of adjacent properties and the surrounding neighborhood.
- ***Policy H-1.2.1: Affordable Housing Production as a Civic Priority:*** Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city.
- ***Policy H-1.2.3: Mixed Income Housing:*** Focus investment strategies and affordable housing programs to distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing.
- ***Policy H-1.3.1: Housing for Families:*** Provide a larger number of housing units for families with children by encouraging new and retaining existing single family homes, duplexes, rowhouses, and three- and four-bedroom apartments.

- ***Policy H-4.1.1: Integration of Special Needs Housing:*** Integrate special needs housing units throughout the city rather than segregating them into neighborhoods that already have high concentrations of such housing.

The Project is providing luxury residential housing along a critical transportation corridor in the District. The units will be spacious with a significant amount of corresponding green space on the lot. The Project will offer primarily one bedroom and two bedroom units; however, it will provide the option of studios as well as three bedroom units. There will be a mix of units available to families as well as single people. Further, the Project will dedicate five of its two-bedroom units to affordable housing. This will enable families to live in the neighborhood, an area that has become increasingly unaffordable for many.

34. The development is consistent with the following environmental policies:

(Exhibit 4, p. 21; Exhibit 15, pp.21-22.)

Policy E-1.1.3: Landscaping: Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity.

Policy E-3.1.1: Maximizing Permeable Surfaces: Encourage the use of permeable materials for parking lots, driveways, walkways, and other paved surfaces as a way to absorb stormwater and reduce urban runoff.

Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff: Promote an increase in tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction and adaptive reuse, and the application of tree and landscaping standards for parking lots and other large paved surfaces.

The development adaptively reuses an existing building, which greatly minimizes the impact of the development. Further, the site plan was developed so as to incorporate significant amounts of green space. The Project only occupies 58% of the Property, which provides a significant amount of green space for landscaping and passive recreation.

35. The development is thoughtfully designed to incorporate elements of the existing building as the surrounding community. It is of an appropriate scale and use and promotes several urban design policies of the District: (Exhibit 4, p. 22; Exhibit 15, p. 22.)

- ***Policy UD-1.3.7: Neighborhood Connectivity:*** Improve the physical connections between neighborhoods and nearby waterfronts. Where feasible, extend the existing city grid into large waterfront sites to better connect nearby developed areas to the shoreline.
- ***Policy UD-1.4.1: Avenues/Boulevards and Urban Form:*** Use Washington's major venues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/ boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city.
- ***Policy UD-1.4.3: Avenue/Boulevard Vistas and View Corridors:*** Protect views and view corridors along avenues/boulevards, particularly along streets that terminate at important civic monuments or that frame distant landmarks. Vistas along such streets should be accentuated by creating more well-defined street walls, improving landscaping, and requiring the highest architectural quality as development takes place.
- ***Policy UD-2.2.7: Infill Development:*** Regardless of neighborhood identity, avoid overpowering contrasts of scale, height and density as infill development occurs.
- ***Policy UD-2.2.2: Areas of Strong Architectural Character:*** Preserve the architectural continuity and design integrity of historic districts and other areas of strong architectural character. New development within such areas does not need to replicate prevailing architectural styles exactly but should be complementary in form, height, and bulk.

The Project will respond appropriately to the existing institutional and residential uses surrounding the site. It will balance the varying uses, densities, and design of these structures, and at the same time, preserve the integrity of the historic resource.

36. One of the primary assets of this Project is its preservation of the former Italian Embassy. The Applicant's preservation of the building is consistent with Historic Preservation policies of the Comprehensive Plan: (Exhibit 4, p.23; Exhibit 15, p. 23.)

- ***Policy HP-2.4.1: Rehabilitation of Historic Structures:*** Promote appropriate preservation of historic buildings through an effective design review process. Apply design guidelines without stifling creativity, and strive for an appropriate balance between restoration and adaptation as suitable for the particular historic environment.

- ***Policy HP-2.4.2: Adaptation of Historic Properties for Current Use:*** Maintain historic properties in their original use to the greatest extent possible. If this is no longer feasible, encourage appropriate adaptive uses consistent with the character of the property.
- ***Policy HP-2.4.3: Compatible Development:*** Preserve the important historic features of the District while permitting compatible new infill development. Within historic districts, preserve the established form of development as evidenced by lot coverage limitations, yard requirements open space, and other standards that contribute to the character and attractiveness of those areas. Ensure that new construction, repair, maintenance, and improvements are in scale with and respect historic context through sensitive siting and design and the appropriate use of materials and architectural detail.
- ***Policy HP-2.4.4: Suitability to the Historic Context:*** Apply design standards in a manner that accounts for different levels of historic significance and different types of historic environments. Encourage restoration of historic landmarks while allowing enhancements of equivalent design quality, provided such enhancements do not damage the landmark. Exercise greater restraint in residential historic districts and areas with a clear prevailing development pattern or architectural style. Allow greater flexibility where the inherent character of historic properties can accommodate greater intervention or more dramatic new design, for example, in non-residential areas and in areas without a significant design pattern.
- ***Policy HP-2.4.5: Protecting Historic Building Integrity:*** Protect historic buildings from demolition whenever possible, and protect the integrity of whole buildings. Discourage treatments like facadism or relocation of historic buildings, allowing them only when there is no feasible alternative for preservation, and only after a finding that the treatment is necessary in the public interest. Waivers or administrative flexibility should be provided in the application of building and related codes to permit maximum preservation and protection of historic resources while ensuring the health and safety of the public.

The Historic Preservation Review Board noted that the Project successfully responds to the existing developments adjacent to the Property. It further supports the development with respect to the relationship between the addition and the historic resource. The design respects the significance of the former Embassy building yet it is architecturally significant in its own right. The cohesion of both elements of the Project create a presence along 16th Street that will only strengthen this historic corridor. Even further, the Applicant is doing more than preserving the exterior spaces. It recognizes that the interior spaces also contribute to the historic integrity of the landmark and it is keeping those grand rooms intact and it is making them available to be enjoyed by residents.

37. The Property is a part of the Mid-City Area Element. The development is consistent with the following policies of the Area Element: (Exhibit 4, p. 24; Exhibit 15, p. 24.)

- ***Policy MC-1.1.1: Neighborhood Conservation:*** Retain and reinforce the historic character of Mid-City neighborhoods, particularly its row houses, older apartment houses, historic districts, and walkable neighborhood shopping districts. The area's rich architectural heritage and cultural history should be protected and enhanced.
- ***Policy MC-1.1.2: Directing Growth:*** Stimulate high-quality transit-oriented development around the Columbia Heights, Shaw/Howard University, and U St./African American Civil War Memorial/Cardozo Metrorail station areas, as well as along the Georgia Avenue corridor and the North Capitol Street/Florida Avenue business district. Opportunities for new mixed income housing, neighborhood retail, local-serving offices, and community services should be supported in these areas, as shown on the Comprehensive Plan Policy Map and Future Land Use Map.
- ***Policy MC-1.1.7: Protection of Affordable Housing:*** Strive to retain the character of Mid-City as a mixed income community by protecting the area's existing stock of affordable housing units and promoting the construction of new affordable units.

The Project will provide residential housing that will be available to households of different income levels. It will integrate affordable units with market-rate units. It will also make units available to families, seniors, and single individuals. It will be a true mix of residents, much like District policy intends.

Government Agency Reports and District Government

38. By report dated August 29, 2011, the Office of Planning ("OP") recommended that the proposed PUD and related Zoning Map amendment should be approved. In its report, OP stated, "The proposal is not inconsistent with the Comprehensive Plan, including the Future Land Use and Policy Map." (Exhibit 22, p.1).

39. The Office of Planning further found that the “shift in height and density on the site would preserve the site’s important historic features while permitting a compatible and sensitive addition.” (Id. at p. 11.)

40. By its report dated August 31, 2011, DDOT recommended approval of the PUD and related Zoning Map amendment. DDOT voiced concerns with the number of curb cuts on the site and indicated that it opposed providing more than one curb cut on the Property. Specifically, it stated its opposition to the two existing curb cuts on 16th Street due to the fact that they do not meet the DDOT Traffic Safety Division requirement that no curb cut shall be within 60 feet of an intersection. It noted its opposition to the curb cut on Mozart Place given the two existing curb cuts on the adjacent property. It opposed there being 72 feet of curb cuts along a single block of Mozart Place. (Exhibit 23, pp.1-4.)

41. In its testimony at the hearing, DDOT reiterated its concerns with providing four curb cuts for the Property. (Transcript, p. ____)

42. The Applicant provided evidence from two different traffic consultants that the curb cut on Mozart Place was necessary for the proper day to day functioning of the building. The curb cut on Mozart Place was necessary for loading and for trash pick-up. The Applicant submitted a letter from a trash company indicating that there was a risk that the Applicant would not be able to secure a private trash collection service for the site if there was no curb cut on Mozart Place to accommodate a trash and service room. Without a curb cut on Mozart Place, the Applicant would be forced to haul trash to the curb for pick-up, several times a week. This would not be ideal from a pedestrian point of view or from a cleanliness point of view. The Applicant also provided evidence of the level of use of the curb cuts on the adjacent property. It is insignificant, diminishing the risk the multiple curb cuts pose to pedestrians.

Finally, the Applicant noted that its curb cut is designed to align with the alley on the north side of Mozart Place, making it visible for pedestrians. Further, by providing a curb cut on Mozart Place, cars exiting the garage will avoid the intersection of Mozart Place and Fuller Street, thus minimizing pedestrian and vehicular conflicts at an already busy intersection. With respect to the curb cuts on 16th Street, the Applicant provided evidence that it is an existing condition that exists at numerous properties in the vicinity along 16th Street. It further noted that the Historic Preservation Office specifically requires the preservation of the driveway (even if it is not functional); elimination of the curb cuts but maintenance of the driveway would cause confusion and create a hazard for motorists. Finally, the curb cuts are an existing condition and have not been responsible for any motor vehicle accidents since their establishment as far as accident records can establish. (Transcript, p. ____; Exhibits 25-27.)

43. The Historic Preservation Review Board Staff Report was submitted by the Applicant into the record. It stated that the “[w]hile there is additional refinement to be done, the revised proposal addresses and successfully resolves the height and massing concerns raised by the earlier design. The HPO recommends that the Board approve the overall conceptual design for new construction on the site, and direct the applicants to continue working with the staff on design development.” (Exhibit 15, Tab B.)

ANC 1C Report

44. ANC 1C voted unanimously in support of the application conditioned on the provision of the amenities package that the Applicant presented at the public meeting, which is consistent with the amenities package outlined in Paragraph 30(e) above. It further noted that ~~it expressed “strong support for the originally submitted creation of two curb cuts; one on Fuller Street, NW and one on Mozart Place, NW...”~~. (Exhibit 28).

45. The ANC supplemented its report on October 6 to address the Commission's concerns regarding whether residents of the proposed building should be permitted to take part in the Residential Parking Program. The ANC's resolution states _____. (Exhibit ____.)

46. At the public hearing, the chairperson of the ANC, Wilson Reynolds, testified in support of the application. (Transcript, p. ____)

Parties and Persons in Support

47. There were no parties or persons in support of the application.

Parties and Persons in Opposition

48. There were no parties or persons in opposition of the application.

Satisfaction of the PUD and Zoning Map Amendment Approval Standards

49. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." 11 DCMR § 2403.8. The Applicant's testimony at the public hearing noted that it had substantially increased its benefits and amenities package since the initial submission of the application. Further, the Commission notes that the Applicant is not seeking a significant increase in density, but seeks the flexibility to redistribute density on the site. Given the significant amount and quality of the project amenities and public benefits included in this PUD and related Zoning Map amendment application, the Commission finds that the development incentives to be granted for the project and the related rezoning are appropriate. The Commission also finds that the requested areas of ~~flexibility from the requirements are consistent with the purpose and evaluation standards of~~ Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this project. The Commission notes that the amount of development

proposed in this PUD project is generally consistent with the amount of density that would be permitted on the Property as a matter-of-right, without the restrictions imposed by the landmark.

50. The Commission finds that the project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to affordable housing, urban design, landscaping and open space, site planning, job training and employment opportunities, transportation measures, environmental benefits, and uses of special value to the neighborhood and District as a whole.

51. The Commission credits the written submissions and testimony of the Applicant and OP that the proposed PUD and rezoning to the R-5-D Zone District is appropriate for the specified portion of the Property and that the proffered amenities and benefits are acceptable. The Commission also credits the testimony of the Applicant and OP that the proposed PUD project and rezoning of the Property are not inconsistent with the Comprehensive Plan and the surrounding properties. The Commission finds the written statements, reports and testimony of the Applicant and OP persuasive that the preservation of the historic landmark and proposed residential addition is a considerable attribute to the 16th Street corridor.

52. The Commission also notes that it finds the provision of four curb cuts entirely acceptable and strongly disagrees with DDOT's position on the reduction in the number of curb cuts given the effect it would have on the functioning of the project and because of the impact it would have on the community. The Commission does not find that the proposed curb cuts pose a risk to pedestrian safety. In fact, the Commission finds that there will be greater risk to pedestrian safety if there is no curb cut on Mozart due to the trash pick-up arrangement

under that scenario and due to increased vehicular traffic at the intersection of Fuller Street and Mozart Place.

53. The requested rezoning to R-5-D Zone District is part of a PUD application, which allows the Zoning Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. In Zoning Commission Order No. 921, a PUD and Zoning Map amendment case, the Zoning Commission clearly articulated the legal standard for reviewing PUD-related Zoning Map amendments:

A PUD Map amendment is thus a temporary change to existing zoning, that does not begin until a PUD Covenant is recorded, ceases if the PUD is not built and ends once the PUD use terminates. This being the case, the Commission may grant PUD related map amendments in circumstances where it might reject permanent rezoning.

Z.C. Order No. 921 at 15 (COL 5). The Commission added:

A map amendment granted as part of a PUD establishes no precedent for zoning cases involving permanent zoning map amendments. A PUD map amendment is tied to the PUD use. The PUD use is constrained by covenant. Therefore, the merits of such amendments are usually analyzed in the narrow context of the PUD use requested.

Id. at 17-(COL 13). Finally, the Commission observed:

A PUD applicant seeking a related map amendment must still demonstrate that public health, safety, and general welfare goals of the zoning regulations would be served by the amendment.

Id. at 16 (COL 6).

54. In this case, the Commission finds that the proposed PUD and related map amendment of the Property to the R-5-D Zone District is appropriate given the superior features of the Project, the superior architecture of the project and the significant benefits and amenities package. The Commission's conclusion is consistent with OP's recommendations to approve the project and the PUD-related Zoning Map amendment.

55. The Commission finds that the Applicant's testimony at the hearing and its supplemental traffic analysis adequately rebut DDOT's objections to the proposed curb cuts. The Commission further finds that the Applicant's submission dated October 6, 2011, adequately addresses the Commission's concerns regarding the narrowness of the courtyard in the northwest corner of the Property.

56. The Commission has accorded ANC 1C the "great weight" to which it is entitled. In so doing, the Commission fully credited the unique vantage point that ANC 1C holds with respect to the impact of the proposed PUD on the ANC's constituents. The Commission recognizes that the Applicant met with the community on numerous occasions over a nine month period to address residents' concerns with the application. The Commission also finds that the Applicant worked with the ANC to determine appropriate items to include in the public benefits and project amenities package. The Applicant's public benefits and project amenities package is entirely appropriate for the development incentives and flexibility that it is requesting. The Commission also affords great weight to the ANC's conclusions regarding the Residential Permit Program as specified in its filing dated October 6, 2011. This matter was discussed fully at the Planning and Zoning Committee meeting on October 4 and at the full ANC meeting on _____. The Planning and Zoning Committee, [as well as the ANC], declined to exclude the future residents of Il Palazzo from the Residential Permit Program.

CONCLUSIONS OF LAW

57. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces-and other amenities" (11 DCMR § 2400.1). The overall

goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience” (11 DCMR § 2400.2).

58. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD (11 DCMR § 2402.5). The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, and yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment (11 DCMR § 2405).

59. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development

60. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

61. The application meets the contiguity requirements of § 2401.3.

62. The proposed height and density of the building in the Project will not cause a significant adverse effect on any nearby properties and does, in fact, comport with District goals for development. Any impact of the project on the surrounding area and adjacent properties is deemed to be not unacceptable. As demonstrated in the Traffic Study submitted by the Applicant and supported by DDOT, the project will not cause adverse traffic impacts.

63. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be properly mitigated.

64. The benefits and amenities provided by the Project are truly significant, thus granting the development incentives proposed in this application is appropriate.

65. The application seeks a PUD-related zoning map amendment to the R-5-D Zone District. The application also seeks limited flexibility from the Zoning Regulations regarding courtyard, and roof structure relief.

66. Approval of the PUD and change in zoning is not inconsistent with the Comprehensive Plan. The Commission finds that rezoning the site is consistent with the Comprehensive Plan.

67. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The Project is consistent with the major themes and city-wide elements of the Comprehensive Plan, including the Land Use, Housing and Transportation Elements. The PUD is also consistent with the more specific goals and policies of the Area Element.

68. The Commission is required under D.C. Code § 1-309.10(d)(3)(A)(2001) to give “great weight” to the issues and concerns of the affected ANCs. As is reflected in the Findings of Fact, ANC 1C voted to support the application subject to adoption of the specified benefits and amenities program.

69. The Commission is also required to give great weight to the recommendations of OP (See D.C. Code § 6-623.04 (2001)). The Commission gives OP’s recommendation to approve the PUD great weight and concurs with its conclusions.

70. The Commission notes that DDOT has not persuaded the Commission that the project would be improved with a reduction in the number of curb cuts. The Commission strongly disagrees with DDOT's assessment. The Commission supports the provision of a curb cut on Mozart Place and encourages the Public Space Committee to approve the requested curb cut. A curb cut on Mozart Place reduces the potential for vehicular and pedestrian conflicts at the Fuller Street and Mozart Place intersection and it is necessary for the proper functioning of the building, namely, keeping the trash indoors rather than being kept at the curb for pick-up. The Commission believes that latter would be a nuisance to the neighborhood and would impede pedestrian traffic. The Commission also finds that the retention of the existing curb cuts on 16th Street are consistent with the preservation of the building and to eliminate them but retain the drive would create confusion for drivers and create a potential hazard, particularly for emergency vehicles. The Commission also finds that a functional circular drive on 16th Street will help redistribute traffic to the site and will be helpful in accommodating deliveries and taxi cabs.

71. The Commission also finds that the Applicant's Traffic Impact Study was conducted and prepared in an appropriate manner. The Commission agrees with the conclusions of the Applicant's Traffic Engineering expert that this project will not create adverse traffic impacts. The Commission finds that the design of this project is consistent with good urban planning principles and will not have a detrimental effect on neighboring properties.

72. The PUD project and the rezoning of the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

73. ~~The Commission notes that the Zoning Regulations treat a PUD-related Zoning~~ Map amendment differently from other types of rezoning. PUD-related Zoning Map

amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations and the conditions of this Order, the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. Here, the Commission finds that the proposed PUD-related map amendment of the Property to the R-5-D Zone District is appropriate given the superior features of the PUD project and is subject to the limitations stated herein.

74. The applications for a PUD and related Zoning Map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of this application for Consolidated Review of a Planned Unit Development and related Zoning Map amendment for the Subject Property (Square 2578, Lot 26). The approval of this PUD is subject to the following conditions:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit _____ of the record, as modified by the guidelines, conditions, and standards of this Order.
2. The Applicant shall reserve a minimum of 6 of the residential units as affordable for households having an income not exceeding 80% of the Area Median Income ("AMI") for the Washington, DC Metropolitan Statistical Area (adjusted for family size). The Applicant shall dedicate at least five of the six proffered affordable units as two-bedroom units, as depicted on Sheet __ of Exhibit 30, as modified by Exhibit _____ filed on October 6, 2011.

3. Per the Employment Agreement entered into the record as Exhibit 21, Tab B, the Applicant shall hire a minimum of 12 District of Columbia residents for construction positions for the duration of the development of a construction project in the District of Columbia; the positions are not limited to the development of Il Palazzo. The Applicant shall also host job fairs for District residents at least once every 90 days.

4. Per the agreement entered into the record as Exhibit 21, Tab C, prior to the issuance of a certificate of occupancy for the Project, the Applicant shall renovate the commercial kitchen at the Festival Center located at 1640 Columbia Road, NW. The renovation of the kitchen shall include the demolition and moving of the men's restroom, demolition and building of the new kitchen space and installation of the new kitchen equipment. In the event the Festival Center is not ready to move forward with its renovations at the time the Applicant is ready to secure a certificate of occupancy, the Applicant shall work with the ANC to revise the timeline of the renovation.

5. Prior to securing a certificate of occupancy for the Project, the Applicant shall establish a tree fence buy-in program with the Reed-Cooke Neighborhood Association and the Applicant shall contribute \$50,000 to the program. Once the program is established, the Applicant shall be responsible for selling and installing up to 625 tree fences. The tree fences shall be sold at-cost.

6. Prior to securing a certificate of occupancy for the Project, the Applicant shall survey and repair all visible damage to units in Sarah's Circle caused by the August 2011 earthquake.

7. Prior to beginning construction of the Project, the Applicant shall provide the following materials to the HD Cook Elementary School:

(a) library books that reflect the IB learner profile, key concepts and attitudes in Spanish and English, at a cost of up to \$12,000.

(b) choral sheet music to support the choral program, at a cost of up to \$500.

(c) musical instruments to support the band program, at a cost of up to \$2,500.

The Applicant shall also establish the following prior to commencement of construction of the Project:

(a) scholarship for H.D. Cooke Elementary School Students to attend classes at the SITAR art center also located in the Adams Morgan Area, at a cost of up to \$2,500.

(b) funding to support training parents with local community agency. Training to be focused in one of the areas of job readiness, computer basics, educational advocacy, life skills, and language acquisition, at a cost of up to \$2,500.

8. The Applicant shall have flexibility with the PUD in the following areas:

- (a) ~~To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;~~

- (b) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;
- (c) To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;
- (d) To provide mechanical parking in place of the proposed conventional parking garage, so long as any resulting modifications to the floor plans or building elevations are approved by the Historic Preservation Review Board.
- (e) To respond to comments or concerns initiated by the Historic Preservation Review Board or the Historic Preservation Office staff in connection with final review.

10. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and 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 the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct and use the Subject Property in accordance with this order, or amendment thereof by the Zoning Commission. The applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

11. The change of zoning from the D/R-5-B Zone District to the R-5-D Zone District shall be effective upon the recordation of the covenant pursuant to 11 DCMR §3028.9.

12. The PUD shall be valid for a period of two (2) years from the effective date of Zoning Commission Order No. 11-08. Within such time, an application must be filed for a building permit for the construction of the project as specified in 11 DCMR Section 2409.1; the filing of the building permit application will vest the Zoning Commission Order. Construction of the project must commence within three (3) years of the effective date of Zoning Commission Order No. 11-08.

13. 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, familial status, family responsibilities, marital status, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

On September 24, 2011, upon the motion of _____, as seconded by _____, the Zoning Commission **APPROVED** the application for the PUD and related map amendment by a vote of _____.

On October 17, 2011, upon the motion of _____, as seconded by _____, the Zoning Commission **ADOPTED** this Order to approve the PUD, related Zoning Map amendment by a vote of _____.

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on _____.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

RICHARD NERO
ACTING DIRECTOR
OFFICE OF ZONING