

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 12-18

Z.C. Case No. 12-18

USL WDC H Street, LLC and H Street Self Storage, LLC
(Consolidated Planned Unit Development @ Square 858)

June 10, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on April 18, 2013, to consider an application from USL WDC H Street, LLC and H Street Self Storage, LLC (collectively, "Applicant") for the consolidated review and approval of a planned unit development ("PUD") and a related Zoning Map Amendment for Square 858, Lots 860-862, 864, and parts of a public alley system to be closed. The Commission considered the Application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

- 1 On September 11, 2012, the Applicant filed an application with the Commission for the consolidated review and approval of a PUD and a related Zoning Map Amendment (collectively, "Application") for the subject property which is located in Square 858, including Lots 860, 861, 862, 864, and portions of a public alley system to be closed (the "Site").
- 2 The Applicant proposes to build a mixed-use development containing residential and retail uses. The project will have a total gross floor area of approximately 490,000 square feet and a maximum height of 90 feet with setbacks and step downs as shown in the plans.
- 3 The Site is currently split-zoned C-2-B and R-4 with the C-2-B portion being located within the H Street Overlay District. The Application requests a rezoning of portions of the Site, including a request to rezone the northern R-4 portion of the Site fronting I Street to R-5-B and two smaller areas of R-4-zoned land fronting on 6th and 7th Streets to HS/C-2-B.
- 4 At its public meeting held on November 19, 2012, the Commission voted to schedule a public hearing on the Application.

- 5 On December 28, 2012, the Applicant submitted a Prehearing Statement with architectural plans. (Exhibits ["Ex "] 16, 17) The Prehearing Submission responded to questions raised by the Commission at the set down meeting, including additional details regarding the roof plan and regarding the public benefits and project amenities
- 6 On March 29, 2013, the Applicant submitted a Supplemental Prehearing Statement with architectural plans (Ex 27) The Supplemental Prehearing Submission introduced the Grocery Alternate to allow flexibility and stated changes to the plans to incorporate a grocery store use on the ground floor of the project
- 7 After proper notice, the Commission held a public hearing on the Application on April 18, 2013
- 8 The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 6C
- 9 Five principal witnesses testified on behalf of the Applicant at the public hearing, including Trent Smith, on behalf of Insight Property Group LLC, representing the Applicant, Samı Kırkıl, an expert in architecture and design, and Federico Soifer, on behalf of SK&I Architecture, the architects for the project, Steve Fotiu, an expert in retail architecture and design, on behalf of The Eisen Group, and Erwin N. Andres, an expert in transportation planning and analysis, on behalf of Gorove/Slade Associates, Inc Based upon their professional experience, as evidenced by the resumes submitted for the record, Mr Kırkıl, Mr Fotiu, and Mr Andres were qualified by the Commission as experts in their respective fields
- 10 The Office of Planning ("OP") testified in support of the project at the public hearing. The District Department of Transportation ("DDOT") testified in support of the project at the public hearing with conditions
- 11 At the hearing, the Applicant submitted updated plan sheets including corrected information for the Grocery Alternate, an updated summary of the Applicant's Compliance with H Street Strategic Plan Design Guidelines, the Applicant's Summary of Flexibility for Approved PUD, the Applicant's Summary of Requested Zoning Flexibility, and a response to DDOT's comments (Ex 37-42) The Applicant provided a PowerPoint presentation at the hearing (Ex 43.)
- 12 ANC 6C, the ANC within which the Site is located, submitted two letters in support of the Application (Ex 25, 33)
- 13 ANC 6A, whose boundary abuts the Site, also submitted two letters in support of the Application (Ex 23, 32)

- 14 Councilmember Tommy Wells (Ward Six) also submitted a letter dated April 16, 2013, in support of the project (Ex 35) Councilmember Wells indicated the project is an attractive building and its massing relates well to its diverse frontages, including its important presence on the H Street corridor Councilmember Wells noted that both the original submission and the grocery alternate would provide significant benefit to the community and the District
- 15 No individuals or organizations testified in support or in opposition to the project
- 16 Robert and Mary Bradley (the "Bradleys") who own property at 819 6th Street, N E , which is located immediately to the north on the west side of the Site, submitted letters in the record stating concerns relating to the impacts on their property from the project as proposed in the original submission (Ex 34) While the Bradleys support the grocery alternate, the Bradleys proposed various elements that would mitigate perceived impacts under the original submission OP summarized these various elements in its report as well In its Post-Hearing Submission, the Applicant indicated that it offered an agreement to the Bradleys to provide for the requested mitigation (Ex 52)
- 17 At the conclusion of the public hearing, the Commission took proposed action to approve the Application At the close of the hearing, the Commission requested that OP submit a supplemental report providing background information on the issue of how private alleys and private street areas are considered in the calculation of floor are ratio ("FAR ") The OP report and the Commission's finding on the issue are discussed below
- 18 On April 22, 2013, the Commission issued a procedural order requiring the Applicant to submit a list of the public benefits being proffered for the PUD and, for each proffered public benefit, provide a draft condition that is both specific and enforceable to include in the Commission final order, and process for government agencies and ANC 6C to comment on the proposed conditions As directed by the procedural order, the Applicant provided responsive documents on April 29, 2012 and May 13, 2012 (Ex 49, 50)
- 19 On May 16, 2013, the Applicant submitted a Post-Hearing Submission (Ex 52) The Post-Hearing Submission included plans for the original submission and grocery alternate addressing the issues raised by the Commission and provided additional information regarding amenities
- 20 The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") on April 22, 2013, under the terms of the District of Columbia Home Rule Act (Ex 46) NCPC did not provide a response
- 21 The Commission took final action to approve the Application on June 10, 2013

The Site and the Area

- 22 The Site is situated in Ward 6 and consists of Lots 860, 861, 862, 864, and portions of a public alley system to be closed in Square 858. Square 858 is bounded by 6th Street, N E, to the west, I Street, N.E, to the north, 7th Street, N E, to the east, and H Street, N E, to the south. The Site contains approximately 101,111 square feet of land area.
23. The existing condition of the Site includes a former suburban-style shopping center with parking directly off the street at the corner 6th and H Streets, a self-storage building at the east end of the lot facing H Street, and unimproved lots and parking areas facing I and 7th Streets.

Existing and Proposed Zoning

- 24 The Site is currently split-zoned C-2-B and R-4 with the C-2-B portion being located within the H Street Overlay District.
- 25 The C-2-B Zone District is designated to serve commercial and residential functions similar to the C-2-A Zone District, but with higher density residential and mixed uses (11 DCMR § 720.6). Residential and retail uses are permitted as a matter of right. The C-2-B Zone District permits a maximum height of 65 feet, with no limit on the number of stories, and a maximum density of 3.5 FAR (11 DCMR § 770.1, 770.2). With Inclusionary Zoning, the permitted density is 4.2 FAR. Under the PUD guidelines for the C-2-B Zone District, the maximum height is 90 feet and the maximum density is 6.0 FAR (11 DCMR § 2405.1, 2405.2). Parking is required in the C-2-B Zone District at a rate of one space for every three dwelling units and one space for each additional 750 square feet of gross floor area in excess of 3,000 square feet for retail use (11 DCMR § 2101.1).
- 26 The R-4 Zone District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families (11 DCMR § 330.1). The R-4 Zone District permits a maximum height of 40 feet and a maximum of three stories. (11 DCMR § 400.1.) There is no maximum FAR, with bulk controlled by height, number of stories, and lot occupancy (11 DCMR §§ 401, 402, and 403). Under the PUD guidelines for the R-4 Zone District, the maximum height is increased to 60 feet, and the maximum density is 1.0 FAR, to be devoted entirely to residential use (11 DCMR § 2405.1, 2405.2).
- 27 The Application requests a rezoning of portions of the Site, including a request to rezone the northern R-4 portion of the Site fronting I Street to R-5-B and two smaller areas of R-4 zoned land fronting on 6th and 7th Streets to HS/C-2-B.

- 28 The R-5 Zone Districts are General Residence Districts designed to permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts (11 DCMR § 350 1) The R-5-B Zone District is intended to permit moderate height and density. (11 DCMR § 350 2) The R-5-B Zone District permits a maximum height of 50 feet, with no limit on the number of stories, and a maximum density of 1 8 FAR (11 DCMR § 770 1, 770 2) Under the PUD guidelines for the R-5-B Zone District, the maximum height is 60 feet and the maximum density is 3 0 FAR (11 DCMR § 2405 1, 2405 2) Parking is required in the R-5-B Zone District at a rate of one space for every two dwelling units (11 DCMR § 2101 1)
- 29 Under the grocery alternate, a portion of the R-4 Zone District in Lot 860 will be rezoned to HS/C-2-B The rezoning line moves 29 feet to the north, incorporating 4,711 square feet of land area This rezoning is required to allow the grocery use to extend into that portion of the ground floor floorplate

Original Submission

- 30 The original submission proposes a mixed-use development having a combined gross floor area of approximately 490,134 square feet, with approximately 404,508 square feet being devoted to residential use (approximately 450 units), approximately 73,553 square feet devoted to retail use, and 12,073 square feet devoted to loading for the project (“Original Submission”)
- 31 The maximum height of the Original Submission is 90 feet, with steps down in height on I and 7th Streets to 40 feet
- 32 The Original Submission is envisioned as three components The central component incorporates a large setback to create an urban, open courtyard, highlighted by a glass and metal vertical tower element The physical and visual recess breaks down the massing of the building In addition, the entire building is set back five feet along H Street to create a wider sidewalk and improved public space
- 33 The Original Submission will include approximately 442 parking spaces in a below-grade parking garage The Applicant will maintain a minimum of at least one parking space for every two dwelling units to serve the residents of the project and at least meet the minimum requirements for the gross floor area devoted to retail or service use to serve the employees, customers, and guests of the retail or service uses The Applicant shall have flexibility to allocate any parking provided over those minimum numbers to any of the uses in the project

- 34 The below-grade parking garage will be accessed from two separate entrances one from 6th Street, immediately before the entrance to the newly established public alley, and one from the alley access from 7th Street
- 35 The Original Submission incorporates four loading berths at 30 feet each Loading access to two of the 30-foot berths will be taken from the alley to be established from 6th Street Loading access to the remaining berths will be taken from the existing alley off 7th Street
- 36 The roof includes outdoor and indoor community amenity space, mechanical equipment, and green roofs The indoor community amenity space represents approximately 17% of the total rooftop community amenity space

Grocery Alternate

- 37 In its Post-Hearing Submission, the Applicant indicated that it has been working with a grocery store to lease approximately 42,108 square feet As such, the Applicant requested that the Commission consider and approve an alternate for the consolidated PUD in the event that the grocery store is incorporated into the project ("Grocery Alternate")
- 38 The Grocery Alternate continues to be a mixed-use development having a gross floor area of approximately 490,134 square feet. The retail square footage would increase to 96,548 square feet The amount of residential square footage is reduced to approximately 388,000 square feet, with approximately 432 units The loading area comprises approximately 5,517 square feet
- 39 With the Grocery Alternate, the below-grade parking facility will include approximately 438 parking spaces The Applicant will maintain the ratio of one space for every two dwelling units The grocery store will be allocated 163 parking spaces and 46 parking spaces will be allocated to the balance of the retail The Applicant shall have flexibility to allocate the 13 unassigned parking spaces
- 40 The below-grade parking garage is accessed from the two entrances proposed in the Original Submission, including one entrance from 6th Street and one entrance from the alley access from 7th Street
- 41 In the Grocery Alternate, the project incorporates three 55-foot loading berths, two 30-foot loading berths and two 20-foot service/delivery spaces Access to the loading facilities is taken exclusively from the alley from 7th Street All turning movements will take place within the alley system and private property The trucks will not enter or leave the alley system through I Street as all ingress and egress will be via 7th Street

- 42 The roof continues to include outdoor and indoor community amenity space, mechanical equipment, and green roofs. The roof structure slightly increases to accommodate for a shifted residential entry and elevator core along with additional mechanical equipment required for the grocery use. The indoor community amenity space represents approximately 20% of the total rooftop community amenity space.

Development Incentives and Flexibility

- 43 The Applicant requested the following areas of flexibility from the Zoning Regulations
- a *Loading* For the Original Submission, § 2201.1 of the Zoning Regulations requires that the project include the following loading: for residential use, one 55-foot loading berth and one 20-foot service/delivery space and for retail use, one 55-foot loading berth, one 30-foot loading berth, and one 20-foot service/delivery space. The Original Submission proposes four 30-foot loading berths, with two accessed from the alley to be established from 6th Street and two accessed from the existing alley off 7th Street. The provided berths are sufficient to accommodate the anticipated demand. Therefore, the Commission finds that the flexibility to not provide the 55-foot loading berths or the required service/delivery spaces is appropriate. For the Grocery Alternate, § 2201.1 of the Zoning Regulations requires that the project include the following loading: for residential use, one 55-foot loading berth and one 20-foot service/delivery space, for retail use, one 55-foot loading berth, one 30-foot loading berth, and one 20-foot service/delivery space, and for grocery use, one 55-foot loading berth, one 30-foot loading berth, and one 20-foot service/delivery space. The Applicant provides the required loading berths, however, the Applicant requests flexibility to eliminate one service/delivery loading space. Based on the anticipated loading demand and operation of the project with the grocery store use, the loading provided will be sufficient to accommodate the anticipated demand. Accordingly, the Commission finds that the flexibility requested is appropriate in this case,
 - b *Lot Occupancy* While § 1324.4 of the Zoning Regulations limits lot occupancy to 70%, § 2604.2 (Inclusionary Zoning) permits 80% lot occupancy for projects within the C-2-B Zone District. Under the Original Submission, the lot occupancy of the project is 79.65%. Under the Grocery Alternate, the footprint of the commercial space on the ground floor increases to 84.24%. Above the commercial levels, the project would not exceed the 80% maximum occupancy. The Commission finds that this deviation is acceptable in order to permit the grocery use at the Site,

- c *Courts* Section 776 of the Zoning Regulations provides for minimum dimensions and areas for open courts and closed courts. Both the Original Submission and the Grocery Alternate incorporate a variety of setbacks and step downs, including on the east façade at the 7th Floor and along the alley easement along the west boundary of the project. The Commission finds that the setbacks result in a project that responds well to its diverse frontages and, as such, finds that the deviation from the minimum court requirements to permit these setbacks is appropriate in this case,
- d *Roof Structures* The Applicant requests flexibility from the roof structure requirements of the Zoning Regulations because there will be multiple roof structures (§§ 411.3 and 770.6(a)), the roof structures are not set back a distance equal to their heights above the roof (§§ 411.2 and 770.6(b)), and the roof structures have multiple heights in order to create as low of roof structures as possible. These three conditions exist for both the Original Submission and the Grocery Alternate. The location and height of the roof structures are driven by the requirements for mechanical equipment, the separate means of egress needed for the use of the roof, and to break up the massing of the roof structures. The roof structure on the central component and the roof structure furthest to the east do not fully meet the setback requirement in both the Original Submission and the Grocery Alternate and a portion of the northern portion of the roof structure in the Original Submission does not meet the setback from the court wall. However, the requested roof structure design will not adversely impact the light and air of adjacent buildings since each element has been located to minimize its visibility and harmonize with the building's design. The Commission finds that the requested roof structure design will not adversely impact the light and air of adjacent buildings since each element has been located to minimize its visibility. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected,
- e *Flexibility from Streetwall Requirements.* Subsection 1324.2 of the Zoning Regulations provides that buildings in the HS Overlay District must be designed and built such that not less than 75% of the streetwall(s) to a height of not less than 25 feet must be constructed to the property line abutting the street right-of-way, and that buildings on corner lots must be constructed to both property lines abutting public streets. In an effort to create a wider, more pedestrian-friendly sidewalk, the Applicant has set the entire building back from the H Street property line a distance of five feet. The Commission finds that the intent of this provision is to provide an urban streetwall. When viewed at the point of a five-foot setback, the building creates a distinct streetwall, with breaks only at the corners and for the courtyard feature in the central component of the project. The Commission

finds that the proposed set back along H Street will widen a narrow sidewalk in order to provide for a very active pedestrian-friendly thoroughfare. Therefore, the Commission finds that flexibility from the streetwall requirement of § 1324.2 of the Zoning Regulations is appropriate in this case,

- f. *H Street Overlay Non-Residential FAR Limitation* Subsection 1321.1 of the Zoning Regulations provides that density for new construction in the HS-H sub-district may not exceed 0.5 FAR for non-residential uses, with limited exceptions. For the Original Submission, the project slightly exceeds this maximum with the provision of 0.7 FAR dedicated to retail uses. For the Grocery Alternate, the project also exceeds this maximum with the provision of 1.0 FAR dedicated to retail and grocery store uses. The Commission finds that the location of the retail uses on this large site is appropriate. The amount of retail use proposed will benefit the H Street corridor and the neighborhood, and the project complies with the spirit and intent of the H Street Overlay. Therefore, the Commission finds that the flexibility from non-residential density limitation is appropriate in this case,
- g. *H Street Overlay Door Requirement* Subsection 1324.11 of the Zoning Regulations requires that buildings shall be designed so as not to preclude an entrance every 40 feet on average for the linear frontage of the building. The Original Submission complies with this provision. However, for the Grocery Alternate, the grocery store is not capable of having an entrance every 40 feet on average given the design and layout of grocery store use. The Applicant anticipates providing eight of the required 12 entrances. Given the unique design considerations for a grocery store use, the Commission finds that flexibility from this provision is appropriate in this case, and
- h. *Phasing of Building* The Applicant is seeking flexibility to construct the proposed building in either one or two phases, for either the Original Submission or the Grocery Alternate. For the Original Submission, if the project is phased, the first phase will include the western portion of the building, and the second phase will include the eastern portion of the building, as shown in the Applicant's presentation (Ex. 43). For the Grocery Alternate, if the project is phased, the first phase will include the majority of the building, and the second phase will include the 7th Street portion of the building, as shown in the Applicant's presentation (Ex. 43).

44. No other zoning flexibility was requested by the Applicant, and no additional zoning flexibility is granted through this Order.

Public Benefits and Amenities

45 The Commission finds that the following benefits and amenities will be created as a result of the PUD

- a *Urban Design, Architecture, Landscaping and Open Space (§ 2403 9(a))* The project has been designed with a fresh and engaging architectural design that complements the form and materials of the existing context and will benefit both the H Street corridor and the surrounding residential neighborhoods. The project creates a pedestrian-friendly urban retail streetscape with the retail architecture and proposed streetscape. The building façade is set back from the property line at least five feet for the entire length of the H Street to increase the width of the sidewalk. This additional width will significantly enhance the pedestrian experience by reducing congestion and allowing for more open and green space. In addition, the Application includes substantial improvements to streetscape and adjacent alleys,
- b *Site Planning and Efficient Economical Land Utilization (§ 2403 9(b))* The project has been designed to have the bulk of activity on H Street and incorporates step downs of building height and setbacks to minimize impacts on the neighborhood. In addition, the replacement of the existing commercial improvements on the Site with a residential and retail focused project is a significant benefit. Moreover, the project will help to implement the design guidelines of the *H Street NE Strategic Development Plan* and bring more activity to H Street,
- c *Housing (§ 2403 9(f))* The project results in creation of new residential use, which replaces existing non-residential uses. In the Original Submission, there is more than 400,000 square feet of residential use while in the Grocery Alternate there is more than 388,000 square feet of residential use. In addition, the project provides affordable housing in an amount of at least 8% of the gross floor area devoted to residential use. Based on the residential gross floor area proposed in the Original Submission, eight percent equals 32,361 square feet. Based on the residential gross floor area proposed in the Grocery Alternate, eight percent equals 31,046 square feet. The affordable housing amount is viewed as the increased amount of affordable housing as compared to matter of right development. As indicated in the Post-Hearing Submission, the proposed affordable housing is approximately 50% above matter-of-right development (Ex 52). The Applicant also commits that the affordable housing units shall not be overly concentrated on any floor and that there will be no affordable housing units on the top two floors of the building.

- d *Environmental Benefits (§ 2403 9(h))* The project will be designed to meet at least the minimum points for LEED Silver under LEED 2009 for New Construction. The project incorporates a variety of sustainable design elements, as summarized in the Prehearing Submission, (Ex 16A)
- e *Transportation Features* The project supports biking options with the installation of a public bike pump on I Street, between 6th and 7th Streets and commits to increase capacity or install a new Capital BikeShare Station, as further described below. In addition, the project will provide a Transportation Management Program (“TMP”), including the following elements:
 - i Identify a Transportation Services Coordinator within the property management group who will be the point of contact and will be responsible for coordinating, implementing, and monitoring the TMP strategies,
 - ii Establish a program that provides detailed transportation information and promotes walking, cycling, and transit,
 - iii Encourage bicycling through the provision of on-site bicycle parking spaces in an amount of one space for each two residential units,
 - iv Provide carpooling information to employees and residents who wish to carpool,
 - v Provide a transit incentive of a SmarTrip card preloaded with \$25 in a move-in transportation package to the initial occupant of the initial occupancy of each residential unit,
 - vi Sell or lease parking spaces separately from residential units,
 - vii Reserve five parking spaces in the below-grade parking facility for use by car sharing services,
 - viii Provide a car charging station within the parking facility,
 - ix Restrict residential tenants from applying for an off-site permit under the Residential Parking Permit Program,
 - x Restrict residential tenants from applying for visitor guest passes available under the Residential Parking Permit Program,

- xI Offer a one-year membership to either a bikeshare or carshare service to the initial occupant(s) of the initial occupancy of each residential unit,
 - xII Offer a one-year membership to either a bikeshare or carshare service to the initial employees of the initial occupancy of each retail space,
 - xIII Prohibit subleasing of commercial parking spaces to adjacent businesses or residents,
 - xIV Provide increased capacity at the existing Capital BikeShare station adjacent to the site or provide for a new Capital BikeShare station within proximity to the project in a location to be approved by DDOT, in an amount not to exceed \$70,000 for Capital BikeShare equipment and maintenance up to one year; and
 - xv Conduct performance monitoring of its retail/grocery trip generation once the project reaches 90% of commercial occupancy by documenting the inbound PM peak hour (between 4 00 p.m. and 7 00 p.m.) vehicle trips generated by the site. This monitoring shall be conducted on three separate, non-successive days (Tuesday through Thursday) over the course of a four-week period. The Applicant shall submit a copy of the information to DDOT annually (no later than October 31st each year). When trips are consistent with the trip generation projections for two successive periods, the Applicant shall be released from the monitoring requirement. In the event that the project exceeds the vehicle trip generation by 10% for two consecutive years after operation, then the Applicant shall meet with DDOT to determine additional transportation demand management measures to incorporate in the project. Any such additional transportation demand measures shall not include construction, and
- f *Special Value to the Neighborhood (§ 2403 9(i))* The project provides a variety of amenities that provide special value to the neighborhood. These include the following
- i Significant Retail in the Project The project incorporates significant retail use to activate the H Street corridor and provides additional retail options with the possibility of a grocery use to serve the community. In the Original Submission, the retail/service component is up to approximately 73,000 square feet. In the Grocery Alternate, the retail/service/grocery component is up to approximately 96,000 square feet,

- ii Enhanced and Improved Alley System The Applicant will establish by easement a public alley from 6th Street which currently does not exist. All of the alleys within the square will be repaved and improved in accordance with DDOT standards as part of the development of the site, subject to DDOT approval. Portions of the alley improvements as shown on Sheet 1 214 of the Final PUD Plans will be made consistent with the DDOT's Green Alley Program, if approved by DDOT,
- iii Parking for Church and Neighborhood Use on Sunday Mornings The Applicant will provide vouchers for parking without charge on Sunday mornings to the churches in the adjacent block of H Street, N.E., and other residents or business within the immediate vicinity, including the square in which the Site is located as well as all eight squares abutting it (i.e., Squares 831, 832, 833, 857, 858, 859, 888, 889, and 890). Specifically, the Applicant will make available 40 vouchers per week for parking in the project on Sundays between 8 00 a.m. and 12 noon. The vouchers will be distributed on a first come, first serve basis on Monday morning at 8.00 a.m. from the concierge at the project. No more than 10 vouchers will be given to any single user at that time. Any vouchers remaining by Wednesday at 5 00 p.m. will be available on a first come, first served basis to any user, including those users who already obtained vouchers for the week,
- iv Streetscape Improvements to Blair House The Applicant will expend up to \$75,000 to remove the paved area in the public space immediately fronting the Blair House at 635 I Street, N.E., and replace it with landscaping and plantings, including the following improvements: (a) removal of existing concrete sidewalk from curb to property line on I Street; (b) installation of DDOT standard improvements such as street trees, sidewalk, and curb where necessary; (c) installation of a bike rack along I Street curb; and (d) installation of landscaping, including small flowering trees, shrubs, tall grass plantings and seating area between the sidewalk and property line. All improvements within public space are subject to approval by DDOT,
- v Landscape Improvements to National Park Service Park at 5th and I Streets, N.E. The Applicant will expend up to \$50,000 to improve the National Park Service property located at the northeast corner of 5th and I Streets, N.E., including the following work: (a) removal of existing sod and landscaping; (b) installation of turf area at center of property; (c) creation of pervious gravel path around property; (d) installation of low maintenance plantings around edge of property; (e) installation of National

Park Service standard benches, and (f) installation of DC standard trash can and bike racks at street All improvements within the National Park Service property are subject to approval from the National Park Service All improvements within public space are subject to approval by DDOT The Applicant shall maintain the improvements for a period of three years from completion of the improvements;

- vi H Street Main Street Clean & Safe Program The Applicant will register to participate in the H Street Main Street Clean & Safe Program, which seeks to ensure that streets are clean and safe to create desirable neighborhood for businesses and residents alike. The program began in 2007 and provides regular street cleaning services to H Street, N E from the 300 to the 1500 block, and
- vii Construction Management Plan. The Applicant shall abide by a construction management plan including those elements identified in the Construction Management Plan. (Ex 16B)

- 46 The Commission finds that the relative value of the project amenities and public benefits offered is sufficient given the degree of development incentives requested and any potential adverse effects

Compliance with PUD Standards

- 47 The Application complies with the standards for a PUD set forth in Chapter 24 of the Zoning Regulations
- 48 The Commission finds that the project offers a high level of public benefits and project amenities When compared with the amount of development flexibility requested and project impacts, the Application satisfies the balancing test required in § 2403 8 of the Zoning Regulations
- 49 The Site is approximately 101,111 square feet in land area, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the C-2-B Zone District, in accordance with § 2401 1(c) of the Zoning Regulations
- 50 The project has been evaluated under the PUD guidelines for the C-2-B and R-5-B districts The density of the project is within the density permitted for a PUD within the C-2-B Zone District, and the maximum height is within that permitted for a PUD in the C-2-B Zone District
- 51 The project has been evaluated by the relevant District agencies

- 52 The Commission finds that the adjacency of the Bradleys' property to the expanded alley system and to the proposed development under the Original Submission creates no adverse impact because the expanded alley system improves access to the Bradleys' property and because the setback between the Bradleys' property and the Original Submission development results in an appropriate buffer. The Commission, however, encouraged the Applicant to work with the Bradleys which is consistent with the Applicant's statements in the Applicant's Post-Hearing Submission.

Compliance with Guiding Principles of the Comprehensive Plan Amendment Act of 2006 (D.C. Law 16-300, effective March 8, 2007)

- 53 The District of Columbia Comprehensive Plan Future Land Use Map designates the H Street side of the Site for mixed-use medium-density commercial/medium-density residential land uses and the I Street side of the Site for moderate-density residential land uses. The existing and proposed C-2-B Zone District and the proposed R-5-B Zone District are appropriate zone classifications for the designations respectively. The Comprehensive Plan Generalized Policy Map identifies the H Street side of the Site within the Main Street Mixed-Use Corridor and the I Street side within a Neighborhood Conservation Area. Such designations are consistent with the project as proposed.
- 54 The Commission finds that the Applicant's proposal to construct a mixed-used development that includes residential and retail uses on the Site is consistent with the Future Land Use Map's designations of the Site and with the Generalized Policy Map's designations of the Site.
- 55 The Commission finds that the proposed PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as follows:
- a *Managing Growth and Change* The guiding principles of this element are focused on ensuring that the benefits and opportunities of living in the District are equally available to everyone in the city. The project is fully consistent with a number of the goals set forth in this element. The Applicant's proposal to develop a significant amount of residential and retail use is also consistent with the Comprehensive Plan's acknowledgement that the growth of both residential and non-residential uses is critical, particularly since non-residential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income (§ 217.4). In addition, the project will help connect the Site to the rest of the neighborhood and the overall urban fabric by developing a vibrant mixed-use development on H Street, N.E., (§ 217.5 and 217.6).

- b *Creating Successful Neighborhoods* The guiding principles for creating successful neighborhoods include both improving the residential character of neighborhoods and encouraging commercial uses that contribute to the neighborhood's character and make communities more livable (§ 218.1 and 218.2) In addition, the production of new affordable housing is essential to the success of neighborhoods (§ 218.3) Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements (§ 218.8) The project furthers each of these guiding principles with the construction of market-rate and affordable housing, as well as retail uses that result in additional housing, retail, and employment opportunities In addition, as part of the PUD process, the Applicant has worked closely with both the ANC within which the project is located and the adjacent ANC to ensure that the project provides a positive impact to the immediate neighborhood,
- c *Increasing Access to Education and Employment* The Increasing Access to Education and Employment element includes a number of policy goals focused on increasing economic activity in the District, including increasing access to jobs by District residents (§ 219.1), encouraging a broad spectrum of private and public growth (§ 219.2), supporting land development policies that create job opportunities for District residents with varied job skills (§ 219.6); and increasing the amount of shopping and services for many District neighborhoods. (§ 219.9) The project is fully consistent with these goals since the proposed retail area will help to attract new jobs to the District as well as to this specific neighborhood,
- d *Connecting the City* The project will help to implement a number of the guiding principles of this element The project includes streetscape improvements to provide improved mobility and circulation as well as the overall neighborhood (§ 220.2) These improvements include setting the building back five feet along H Street to increase the effective width of the public space. In addition, the access points for the required parking and loading facilities have been designed to appropriately balance the needs of pedestrians, bicyclists, transit users, autos and delivery trucks as well as the needs of residents and others to move around and through the city *Id* Moreover, the proposed redevelopment and streetscape improvements along H Street will also help to reinforce and improve one of the "great streets" of the city, and (§ 220.3)
- e *Building Green and Healthy Communities* The project is fully consistent with the guiding principles of the building green and healthy communities element since the project's proposed landscaping plan will help to increase the District's tree cover, and the proposed development will minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on

the natural environment (§ 221.2 and 221.3). In addition, the project includes many sustainable design elements and seeks to achieve LEED Silver certification. The project will also help to facilitate pedestrian and bicycle travel. The redevelopment of the Site will be of significant benefit from an urban design and environmental standpoint.

- 56 The Commission also finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as set forth in the Applicant's Summary of Compliance with the Comprehensive Plan and the report of OP. (Ex 4F, 28)

Office of Planning Reports

- 57 By report dated November 9, 2012, OP stated that it supports the Application and that the proposed PUD is not inconsistent with the Comprehensive Plan (Ex 14). Therefore, OP recommended that the Commission schedule a public hearing on the Application.
- 58 By report dated April 8, 2013, OP recommended final approval of the Application (Ex 28.) OP stated that redevelopment of the Site would provide new housing and much needed neighborhood serving retail uses on the quickly evolving H Street corridor. OP found that both the Original Submission and the Grocery Alternate are not inconsistent with the 2006 Comprehensive Plan Future Land Use and Generalized Policy maps, and further many important policies for the Capitol Hill Area. OP also found that the Applicant's requests for zoning flexibility should be granted as proposed.
- 59 By report dated May 14, 2013, OP provided background information and explanation regarding the calculation of FAR for sites containing private alleys and/or streets (Ex 55). The report stated that in previous cases, the Commission has excluded private street areas from the lot area when calculating the density, but included private alley areas from the lot area when calculating density. The report stated that the Applicant's proposed vehicular access area at issue in this case is more akin to a private alley. The report further stated that if the Commission treated the access area as a private alley and followed its past precedent and included the space in the lot area for purposes of calculating density, the density would be 4.84 FAR. If the Commission excluded the area from the lot area, the density would be 5.1 FAR, which would still be within the maximum density permitted.
- 60 The Commission finds that the vehicular access area is akin to a private alley and should therefore be included in the lot area for purposes of calculating the FAR and the lot occupancy. The Commission notes this finding is consistent with a past ruling of

the Board of Zoning Adjustment in *Application No 17810-A of Michael Reutz*, November 24, 2010

DDOT Report

- 61 DDOT submitted a memorandum dated April 10, 2013, indicating that DDOT supported the overall development concept, subject to four conditions (Ex 29)
- 62 In the Applicant's response to DDOT's Conditions , the Applicant indicated that it could agree to the significant majority of the conditions (Ex 37) In the Applicant's Post-Hearing Submission, the Applicant provided further details regarding its agreement to the conditions (Ex 52)
- 63 In its response to DDOT's Conditions, the Applicant noted that it could not agree to two requested conditions First, the Applicant noted that it could not agree to eliminate the parking entrance to the building on 6th Street, thereby reducing the number of curb cuts from two to one on 6th Street. The Applicant asserted that two curb cuts are necessary for the successful operation of the project and as the preferred alternative from the community Second, the Applicant cannot agree to limit the parking to on-site uses only because there will be no way to monitor or ensure that such parking is limited given that the garage is a market-rate, pay-to-park garage
- 64 At the public hearing, DDOT testified in support of the project but continued to indicate concern with two curb cuts on 6th Street Accordingly, the Applicant requests that the Commission approve the Application with the option for the Applicant to provide the driveway for parking access directly from 6th Street or to provide the driveway for parking access from the alley easement, subject to final approval through the public space permitting process
- 65 The Commission finds that the flexibility relating to the location of the driveway is appropriate so that the Applicant and DDOT can continue to work on the appropriate location In addition the Commission finds that the on-site parking should not be limited because the garage is a market-rate, pay-to-park garage

Advisory Neighborhood Commissions

66. ANC 6C, the ANC within which the Site is located, submitted a letter dated January 16, 2013 , indicating that at a duly noticed public meeting on January 9, 2013, at which notice was properly given and a quorum was present, ANC 6C voted unanimously to support the Application and proposed development (Ex 25) ANC 6C noted the desirability of two curb cuts on 6th Street, support for the setback relief to provide the

strong visual break along H Street and the favorable urban design and positive community impact of the project

- 67 ANC 6C submitted a second letter dated April 17, 2013, indicating that at a duly noticed public meeting on April 10, 2013, at which notice was properly given and a quorum was present, ANC 6C voted unanimously to support the Grocery Alternate as part of the Application (Ex 33) ANC 6C noted that the project should include at least 50% of the ground level street wall on H Street to consist of display windows with unobstructed view, to which the Applicant agreed, and that DDOT perform an in-depth review of traffic related on 7th Street
- 68 ANC 6A, whose boundary abuts the Site, submitted a letter dated February 20, 2013, indicating that at a duly noticed public meeting on February 14, 2013, at which notice was properly given and a quorum was present, ANC 6A voted 7-0-1 to support the Application and proposed development (Ex 23) ANC 6A noted that the Applicant had worked closely with ANC 6A and that the result was a high quality building that will accelerate the H Street's development as a vibrant retail corridor ANC 6A requested the Applicant to provide a summary of the Application's compliance with the H Street design guidelines and to support a future H Street NE historic district, if one is proposed As part of the Applicant's Supplemental Prehearing Submission, the Applicant submitted a summary of compliance with the H Street design guidelines, which was supplemented by a submission at the public hearing (Ex 27D, 38) In addition, in its Supplemental Prehearing Submission, the Applicant committed to support a future H Street NE historic district if one is proposed
- 69 ANC 6A also submitted a letter dated April 14, 2013, indicating that at a duly noticed public meeting on April 11, 2013, at which notice was properly given and a quorum was present, ANC 6A voted unanimously to support the request to include a project alternative that would allow the potential inclusion of a large, specialty grocer (Ex. 32.)
- 70 The Commission afforded the views of ANC 6C and ANC 6A the "great weight" to which they are entitled

CONCLUSIONS OF LAW

- 1 Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits (11 DCMR § 2400 1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience " (11 DCMR § 2400 2)

- 2 Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, or for 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.
3. Development of the property included in the 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.
- 4 The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
- 5 The PUD, as approved by the Commission, complies with the applicable height, bulk and density standards of the Zoning Regulations. The uses for this project are appropriate for the Site. The impact of the project on the surrounding area under both the Original Submission and the Grocery Alternate are not unacceptable. Accordingly, the project should be approved.
- 6 The Application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
- 7 The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.
- 8 Approval of this 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 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.
- 9 The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21, D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC's recommendation. In this case, ANC 6A and 6C voted unanimously to support the project and recommended that the Commission approve the Application. (See Ex. 23, 25, 32, 33.) The Commission has given ANC 6A's and ANC 6C's recommendations great weight in approving this Application.

- 10 The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D C Law 8-163, D C Official Code § 6-623 04) to give weight to the OP Reports OP recommended approval of the Application in its reports The Commission has given OP's recommendations great weight in approving this Application
- 11 The application for a PUD is subject to compliance with D C Law 2-38, the Human Rights Act of 1977

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission **ORDERS APPROVAL** of the Application for a consolidated PUD and the PUD-related Zoning Map amendment to rezone the Site from HS-H/C-2-B and R-4 to HS-H/C-2-B and R-5-B This approval is subject to the following guidelines, conditions, and standards Whenever compliance is required prior to, on or during a certain time, the timing of the obligation is noted in bold and underlined text For purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Site If there is more than one owner of the Site, the obligations under this Order shall be joint and several If a person or entity no longer holds title to the 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 of the Site

A. PROJECT DEVELOPMENT

- 1 In the event that the Original Submission is selected, the project shall be developed in accordance with the plans prepared by SK&I Architects, dated May 16, 2013, in the record at Exhibit 54 (the "Final Original Submission PUD Plans"), as modified by the guidelines, conditions, and standards herein In the event that the Grocery Alternate is selected, the project shall be developed in accordance with the Final Original Submission PUD Plans, as amended by the Grocery Alternate plans prepared by SK&I Architects, dated May 16, 2013, in the record at Exhibit 53 (the "Final Grocery Alternate PUD Plans"), as modified by the guidelines, conditions, and standards herein. The Final Original Submission PUD Plans and the Final Grocery Alternate PUD Plans are collectively referred to herein as the "Final PUD Plans."
- 2 The project shall have an approximate gross floor area of 490,134 square feet, or 4.85 FAR based on the Site If the Original Submission is selected, then the project shall include approximately 404,508 square feet of gross floor area

devoted to residential uses¹, approximately 73,553 square feet of gross floor area devoted to retail uses, and approximately 12,073 square feet within the loading area. If the Grocery Alternate is selected, then the project shall include approximately 388,069 square feet of gross floor area devoted to residential uses, approximately 42,108 square feet of gross floor area devoted to grocery use, approximately 54,440 square feet of gross floor area devoted to retail uses, and approximately 5,517 square feet within the loading area.

- 3 In the Original Submission, the lot occupancy of the project shall be approximately 79.65% based on the Site. In the Grocery Alternate, the lot occupancy of the project shall be approximately 84.25% based on the Site.
- 4 The maximum height of the building shall be 90 feet, with step downs and setbacks as shown on the Final PUD Plans.
- 5 Except as permitted in Condition No. 7(g), parking spaces shall be provided as follows. In the Original Submission, the project shall include approximately 442 parking spaces in the below-grade parking garage, with access as shown on the Final Original Submission PUD Plans. In the Grocery Alternate, the project shall include approximately 438 parking spaces in the below-grade parking area, with access as shown on the Final Grocery Alternate PUD Plans.
- 6 In the Original Submission, the project shall include four 30-foot loading berths in the location specified and with access as shown on the Final Original Submission PUD Plans. In the Grocery Alternate, the project shall include three 55-foot loading berths, two 30-foot loading berths, and two 20-foot service/delivery spaces in the location specified and with access as shown on the Final Grocery Alternate PUD Plans.
- 7 The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building,

¹ The Applicant does not contest that the project is subject to the Inclusionary Zoning requirement of Chapter 26 of the Zoning Regulations.

- 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 vary the final number of residential units by a range of five percent of the total approved, within the maximum gross floor area approved,
- d To reduce the total amount of retail gross floor area provided on the second floor of the project in the event that the Applicant is unable to lease such space and to convert the space into residential units in addition to the flexibility requested in Item 3,
- e In the Grocery Alternate, to permit retail, service, professional office or residential use within the portion of the building fronting on 7th Street (approximately 14,000 square feet of gross floor area);
- f To vary the location, attributes and general design of the streetscape incorporated in the project to comply with the requirements of and the approval by the DDOT Public Space Division,
- g To vary the total number of parking spaces, so long as the minimum number of spaces provided meets the requirements of the Zoning Regulations,
- h To locate retail entrances in accordance with the needs of the retail tenants and vary the façades as necessary within the general design parameters proposed for the project and to locate retail or service uses where "retail" is identified and to locate retail, service, or office uses where "retail/office" is identified. The number of retail entrances may be increased or decreased depending upon the actual layout of retail tenants and the operating requirements of those tenants,
- i To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, roof structures, architectural embellishments and trim, venting, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals,
- j To modify the alley easement to be established as part of the alley closing application for the Site as finally approved by the D C Council, and

- k To relocate the driveway to the parking access from 6th Street to the alley easement, if required through the public space permitting process

B. PUBLIC BENEFITS

- 8 **Prior to issuance of a building permit for the project,** the Applicant shall establish an alley easement, as approved and accepted by the D C Council, for access within the western half of Square 858
- 9 **The Applicant shall submit with its building permit application** a checklist evidencing that the project or the phase of the project for which the permit is submitted has been designed to meet the USGBC LEED Silver standard under LEED 2009 for New Construction
- 10 **At the time of public space permitting,** the Applicant shall provide and install appropriate new signal hardware for exclusive turn movements along H Street at 6th and 7th Streets as deemed necessary by DDOT and shall submit appropriate updated signal timing plans and lane marking plans for the H Street corridor
- 11 **During the construction of the project,** the Applicant shall abide by a construction management plan including those elements identified in the Construction Management Plan in the record at Exhibit 16B
- 12 **Prior to the issuance of a certificate of occupancy for the project,** the Applicant shall repave all of the public alleys within Square 858 in accordance with DDOT standards in effect as of the date of the PUD approval, subject to DDOT's final approval. Portions of the alley improvements as shown on Sheet 1.214 of the Final PUD Plans will be made consistent with the DDOT's Green Alley Program, if approved by DDOT
- 13 **Prior to the issuance of a certificate of occupancy for the project,** the Applicant shall expend up to \$75,000 to remove the paved area in the public space immediately fronting the Blair House at 635 I Street, N E , and replace it with landscaping and plantings, including the following improvements
 - a Removal of existing concrete sidewalk from curb to property line on I Street,
 - b Installation of DDOT standard improvements such as street trees, sidewalk and curb where necessary,
 - c Installation of bike rack along I Street curb, and

- d Installation of landscaping, including small flowering trees, shrubs, tall grass plantings and seating area between sidewalk and property line

All improvements within public space are subject to approval by DDOT

- 14 **Prior to the issuance of a certificate of occupancy for the project,** the Applicant shall expend up to \$50,000 to improve the National Park Service property located at the northeast corner of 5th and I Streets, N E , including the following work

- a Removal of existing sod and landscaping,
- b Installation of turf area at center of property,
- c Creation of pervious gravel path around property,
- d Installation of low maintenance plantings around edge of property,
- e Installation of National Park Service standard benches, and
- f Installation of DC standard trash can and bike racks at street

All improvements within the National Park Service property are subject to approval from the National Park Service All improvements within public space are subject to approval by DDOT The Applicant shall maintain the improvements for a period of three years from completion of the improvements

- 15 **Prior to the issuance of a certificate of occupancy for the project,** the Applicant shall submit to DCRA proof that the Applicant has registered to participate in the H Street Main Street clean and safe program for H Street, if the clean and safe program is in place at such time

- 16 **Prior to the issuance of a certificate of occupancy for the project,** the Applicant shall install a public bike pump on I Street, between 6th and 7th Street, N E , to coincide with the separated bike lane planned for I Street, with the location and installation of the bike pump subject to DDOT's review and approval

- 17 **During the operation of the building,** the Applicant shall provide a Transportation Management Program ("TMP") including the following elements

- a Identify a Transportation Services Coordinator within the property management group who will be the point of contact and will be responsible for coordinating, implementing, and monitoring the TMP strategies,
- b Establish a program that provides detailed transportation information and promotes walking, cycling, and transit,
- c. Encourage bicycling through the provision of on-site bicycle parking spaces in an amount of one space for each two residential units,
- d Provide carpooling information to employees and residents who wish to carpool,
- e Provide a transit incentive of a SmarTrip card preloaded with \$25 in a move-in transportation package to the initial occupant of the initial occupancy of each residential unit;
- f Sell or lease parking spaces separately from residential units,
- g Reserve five parking spaces in the below-grade parking facility for use by car sharing services,
- h Provide a car charging station within the parking facility,
- i Restrict residential tenants from applying for an off-site permit under the Residential Parking Permit Program,
- j Restrict residential tenants from applying for visitor guest passes available under the Residential Parking Permit Program,
- k Offer a one-year membership to either a bikeshare or carshare service to the initial occupant(s) of the initial occupancy of each residential unit,
- l Offer a one-year membership to either a bikeshare or carshare service to the initial employees of the initial occupancy of each retail space,
- m Prohibit subleasing of commercial parking spaces to adjacent businesses or residents,
- n. Provide increased capacity at the existing Capital BikeShare station adjacent to the site or provide for a new Capital BikeShare station within

proximity to the project in a location to be approved by DDOT, in an amount not to exceed \$70,000 for Capital BikeShare equipment and maintenance up to one year, and

- o Conduct performance monitoring of its retail/grocery trip generation once the project reaches 90% of commercial occupancy by documenting the inbound PM peak hour (between 4 00 p m and 7 00 p m) vehicle trips generated by the site. This monitoring shall be conducted on three separate, non-successive days (Tuesday through Thursday) over the course of a four-week period. The Applicant shall submit a copy of the information to DDOT annually (no later than October 31st each year). When trips are consistent with the trip generation projections for two successive periods, the Applicant shall be released from the monitoring requirement. In the event that the project exceeds the vehicle trip generation by 10% for two consecutive years after operation, then the Applicant shall meet with DDOT to determine additional transportation demand management measures to incorporate in the project. Any such additional transportation demand measures shall not include construction.

- 18 **During the operation of the building**, the Applicant shall provide up to 40 vouchers for parking without charge on Sunday mornings between 8 00 a.m. and 12 noon to the churches in the adjacent block of H Street, N E , and to other residents or businesses within the Squares 831, 832, 833, 857, 858, 859, 888, 889, and 890. The vouchers shall be distributed on a first come, first served basis on Monday morning at 8 00 a m from the concierge at the project. No more than 10 vouchers will be given to any single user at that time. Any vouchers remaining by Wednesday at 5 00 p m will be available on a first come, first served basis to any user, including those users who already obtained vouchers for the week.

C. MISCELLANEOUS

- 19 No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner of the Site and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Commission.
- 20 At the election of the Applicant, the project may be constructed in a single phase, or in two phases.

- a For the Original Submission, if the project is phased, the first phase will include the western portion of the building, and the second phase will include the eastern portion of the building, as shown in the Applicant's presentation in the record at Exhibit 43, and
 - b For the Grocery Alternate, if the project is phased, the first phase will include the majority of the building, and the second phase will include the 7th Street portion of the building, as shown in the Applicant's presentation in the record at Exhibit 43
- 21 The PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit for the first phase or the entire building as specified in 11 DCMR § 2409.1. Construction of the project approved by the building permit shall begin within three years of the effective date of this Order.
- 22 If phased, an application must be filed for a building permit for the second phase of development within two years after the completion of the first phase of the building as evidenced by the issuance of the certificate of occupancy for the residential portion of the building. Construction of the second phase shall begin within three years after the completion of the first phase of the building as evidenced by the issuance of the certificate of occupancy for the residential portion of the building.
- 23 The Applicant is required to comply fully with the provisions of the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination 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 April 18, 2013, upon the motion of Commissioner May, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the Application at the conclusion of the public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

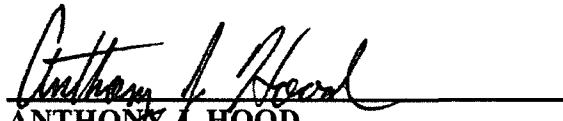
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Z C. CASE NO 12-18

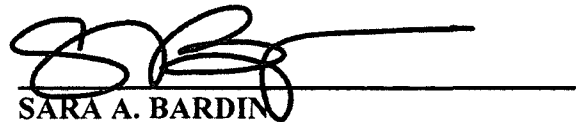
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On June 10, 2013, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J Hood, Marcie I Cohen, Robert E Miller, Peter G May, and Michael G Turnbull to adopt)

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D C Register*, that is on July 5, 2013



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING