

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning




Z.C. CASE NO.: 13-05 (Corrected)

FEB 20 2014

As Secretary to the Commission, I hereby certify that on _____ a copy of the Z.C Order No 13-05 was by first-class, postage prepaid mail to the following

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ATTESTED BY: 
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-05

Z.C. Case No. 13-05

Forest City Washington

(First-Stage Planned Unit Development and Related Zoning Map Amendment: G1, G2, & G3 Parcels and Consolidated Planned Unit Development and Related Zoning Map Amendment: F1 Parcel @ D.C. Water Sites – Near Southeast)

December 9, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on September 19, 2013, to consider an application by Forest City Washington (“Applicant”) on behalf of the District of Columbia, the owner of the subject property, for approval of a first-stage planned unit development (“PUD”) and related amendment to the Zoning Map of the District of Columbia for part of Lot 805 in Square 744S and part of Lot 801 in Square 744SS. The Applicant also sought approval of a consolidated PUD and related Map Amendment for the first phase of the proposed PUD. 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. The Commission approves the application, subject to the conditions below.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The project site consists of part of Lot 805 in Square 744S and part of Lot 801 in Square 744SS (the “Property”) and is located at 1st Street, S.E., and N Place, S.E., just east of Nationals Park.
2. On February 27, 2013, the Applicant filed an application for a first-stage PUD and related amendment to the Zoning Map of the District of Columbia from the CG/W-2 Zone District to the CG/CR and CG/W-1 Zone Districts. The Applicant also requested consolidated¹ PUD approval for the first phase of the PUD (together with the first-stage PUD and map amendment, the “Application”). (Exhibit [“Ex.”] 2.)

¹ The Applicant filed for “second-stage” PUD approval for the first phase of the PUD, but the Office of Zoning elected to describe the request as a “consolidated” PUD for this component of the PUD and a first-stage PUD for the remainder of the PUD

3. During its public meeting on April 29, 2013, the Commission voted to set down the Application for a public hearing. Notice of the public hearing was published in the *DC Register* on July 19, 2013 and was mailed to Advisory Neighborhood Commission (“ANC”) 6D and to owners of property within 200 feet of the Property. (Ex. 12, 13)
4. The Application was further updated by pre-hearing submissions filed on June 28, 2013 and August 30, 2013. (Ex. 10, 17.)
5. A public hearing was conducted on September 19, 2013. The Commission accepted Mark Gilliland and Gerry Renaud as experts in the field of architecture, Rick Parisi as an expert in the field of landscape architecture, and Erwin Andres as an expert in the field of traffic engineering. The Applicant provided testimony from these experts as well as from Alex Nyhan of Forest City Washington and Bob Gallivan of Kerasotes Showplace Theaters.
6. In addition to the Applicant, ANC 6D was automatically a party in the proceeding and submitted a report in support of the Application. (Ex. 21.) The Commission also granted DC Water’s request for status as a party in support of the Application; DC Water submitted a letter in conditional support of the Application. (Ex. 18, 22)
7. At the hearing, the Commission heard testimony and received evidence from the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), and the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”). (Ex. 19, 20.)
8. At the close of the hearing, the Commission took proposed action to approve the Application and the plans that were submitted into the record. The Commission also asked the Applicant to address certain design issues related to the consolidated PUD, resolve certain outstanding transportation issues with DDOT, provide an update on DC Water relocation efforts, and provide additional information on the Applicant’s track record on Certified Business Enterprise (“CBE”) commitments. The Applicant addressed these issues and concerns in a post-hearing submission dated November 12, 2013. (Ex. 31.)
9. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the Home Rule Act. NCPC did not provide a report on this case.
10. The Commission took final action to approve the Application on December 9, 2013.

THE MERITS OF THE APPLICATION

Overview of the Property

11. The Property consists of approximately 235,130 square feet of land area and is located across 1st Street, S.E. from the Washington Nationals ballpark in Ward 6. The property is currently improved with multiple low-scale structures and surface parking used by D C. Water for a variety of light industrial uses. The Property is bounded by N Place, S.E. on the north, 1st Street, S.E. on the west, Diamond Teague Park on the south, and DC Water's Main and O Street pumping stations to the east. (Ex. 2.)
12. The entrance to the Navy Yard Metrorail station is located approximately three blocks north of the Property. (Ex. 2.)
13. To the west of the Property is the Washington Nationals ballpark. To the southwest is the Florida Rock redevelopment approved by Z.C. Order No. 04-14B, which will consist of two residential buildings, a hotel and an office building ranging from 95 to 130 feet in height, and to the northwest is the Ballpark Square redevelopment approved by Z.C. Order No. 12-05, which will consist of a new 130-foot tall residential, hotel, and office building. (Ex. 2.)
14. The Property is also adjacent to The Yards, which is the mixed-use neighborhood being redeveloped by the Applicant in conjunction with the General Services Administration ("GSA"). Two parcels within The Yards, Parcels H and I, are located immediately to the north of the Property. Each parcel is intended to be redeveloped with residential uses, bisected by an extension of the proposed 1 ½ Street, S.E. that is also contemplated for this PUD. (Ex. 2.)
15. The Property is also proximate to Diamond Teague Park, a new public plaza with water taxi and public piers that is located at the terminus of 1st Street, S.E. at the Anacostia River. (Ex. 2.)
16. The Property is located in the CG/W-2 Zone District. Property to the north is located in the SEFC/CR Zone District. Property to the west and northwest is located in the CG/CR Zone District. The Florida Rock site to the southwest was rezoned to the C-3-C Zone District as part of the approved PUD. DC Water's Main Pumping Station to the east of the Property is located in the M Zone District. (Ex. 2.)
17. The Future Land Use Map designates the Property in the Medium Density Residential/Medium Density Commercial land use category on the Future Land Use Map. The Property is designated as a Land Use Change area on the Generalized Policy Map. The Property is also located within the Central Employment Area. (Ex. 2.)

The First-Stage PUD

18. The Applicant requested approval to redevelop the Property into four new city blocks with a new 16-screen movie theater and parking garage, two new apartment buildings, an expansion of Diamond Teague Park, and a total of approximately 35,000-50,000 square feet of ground-floor retail, arts, and entertainment uses throughout the PUD (the "Redevelopment Plan"). (Ex. 2.)
19. As a part of the Redevelopment Plan, the Applicant will reintroduce the street grid to the Property through a series of private streets O Street, S.E. and Potomac Avenue, S.E. as new east-west streets, and 1½ Street, S.E. as a new north-south street. The proposed street network will divide the Property into four city blocks: the F1 Parcel, which is located in the northeast corner of the Property, and the G1, G2, and G3 Parcels, which are located along 1st Street, S.E. (Ex. 2.)
20. The Redevelopment Plan will provide approximately 600 residential units, including approximately 350 units in the G1 building and approximately 250 units in the G2 building. The Applicant noted that the final number of units would be determined with future second-stage submissions and could vary depending on building efficiency and market conditions (Ex. 2)
21. The Redevelopment Plan will activate the existing and proposed street grid through street-level activating uses, including ground-floor preferred retail, service, entertainment, and arts uses along 1st Street and 1½ Street, as well as potentially along Potomac Avenue. (Ex. 2.)
22. The Redevelopment Plan will significantly improve the sustainability of the site over existing conditions, from 100% impervious surface parking and buildings to over 53% permeable area, with new street trees, green roofs, low-impact development planters, and the expanded Diamond Teague Park to increase site porosity and control stormwater runoff. (Ex. 2; Tr. Sept. 19, 2013 at p 83.)
23. The Redevelopment Plan calls for approximately one vehicular parking space for every two residential units and approximately one bicycle parking space for every three residential units in the G1 and G2 buildings, but the Applicant noted that the final number of parking spaces would be determined in conjunction with future second-stage PUD submissions. The Redevelopment Plan also calls for approximately 331 parking spaces on the F1 Parcel as described herein. Parking for the retail uses in the G1 and G2 building as well as parking for the G3 building will be accommodated within the F1 Parcel's parking garage. The Redevelopment Plan also calls for on-street parking spaces on the private streets within the PUD. (Ex. 2.)

24. The Redevelopment Plan will provide a total of approximately 600 residential dwelling units and 131,000–146,000 square feet of retail, arts, and entertainment space, and above- and below-grade parking, for a total density of approximately 5.87 floor area ratio (“FAR”) across the entire PUD site, including approximately 1.76 FAR devoted to nonresidential uses. The Applicant excluded the private streets from the total site area for purposes of calculating FAR. The Redevelopment Plan will have a maximum height of 130 feet, with each residential building stepping down to 110 feet toward the Anacostia River. (Ex. 2, 17.)

Zoning Map Amendment

25. The Property is located in the CG/W-2 Zone District. The maximum height allowed in the CG/W-2 Zone District is 70 feet and the maximum density is 5.0 FAR (with the bonus for residential uses). (Ex. 2.)
26. Property to the north is located in the SEFC/CR Zone District. Property to the west and northwest is located in the CG/CR Zone District. Property to the southwest was rezoned to the C-3-C Zone District through the PUD process. (Ex. 2.)
27. The Applicant requested a PUD-related Zoning Map amendment to the CG/CR Zone District for the F1, G1, and G2 Parcels to permit the structures to reach the requested height and density. The maximum height permitted for a PUD in the CG/CR Zone District is the maximum height permitted under the Height Act (130 feet for the G parcels, and 100 feet for the F1 parcel), and the maximum permitted density is 8.0 FAR. (Ex. 2.)
28. The Applicant requested a PUD-related Zoning Map amendment to the CG/W-1 Zone District for the G3 Parcel, to recognize the parcel’s proximity to the waterfront yet also permit the construction of the G3 Building. The maximum height permitted for a PUD in the CG/W-1 Zone District is 50 feet and the maximum permitted nonresidential density is 1.0 FAR. (Ex. 2.)

Consolidated PUD

29. The Applicant requested consolidated approval to construct a 16-screen movie theater above a four-story parking garage on the F1 Parcel (the “Project”). The movie theater consists of two stories plus a mezzanine level with up to 2,500 seats. The F1 Parcel will also contain approximately 2,000 square feet of potential retail or artist studio space along N Place, S.E. The movie theater will serve as an entertainment anchor for the proposed retail and arts node at N Place and 1 ½ Street. (Ex. 2, 17.)
30. The Project is composed primarily of articulated metal panels that include a color-shifting iridescence that will vary the façade with color movement and varying hues in both cool

and warm color temperatures. A series of accent lights within the metal panel system will provide additional variation and articulation. Furthermore, the Applicant has also proposed a separate illuminated panel system along the southeast and east portions of the building as well as along the lower portion of the north façade to create further visual interest. Finally, the façades are broken up at both the northwest corner and southeast corner by a glass curtainwall that brings light and visual transparency into the public portions of the theater. The northwest corner features a multi-story clear glass element that permits views into and out of the lobby entrance. The southeast corner features a two-story window element that corresponds to the theater's lounge and dining area. (Ex. 2, 10, 17, 31.)

31. The Project includes approximately 331 parking spaces in the garage. Vehicles will enter the garage from 1½ Street, S.E. and exit the garage on N Place, S.E. Loading for the Project will be located to the south of the Project and will be accessed from a second curb cut on 1½ Street, S.E. (Ex. 2, 17.)
32. The Project will include a green roof that covers approximately 75% of the green roof, a green wall on lower portions of the Project along 1½ Street S.E., and low-impact development tree pits in both the public streetscape on N Place, S.E. and the private streetscape on 1½ Street, S.E. (Ex. 2, 17.) The Applicant's landscape architect testified that the Project would achieve a green area ratio of 0.43, more than double the minimum requirement. (Tr. Sept. 19, 2013 at p. 82)
33. The total gross floor area included in the Project is approximately 239,225 square feet, for a total density of 5.73 FAR and a total lot occupancy of 93%. The Project will have a maximum height of approximately 100 feet (Ex. 17.)

PUD Flexibility Requested

34. The Applicant proposes to construct the entire PUD on a single lot of record, with multiple buildings on the single record lot, which is permitted under § 2517 of the Zoning Regulations
35. For the Project, the Applicant requested flexibility from the public space at ground level and court requirements of the Zoning Regulations. The Applicant also requested flexibility from the requirement to set back parking within an above-grade structure at least 20 feet from a lot line that abuts a public street and flexibility to permit the Project's loading to project across the lot line and be located on DC Water's property. The flexibility was requested to accommodate the design of the Project as detailed in the Applicant's written submission and the OP Final Report. (Ex 2, 19.)
36. The Applicant stated that flexibility for the remaining phases of the PUD would be identified with future second-stage PUD submissions. The Applicant requested flexibility

to phase the construction of the PUD as set forth in the conditions of approval (Ex. 2, 10)

37. The Applicant requested flexibility to modify the design of PUD-related improvements in public space to correspond with design changes requested by DDOT, including (a) streetscape improvements, (b) the location of the Project's N Place curb cut, and (c) the final design of the proposed intersection of Potomac Avenue and 1st Street, S E. To the extent that the design of streetscape improvements in public space are modified, the Applicant also requested flexibility to modify the design of corresponding elements in private space on the PUD's private streets to align with the final design of streetscape improvements in public space. (Tr Sept. 19, 2013 at pp. 89-90.)
38. The Applicant requested flexibility to change the alignment of Potomac Avenue and the shape and amount of development on the G2 and G3 Parcels based on further discussions with DDOT, OP and HPO. (Tr. Sept. 19, 2013 at pp. 89-90)
39. The Applicant requested flexibility to modify certain elements of the PUD in response to further discussions with DC Water, including modification of the design of the Project to respond to continued coordination efforts with DC Water regarding the Project's loading. (Tr. Sept. 19, 2013 at p. 88.)
40. Finally, the Applicant requested flexibility to modify the interior and exterior design elements of the Project as set forth in the conditions of approval.

Project Amenities and Public Benefits

41. As detailed in the Applicant's testimony and written submissions, the proposed Redevelopment Plan will provide the following project amenities and public benefits:
 - a. Site Planning and Efficient Land Utilization, through the replacement of a fenced-off surface parking lot and low-scale structures with a mixed-use transit-oriented development that restores the street grid, provides connections to the Anacostia riverfront, and strengthens the emerging Ballpark and Yards neighborhoods;
 - b. Housing and Affordable Housing, through the provision of approximately 600 new residential units, including approximately 48 affordable housing units set aside for households earning up to 80% of the Area Median Income. The PUD will result in approximately 22 affordable housing units above what would be delivered as a matter of right;
 - c. Ground Floor Retail Space, including retail space along both 1st Street and 1½ Street as well as potential additional retail space along Potomac Avenue. As

agreed to with ANC 6D, the northeast and southeast corners of the G1 Parcel shall be programmed for retail use;

- d. An Expanded Diamond Teague Park on the G3 Parcel, including playground equipment;
- e. Environmental Benefits that provide a drastic improvement over existing conditions including green roofs, LID tree pits, and the expansion of Diamond Teague Park;
- f. Effective and Safe Vehicular and Pedestrian Access and Transportation Management Measures, including restoration of the street grid, pedestrian-friendly streets, and on-street electric car-charging stations; and
- g. Historic Preservation, through the retention of portions of the Fleet Maintenance Building and restoration of the historic Potomac Avenue right-of-way.

(Ex. 2.)

42. As detailed in the Applicant's testimony and written submissions, the proposed Project will implement the following project amenities and public benefits:

- a. Exemplary Urban Design and Architecture, through the use of high-quality materials, pedestrian-oriented street grid patterns, streetscape improvements, and clear separation of pedestrian and vehicular circulation patterns;
- b. Movie Theater and ground-floor retail and arts uses (uses of special value);
- c. Loading and continued coordination with DC Water;
- d. Environmental Benefits that provide a drastic improvement over existing conditions including a green roof and LID tree pits;
- e. Effective and Safe Vehicular and Pedestrian Access and Transportation Management Measures, including restoration of the street grid, pedestrian-friendly streets, and bicycle parking amenities; and
- f. Employment Opportunities, including a First Source Employment Agreement and a workforce intermediary program.

(Ex. 2; Tr. Sept. 19, 2013 at pp. 36-38, 85-87.)

Transportation Issues

43. The Property is located near several modes of transportation, including the nearby Navy Yard Metrorail station, Metrobus and D C. Circulator routes, and bicycle facilities.
44. The Applicant's traffic expert submitted a detailed transportation impact analysis that concluded the Redevelopment Plan and the Project would not generate an adverse traffic impact on the surrounding roadway network due to traffic or parking impacts. (Ex. 10, Tab A.) The Applicant's traffic expert revised and supplemented this analysis in response to initial feedback from DDOT. (Ex. 17, Tab D.) The Applicant's traffic consultant also concluded that the number of parking and loading spaces as well as the location of the parking and loading entrances would accommodate the parking and loading needs for the PUD and not generate adverse impacts on neighboring property. (Ex. 17, Tab D.)
45. DDOT submitted reports and provided testimony recommending approval of the PUD provided that the Applicant agree to certain conditions related to (1) the design of the intersection of Potomac Avenue and 1st Street, (2) the location of the driveway for the Project on N Place, (3) onsite facility with showers and lockers for bicyclists, (4) updated transportation studies for future second-stage PUD submissions and (5) funding for a new traffic signal at 1st Street and N Place in order to address concerns about the use of the Project's parking garage during the day. (Ex. 20, 30.)
46. The Commission finds that the PUD will not cause unacceptable impacts on vehicular or pedestrian traffic, as demonstrated by the testimony and reports provided by the Applicant's traffic expert and DDOT:
 - a. The Commission finds that the PUD will not impose adverse impacts on the surrounding transportation network and that the number of vehicular parking spaces will not result in adverse conditions, provided that the Applicant provide the mitigation measures recommended by DDOT and agreed to by the Applicant;
 - b. The Commission finds that the location of the parking and loading entrances, including the proposed loading location for the Project, will not generate adverse conditions. The Commission recognizes that DDOT will determine the final location of parking and loading entrances to be located in public space through the public space process; and
 - c. The Commission finds that the Project will not generate adverse impacts on the surrounding pedestrian network. The Commission recognizes that DDOT will determine the final measures to be installed in public space through the public space process.

Compliance with PUD Standards

47. 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 ” The Commission finds that the development incentives for the height, density, flexibility, and related rezoning to CG/CR and CG/W-1 are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines as set forth in the Applicant’s statement and the OP report.
48. The Commission credits the testimony of the Applicant and its architectural experts as well as OP, DDOT, and ANC 6D, and finds that the superior design, site planning, streetscape, sustainable design features, transportation infrastructure improvements, housing and affordable housing, historic preservation, uses of special value, and tax revenue features of the PUD all constitute acceptable project amenities and public benefits.
49. 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 urban design, landscaping and open space, housing and affordable housing, historic preservation, site planning, transportation measures, environmental benefits, and uses of special value to the neighborhood and District as a whole. The Commission credits the testimony of OP and ANC 6D that the PUD provides significant and sufficient public benefits and project amenities.
50. The Commission finds that the character, scale, mix of uses and design of the Project are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant’s architectural and transportation planning experts that the PUD represents an efficient and economical redevelopment of a strategic and transit-oriented parcel three blocks from a Metrorail station entrance.
51. The Commission credits the testimony of OP and the Applicant regarding the Property’s designation as Mixed-Use Medium Density Commercial/Medium Density Residential on the Future Land Use Map of the District of Columbia. The Framework Element lays out “interpretation guidelines” for the Future Land Use Map, and many of these guidelines are reprinted on the map itself. The Interpretation Guidelines state that the Future Land Use Map is not a zoning map and does not specify allowable uses or dimensional standards. The Guidelines also indicate that the typical building heights and densities included in the land use category simply describe the “general character” of the area, and

state that the “granting of density bonuses [through PUDs] may result in heights that exceed the typical ranges cited here.” Finally, the Guidelines indicate that the Future Land Use Map designations are not parcel-specific and should be interpreted in conjunction with the text of the Plan:

- a. The Future Land Use Map identifies the Property as appropriate for mixed-use development supporting Medium Density Commercial and Medium Density Residential uses. The Medium Density Commercial category defines shopping and service areas that draw from a citywide market area, with buildings that are taller than moderate density areas but generally do not exceed eight stories. The Medium Density Residential category defines similarly-sized buildings in neighborhoods where mid-rise (four to seven stories) apartment buildings are the predominant use. The Framework Element lists certain corresponding zone districts for each category that include the C-2-B, C-2-C, C-3-A, and C-3-B zones (for Medium Density Commercial) and R-5-B and R-5-C zones (for Medium Density Residential), but notes that “other districts may apply”; and
 - b. The proposed rezoning to the CG/CR and CG/W-1 Zone Districts is consistent with the Future Land Use Map. The Zoning Regulations define the CR District as a zone that should be applied to areas where “a mixture of uses and building densities is intended to carry out elements of the District of Columbia development plans, including goals in employment, population, transportation, [and housing . . .]” (11 DCMR § 600.4.) Although the proposed Project’s height exceeds the upper limits listed in the definitions in the Medium Density Residential and Medium Density Commercial areas, the Future Land Use map notes that “heights may exceed the typical ranges” when bonuses are granted through a PUD.
52. The Commission finds that the proposed Map Amendment to the CG/CR and CG/W-1 Zone Districts is not inconsistent with the Comprehensive Plan or the character of the surrounding area. The Commission notes that the proposed zoning is consistent with the Property’s location near a Metrorail station, and property across the street is located in the same zone district. The rezoning is necessary to permit the mix and density of uses appropriate for this strategic, transit-oriented site. Further, the rezoning is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public benefits and amenities against the requested zoning flexibility.
53. The Commission credits the testimony of OP and ANC 6D that the Project will provide benefits and amenities of substantial value to the community and the District commensurate with the additional density and height sought through the PUD. Further, the Commission credits OP’s testimony that the impact of the PUD on the level of services will not be unacceptable.

54. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant's traffic consultant and DDOT and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD.
55. The Commission credits the testimony of the Applicant and OP regarding the compliance of the Project with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide, and area elements of the Plan, including:
- a. Designation of the Property as Mixed Use Medium Density Residential / Medium Density Commercial use on the Future Land Use Map as well as provisions of the Framework Element that explicitly state that density and height gained through the PUD process are bonuses that may exceed the typical ranges listed in the Plan;
 - b. Land Use Element policies promoting development within the Central Employment Area, the redevelopment of large sites, transit-oriented development, and the redevelopment of industrial land;
 - c. Policies in the Lower Anacostia and Near Southwest Area Element regarding redevelopment of waterfront sites, creation of an entertainment district near the ballpark, more retail and housing, and elimination of barriers to the Anacostia River; and
 - d. Other policies in the Urban Design, Housing, Economic Development, Transportation, and Environmental Protection Elements related to the Land Use policies and goals stated above.

Agency Reports

56. By report dated September 9, 2013 and by testimony at the public hearing, OP recommended approval of the Application and concluded that the Project's design was exemplary. OP stated that it was "very supportive" of the additional height, which would allow for improved open spaces and greater public views and access to the waterfront. OP concluded that the PUD and related rezoning was not inconsistent with the Property's Future Land Use or Policy Map designations in the Comprehensive Plan and would further the Land Use, Transportation, Housing, Environmental Protection, Economic Development, Parks, and Lower Anacostia Waterfront Elements of the Comprehensive Plan. OP evaluated the PUD and related rezoning under the evaluation standards set forth in Chapter 24 of the Zoning Regulations and concluded that the PUD's benefits and amenities were appropriate given the size and nature of the PUD and related requests for rezoning and flexibility. (Ex. 19.)

- 57 OP requested that the Applicant provide written agreement with DC Water regarding loading access, and evidence of such agreement was provided by DC Water in its conditional support letter dated September 17, 2013. (Ex. 22.)
- 58 By report dated September 9, 2013 and by testimony at the public hearing, DDOT recommended approval of the PUD provided that the Applicant: (1) redesign the intersection of Potomac Avenue and 1st Street and commit to cover the design and construction of new signal hardware; (2) relocate the driveway for the Project on N Place; (3) provide an onsite facility with showers and lockers for employees who bicycle; and (4) provide an updated transportation study for future second-stage PUD submissions. (Ex. 20) The Applicant agreed to all of these requests and they are reflected in the conditions of approval.
59. At the hearing, DDOT and the Applicant testified that they were continuing to discuss two additional proposed conditions of approval related to the amount of proposed parking in the Project and the use of such parking by non-theater goers. Following the public hearing, DDOT issued a supplemental report dated November 13, 2013 that approved the use of the Project's parking garage as proposed by the Applicant, provided that the Applicant agreed to fund the design and installation of a traffic signal for the intersection of 1st Street and N Place. (Ex. 30.) The Applicant agreed to this request, as reflected in the conditions of approval.
60. By letters dated September 17, 2013, and November 19, 2013, DC Water submitted comments in conditional support of the PUD that recognized the Applicant's continuing efforts to coordinate development of the PUD with DC Water. The letter listed a series of design and operational commitments by the Applicant regarding loading access for the Project and other issues. (Ex. 22, 33.) The Applicant's design and operational commitments have been incorporated as conditions of approval. The letter also requested the Commission add a condition requiring the Mayor to comply with a December 31, 2013 reporting deadline included in the Budget Support Act of 2014 and for an independent consulting engineer to certify that there would be no negative impact of the proposed land disposition upon DC Water's viability as required by its Master Indenture. The Commission declines to make existing statutory and contractual requirements conditions of this Order. Moreover the Commission has no authority to compel anyone other than the applicant to abide by its conditions of approval.

ANC Report

61. ANC 6D submitted a written report in support of the proposed PUD and related rezoning. ANC 6D noted that the Applicant had refined the design of the Project in response to the ANC's requests and the ANC conditioned its support on the Applicant's agreement to a series of design and mitigation measures that were requested by the ANC. (Ex. 21.) These measures have been incorporated into the conditions of approval.

CONCLUSIONS OF LAW

1. 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.)
2. Under the PUD process, the Commission has the authority to consider a portion of 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, open space, parking, loading, 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.)
3. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.
4. Proper notice of the proposed PUD and related rezoning was provided in accordance with the requirements of the Zoning Regulations.
5. 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 not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate. The proposed redevelopment of the Property, with a mix of residential and commercial uses, including the first phase of construction as a movie theater with a screened parking garage, capitalizes on the Property’s strategic and transit-oriented location and is compatible with the citywide and area plans of the District of Columbia.
6. The Applicant seeks a PUD-related zoning map amendment to the CG/CR and the CG/W-1 Zone Districts as well as, for the consolidated portion of the PUD, flexibility from the requirement for public space at ground level, court, and parking and loading requirements. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.

7. The PUD is within the applicable height and bulk standards of the Zoning Regulations. The proposed height and density will not cause an adverse effect on nearby properties, are consistent with the height and density of surrounding and nearby properties, and will create a more appropriate and efficient utilization of land at a strategic location next to the Washington Nationals ballpark and near the Navy Yard Metrorail station. The mix of residential and retail uses are also appropriate for the site's location.
8. The project provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe traffic circulation, sustainable features, housing and affordable housing, historic preservation, ground-floor retail, and uses of special value all are significant public benefits. The impact of the project is acceptable given the quality of the public benefits of the Project.
9. The impact of the Project on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed project will not create adverse traffic, parking, or pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area for the Project will be mitigated.
10. Approval of the PUD and rezoning is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed project is consistent with the Property's Mixed-Use Medium Density Commercial/Medium Density Residential Designation on the Future Land Use Map and furthers numerous goals and policies of the Comprehensive Plan in the Land Use Element, Housing Element, and other citywide elements and policies as well as policies in the Lower Anacostia and Near Southeast Area Element as delineated in the OP Report.
11. The Commission concludes that the proposed PUD-related Zoning Map Amendment for the Property from the CG/W-2 to the CG/CR and CG/W-1 Zone Districts is not inconsistent with the Comprehensive Plan, including the Property's designation as Mixed-Use Medium Density Commercial/Medium Density Residential on the Future Land Use Map, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
12. The PUD and rezoning for 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.

- 13 The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. OP recommended approval of the Application and accordingly, approval of the PUD and related rezoning should be granted.
- 14 In accordance with § 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)), the Commission must give great weight to the written issues and concerns of the affected ANC. The Commission accorded the issues and concerns raised by ANC 6D the “great weight” to which they are entitled, and in so doing fully credited the unique vantage point that ANC 6D holds with respect to the impact of the proposed application on the ANC’s constituents. ANC 6D recommended approval of the PUD subject to conditions that have been agreed to by the Applicant. The Commission concludes that the Applicant has addressed the ANC’s conditions and, accordingly, the PUD and related rezoning should be approved.
15. The Applicant 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 of the District of Columbia **ORDERS APPROVAL** of the application for approval of a first-stage PUD and related rezoning from the CG/W-2 Zone District to the CG/CR and CG/W-1 Zone Districts for property consisting of part of Lot 805 in Square 771S and part of Lot 801 in Square 771SS (“Property”) as well as approval of a consolidated PUD for the first phase of development within the PUD on the F1 Parcel. This approval is subject to the following guidelines, conditions, and standards of this Order:

A. First-Stage PUD Conditions

1. The G1, G2, and G3 Parcels shall be developed in accordance with the Master Plan prepared by Shalom Baranes Associates marked as Tab A of Exhibit 17 of the record (the “Master Plan”), as modified by guidelines, conditions, and standards herein and the Zoning Commission’s second-stage approval.
2. The G1 and G2 Parcels shall be rezoned to the CG/CR Zone District, and the G3 Parcel shall be rezoned to the CG/W-1 Zone District, as shown on page S09 of the Master Plan. Pursuant to § 3028.9, the rezoning of each parcel shall not become effective unless and until a second-stage application and the related plans for the

parcel has been approved and “upon filing with the District of Columbia a covenant ensuring compliance with the approved plans.”

3. The G1 and G2 Parcels shall provide approximately 600 residential units and set aside eight percent of the residential gross floor area on each Parcel as affordable housing (estimated as approximately 48 units) for households earning up to 80% of the Area Median Income. The Applicant shall have flexibility to revise the number and type of residential units in conjunction with future second-stage PUD submissions to accommodate the final design of each building.
4. The expanded Diamond Teague Park shall include dedicated playground equipment, at the high level of design expected on the waterfront. Such features could include one or preferably more features such as: slides, swings, and climbing equipment. The Applicant shall request second-stage PUD approval for the expanded park as a part of the second-stage PUD application for either the G1 or G2 Parcel. The Applicant shall construct such park improvements no later than the issuance of a certificate of occupancy for the G1 or G2 building approved in that same second-stage application. The Applicant shall also be permitted to seek approval for temporary, interim uses and structures on the G3 Parcel in conjunction with such park improvements
5. The Applicant shall provide approximately 35,000-50,000 square feet of retail space as shown on page MP-07 of the Master Plan; provided that the Applicant shall reserve the northeast and southeast corners of the G1 Parcel for retail use.
6. In connection with the second-stage PUD applications for each of the G1 and G2 Parcels, the Applicant shall provide evidence that each building will be designed to the equivalent of LEED-NC Silver rating.
7. The Applicant shall design the proposed private street network as shown on the Master Plan. The private street network will be constructed in association with each second-stage PUD; each second-stage PUD application will identify the specific segments of the road and streetscape that will be constructed as a part of that phase of the PUD, and issuance of a certificate of occupancy for that phase of the PUD will be conditioned on the completion of the identified road and streetscape improvements, subject to the following:
 - a. The private street network shall include the LID and tree planting details included on pages L04-L08 and L10-L13 in the Master Plan, provided that the Applicant shall have flexibility to modify the design of such improvements to correspond with any design changes requested by DDOT within the public space associated with the PUD;

- b. The Applicant shall program the proposed private streets Potomac Avenue, S.E. and 1½ Street, S.E. within the PUD as “complete streets” that are shared among a variety of users, most notably bicyclists and automobile drivers. Among other measures, the Applicant shall consider the use of “sharrows” along Potomac Avenue, S.E. Such detail shall be incorporated into future second-stage PUD applications,
 - c. The Applicant shall provide two on-street dedicated electric car-charging stations either (a) on public space adjacent to the PUD on 1st Street and N Place, S.E. or (b) on the proposed private streets within the PUD that include 1½ Street, S.E., Potomac Avenue, S.E., or O Street, S.E. The specific location and timing for provision of such spaces shall be detailed no later than the second-stage PUD submission for the latter of the G1 or the G2 Parcels, and installation of the car-charging stations shall be completed prior to the issuance of a certificate of occupancy for such second-stage PUD;
 - d. The Applicant shall have flexibility to redesign the proposed intersection of Potomac Avenue and 1st Street as well as make related changes to the alignment of Potomac Avenue and the shape and amount of development on the G2 and G3 Parcels, based on further discussions with DDOT, OP, and HPO, and
 - e. The Applicant agrees to contribute 100% of the design and construction costs for appropriate new signal hardware for the Potomac Avenue and 1st Street intersection that is required to accommodate new traffic movements through the intersection triggered by the extension of Potomac Avenue. Such contribution shall be made prior to the issuance of a certificate of occupancy for the G2 Parcel.
- 8 The Applicant shall provide a Comprehensive Transportation Review for each second-stage PUD submission.
9. The Applicant shall retain and incorporate portions of the Fleet Maintenance Building into the G1 Parcel as shown on Page B-02 of the Master Plan:
- a. The Applicant shall develop a preservation program on the preserved Fleet Maintenance Building façade that shall include preservation of the existing brick, walls and window and door openings – with allowances made to retrofit this into a viable retail building, and preservation of some of the existing diverse and mottled window-pane look. The Applicant

shall provide its specific preservation plan with the future second-stage application for the G1 Building;

- b The Applicant shall seriously consider the preservation of the windows, bricks, and other “character-defining” building materials of the existing industrial heritage buildings proposed to be demolished on the site (that is, the Welding Shop, the Concrete Prefabrication Shop, and the Carpenter Shop), and to reuse such materials elsewhere as interior or exterior elements within the PUD. Details on such efforts shall be included in future second-stage PUD applications; and
- c The Applicant shall seriously consider the relocation of one or more of the existing smaller industrial heritage buildings proposed to be demolished on the site (that is, the Concrete Prefabrication Shop and/or the Carpenter Shop) – to the G3 Parcel. Details on such efforts shall be included in future second-stage PUD applications.

B. Consolidated PUD Conditions

1. The F1 Parcel shall be developed in accordance with the plans prepared by RTKL marked as Tab B of Exhibit 17 of the record (“Approved F1 Plans”), as modified by guidelines, conditions, and standards herein
2. The F1 Parcel shall be rezoned to the CG/CR Zone District as shown on page S09 of the Master Plan.
3. The change of zoning from shall be effective upon the recordation of the covenant discussed in Condition No. C.1, pursuant to 11 DCMR § 3028.9.
4. The Applicant shall have flexibility from the public space at ground level, court, parking, and loading requirements of the Zoning Regulations as shown on the Approved F1 Plans.
5. The F1 Parcel shall be used for ground-floor retail and arts uses, a movie theater, and commercial parking uses with approximately 331 parking spaces, as shown on the Approved F1 Plans.
6. The Project shall provide loading consistent with the Approved F1 Plans, provided that the Applicant shall be have the following flexibility to modify such plans in response to continued coordination efforts with DC Water:

- a. The Applicant shall refrain from using WB-50 trucks to service the F1 Parcel, if required by DC Water to accommodate the design of DC Water's proposed new administrative headquarters building;
 - b. The Applicant shall modify the location and design of the trash berth, if required to accommodate the design of DC Water's proposed new administrative headquarters building; and
 - c. The Applicant shall coordinate the time for such deliveries and trash service with DC Water.
7. The Applicant shall design the F1 Parcel to achieve the equivalent of certification or higher under the LEED-CS rating system.
 8. The F1 Parcel shall include a green roof and LID tree pits as shown on the Approved F1 Plans, provided that the Applicant shall have flexibility to modify the final design of improvements in public space in response to DDOT direction and to modify the corresponding elements in private space to align with the final design of streetscape improvements in public space.
 9. The F1 Parcel shall provide a minimum of 40 bicycle parking spaces within the building and 12 bicycle parking spaces on racks outside the building, as well as an on-site facility with showers and lockers for employees of the movie theater. The final number and location of improvements in public space shall be subject to the discretion of DDOT.
 10. Prior to the issuance of a certificate of occupancy for the F1 Parcel, the Applicant shall demonstrate that it has constructed the streetscape improvements along the south side of N Place and the east side of 1½ Street adjacent to the F1 Parcel as shown on the Approved F1 Plans. The final design of any improvements in public space shall be subject to final approval from DDOT and the Applicant shall have flexibility to modify such improvements in response to DDOT direction as well as modify the corresponding elements in private space to align with the final design of streetscape improvements in public space. The Applicant shall also have flexibility to modify the location of the proposed N Place curb cut in response to DDOT direction as well as modify the design of the F1 Parcel to accommodate any change to the location of the curb cut.
 11. Prior to the issuance of a building permit for the Project, the Applicant shall demonstrate that it has contributed 100% of the traffic engineering and construction costs of the signalization of the intersection of 1st Street and N Place, S.E.

12. Prior to the issuance of a building permit for the F1 Parcel, the Applicant shall provide evidence that it has amended its existing First Source Agreement or signed a new First Source Agreement with the D.C. Department of Employment Services.
13. Prior to the issuance of a certificate of occupancy for the F1 Parcel, the Applicant shall provide evidence that it has entered into a Memorandum of Understanding with ANC 6D and/or the Community Benefits Coordinating Council regarding a Workforce Intermediary Program that will provide supported employment and jobs for ANC 6D residents (20003 and 20024 Zip Codes) to the extent permitted by District of Columbia law with a focus on training, placement, and retention of candidates for jobs created by the PUD.
14. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure,
 - b. To vary final selection of the exterior materials within the color ranges and materials types as proposed, based on availability at the time of construction;
 - c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belts, 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, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - d. To vary the size, location and design features of the retail/arts component of the Project, including the size, location, and design of windows, doors, awnings, canopies, signage, and similar features, to accommodate the needs of specific retail tenants and storefront design;
 - e. To vary the size, location, type, and other features of proposed building signage related to the proposed retail and theater uses; and
 - f. To vary the design of the parking garage, which need not conform to the parking garage requirements of the Zoning Regulations regarding aisle width and parking space width, provided that the parking garage contain

approximately 331 vehicular parking spaces, which requirement may be satisfied through any combination of accessible and full and compact parking spaces.

C. Miscellaneous Conditions

1. No building permit shall be issued for the Project until the owner of the Property has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owner of the Property and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Zoning Commission.
2. The consolidated PUD approved by this 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 the building permit as specified in 11 DCMR § 2409.1. Construction must begin within three years of the effective date of this Order.
3. The First-Stage PUD shall be valid for a period of 12 years. Within such time, the Applicant shall:
 - a. File an application for second-stage PUD approval of either the G1 or G2 Parcel no later than two years after the issuance of a Certificate of Occupancy (“CO”) for the F1 Parcel;
 - b. File an application for second-stage PUD approval of the remaining residential building no later than two years after the issuance of the CO for the initial residential building; and
 - c. File an application for second-stage PUD approval for the proposed permanent structure on the G3 Parcel no later than five years after the issuance of a certificate of occupancy for the G1 or G2 Parcels, whichever occurs last.

The 12 year time period shall not be deemed to be extended because there is time remaining for the Applicant to file for a second stage application under 2 (a), (b), or (c).

4. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401 01, et seq (“Act”) and this Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the

basis of actual or perceived race, color, religion, national origin, sex, age, marital status, 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 also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On September 19, 2013, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, 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).

On December 9, 2013, upon the motion of Vice Chairman Cohen, as seconded by Commissioner Miller, 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 February 7, 2014.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING