



PLANNED UNIT DEVELOPMENT COVENANT

Z.C. CASE NO. 13-18
(WBG Wheeler Rd, LLC)

THIS PLANNED UNIT DEVELOPMENT COVENANT (this "Covenant"), is made as of this 30th day of March, 2017, by and between **WBG Wheeler Road, LLC**, a District of Columbia limited liability company (the "Owner"), and the **DISTRICT OF COLUMBIA**, a municipal corporation (the "District").

W I T N E S S E T H:

WHEREAS, Owner owns in fee simple the property known as record Lot 0065¹ in Square 5925 (the "PUD Site"). The PUD Site is known as premises address 4139 Wheeler Road, SE, Washington, D.C., as is more particularly described in Zoning Commission Case No. 13-18 and in Exhibit A attached hereto and incorporated herein;

WHEREAS, pursuant to Chapter 24 of the version of Zoning Regulations of the District of Columbia in effect at the time (the "1958 Zoning Regulations"), the Zoning Commission for the District of Columbia (the "Zoning Commission") approved an application for a planned unit development (the "PUD") and related Zoning Map amendment for the PUD Site by Zoning Commission Order No. 13-18, dated January 26, 2015, which became final and effective on April 17, 2015 (the "Order");

WHEREAS, Chapter 24 of the 1958 Zoning Regulations requires that Owner enter into this Covenant with the District of Columbia assuring Owner's (and its successors in title)

¹. Lot 0820 & 0821 identified in Order No. 13-18 as the "Property" was subdivided into Lot 0065 pursuant to that certain Subdivision Plat, recorded on September 24, 2015, in Book 210, Page 92 in the records of the D.C. Surveyor's Office.

development and use of the PUD Site as approved by the Zoning Commission in the Order and all modifications, alterations or amendments thereto;

WHEREAS, on September 6, 2016, the 1958 Regulations were repealed and replaced by a new set of regulations (the “2016 Zoning Regulations”); and

WHEREAS, Subtitle X § 311.3 of the 2016 Zoning Regulations continues to require this Covenant (all subsequent citations to zoning regulations made herein are to the 2016 Zoning Regulations.)

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed between the parties hereto as follows:

1. Approved Plans, Terms and Conditions. The terms and conditions of the Zoning Commission’s approval of the PUD and related Zoning Map amendment for the PUD Site in the Order (as the same may be amended and/or modified from time to time), are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The PUD Site shall be developed and used in accordance with the plans approved by the Order and in accordance with the conditions and restrictions contained in the Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia may authorize pursuant to Subtitle A § 304.5 or Subtitle X § 311.6, or changes made by the Zoning Commission pursuant to Subtitle Z §§ 703 or 704. Owner covenants that it shall use the PUD Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Subtitle X Chapter 3 of Title 11 DCMR.

2. Additional Time to Construct PUD. If Owner should fail to file for a building permit for and/or to commence construction of the approved PUD within the time specified in

Subtitle Z §§ 702.2 or 702.3 and the Order, the Zoning Commission may duly consider an application for an extension of time for good cause in accordance with and subject to the limitations of Subtitle Z § 705.

3. Default. In the event that Owner fails to file for a building permit for and/or to commence construction of the approved PUD within the time specified in Subtitle Z §§ 702.2 and 702.3 and in the Order, or within any extension of time granted by the Zoning Commission for good cause shown pursuant to Subtitle Z § 705, the benefits granted by the Order shall terminate pursuant to Subtitle Z § 702.6 and this Covenant shall be deemed null and void.

4. Future Conveyance. Owner covenants that if any conveyance of all or any part of the PUD Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns, to develop and use the PUD Site in accordance with the terms and conditions of this Covenant and the grantee, its successors and assigns shall be considered a declarant to this covenant.

5. Covenants to Run with the Land. The covenants and restrictions contained herein shall be deemed real covenants running with the land and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the PUD Site. The District shall have the right to enforce all covenants, conditions, and restrictions contained herein.

6. Recordation. Owner shall record this Covenant, as fully executed by the parties hereto, among the land records of the District of Columbia (the “Land Records”), and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of Covenant. If the Order is modified or amended by the Zoning Commission, no formal amendment of this Covenant shall be required, provided that Owner, or its successors or assigns, records a notice of modification in the Land Records together with a copy of the written order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Zoning Commission.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF...

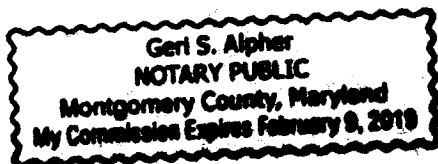
OWNER:

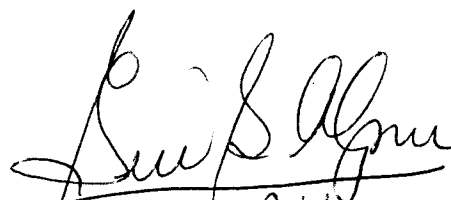
WBG Wheeler Road, LLC.

By: 
Name: Dinesh Sharma
Title: Managing Member

State of: Maryland
County of: Montgomery

Sworn to and subscribed before me this 10th of July, 2017
as to Dinesh Sharma, Managing member of WBG Wheeler
Road, LLC.



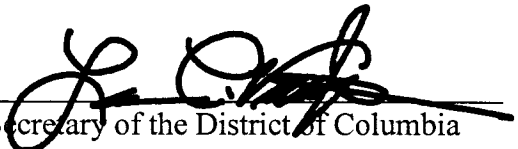

Notary Public

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

DISTRICT:

DISTRICT OF COLUMBIA,
a municipal corporation

By:

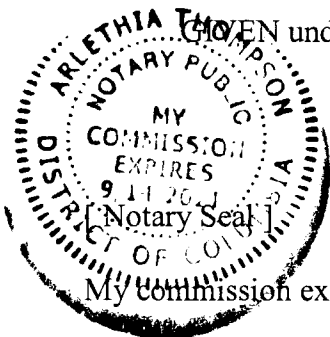

Secretary of the District of Columbia

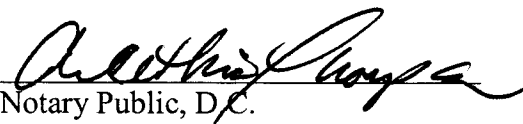
[CORPORATE SEAL]

DISTRICT OF COLUMBIA, ss:

I, Arlethia Thompson, a Notary Public in and for the District of Columbia, do hereby certify that Lauren Vaughan, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant, and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this 23 day of June, 2017




Notary Public, D.C.

My commission expires: 09/14/2023

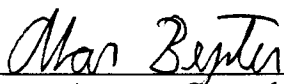
APPROVED:

Matthew Le Hart

4-6-17

Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:



Assistant Attorney General
Office of the Attorney General
for the District of Columbia

EXHIBIT A

LEGAL DESCRIPTION OF THE PUD SITE

The PUD project site consists of Lot 0065 in Square 5925 (the “Property”).

Lot 65 in Square 5925 in a subdivision made by WBG Wheeler Rd LLC, as per plat recorded in Liber 210 at folio 92 among the Records of the Office of the Surveyor for the District of Columbia.

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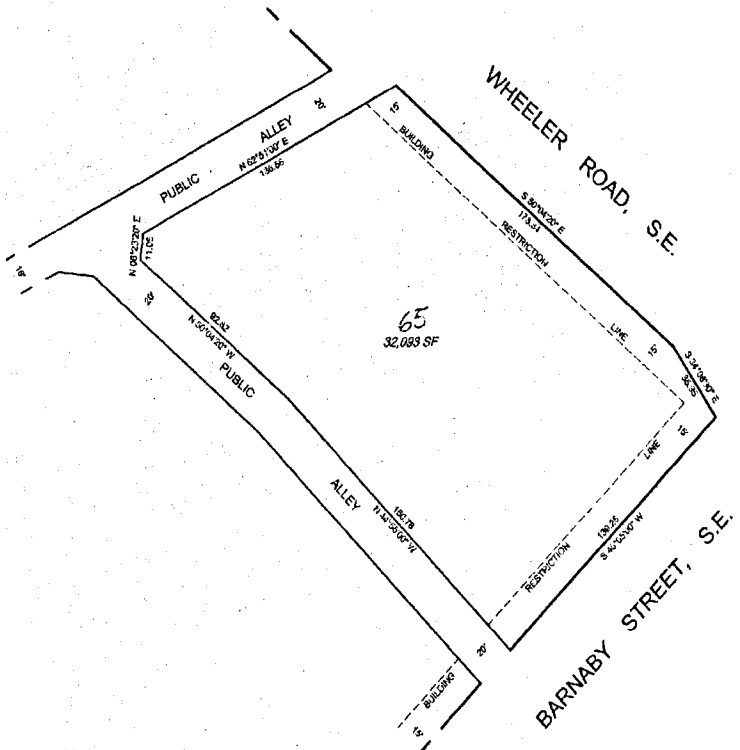


EXHIBIT B

ZONING COMMISSION ORDER NO. 13-18

[appended]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-18

Z.C. Case No. 13-18
WBG Wheeler Road, LLC
(Consolidated PUD & Related Map Amendment @ Square 5925, Lots 820 & 821)
January 26, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on May 29, 2014, to consider an application from WBG Wheeler Road, LLC ("Applicant"), as owner of Lots 820 and 821 in Square 5925 for the consolidated review and approval of a planned unit development ("PUD") and a related zoning map amendment to rezone the property from the C-1 to the C-2-B Zone District. 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 December 30, 2013, the Applicant filed an application with the Commission for the consolidated review and approval of a PUD and a related zoning map amendment regarding Lots 820 and 821 in Square 5925 (the "Property") seeking to rezone the Property from the C-1 Zone District to the C-3-A Zone District. On February 21, 2014, the Applicant submitted an amended application and updated architectural plans (Exhibit ["Ex."] 10), seeking to rezone the Property from the C-1 Zone District to the C-2-B Zone District.
2. The Property is situated in Ward 8 and has a combined land area of approximately 32,092 square feet. The Property is located at the intersection of Wheeler Road and Barnaby Street, S.E., in the Washington Highlands neighborhood. The Property includes approximately 210 feet of linear frontage along Wheeler Road, S.E. and 139 feet of linear frontage along Barnaby Street, S.E. Square 5925 is located in the southeast quadrant of the District and is bounded roughly by Wahler Place to the north, Wheeler Road to the east, Barnaby Street, S.E. to the south and 9th Street to the west. Fifteen-foot building restriction lines are located along both Wheeler Road, S.E. and Barnaby Street, S.E. (Ex. 9.)

3. At its public meeting held on March 10, 2014, the Commission voted to schedule a public hearing on the application.
4. On March 26, 2014, the Applicant submitted a Pre-hearing Statement. (Ex. 13.) The Pre-hearing Statement included updated Architectural Plans and Elevation sheets, and additional materials required pursuant to § 3013 of the Zoning Regulations.
5. On May 9, 2014, the Applicant submitted a Supplemental Pre-hearing Statement and updated Architectural Plans and Elevations, as well as a Transportation Impact Study and letters of support. (Ex. 20.)
6. On May 12, 2014, the Applicant filed a Final Transportation Impact Study. (Ex. 21.) On May 19th and 20th, the Applicant filed expert resumes, outlines of testimonies, a revised penthouse plan, and a letter from the Zoning Administrator. (Ex. 24, 26.)
7. After proper notice, the Commission held a public hearing on the application on May 29, 2014.
8. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 8E, the ANC within which the Property is located.
9. Four principal witnesses testified on the Applicant's behalf at the public hearing. Dinesh Sharma testified on behalf of the Applicant. Sas Gharai testified on behalf of SGA Companies, Inc., and Erwin Andres testified on behalf of Gorove/Slade Associates, Inc. Based upon their professional experience, as evidenced by the resumes submitted for the record and their prior testimony before the Commission, Mr. Gharai was qualified by the Commission as an expert in architecture and Mr. Andres was qualified by the Commission as an expert in transportation planning and analysis. Brenda Richardson also testified as a witness in support of the project during the Applicant's presentation.
10. Wanda Yates and Trayon White both testified as persons in support of the project.
11. The Office of Planning ("OP") testified at the public hearing in support of the project.
12. At the hearing, the Applicant submitted updated plan sheets which included revisions to the plans submitted previously and a copy of the Applicant's PowerPoint presentation. (Ex. 31, 28.)
13. ANC 8E Chair, Anthony Muhammad, filed a letter in support. (Ex. 21.) The ANC 8E Chair indicated in the letter that the project would be a catalyst for this area and would revitalize the Wheeler Road section of Congress Heights. ANC 8E did not submit a

written report prior to the hearing. As discussed further below, several written reports were submitted by ANC 8E, Commissioner Muhammad, and Karlene Armstead, Single Member District Commissioner for ANC 8E06 after the hearing. The reports submitted by ANC 8E and Commissioner Muhammad opposed the project. Ms. Armstead's report was in support.

14. Councilmember Marion Barry submitted a letter in support of the project. (Ex. 2J.) Councilmember Barry indicated in the letter that the project encourages homeownership and meets the ward's need by providing value and economic growth for the community and would be a signature project in Congress Heights for Ward 8.
15. Several organizations submitted letters in support of the project, including: Congress Heights Main Streets, Avanti Real Estate Services, Lewis Real Estate Services, Ida Mae Campbell Foundation, Mary's Excellent Cleaning Services, Ward 8 Workforce Development Council, and the United Planning Organization (Ex. 20D, 20E.)
16. At its public hearing held on May 29, 2014, the Commission took proposed action to approve the proposed PUD and requested zoning map amendment, and left the record open to receive additional specified information from the Applicant and OP to address several concerns it had about the project.

Post-Hearing Submissions and Actions

17. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. (Ex. 30A.) NCPC did not submit a response within the review period established by the Home Rule Act.
18. On June 5, 2014, the Applicant submitted its list of proffered public benefits and amenities and draft conditions, as required by 11 DCMR § 2403.16. (Ex. 32.)
19. On June 9, 2014, the Applicant submitted a post-hearing submission that addressed the Commission's requests made at the close of the hearing. The post-hearing submission included a post-hearing statement, revised architectural plans, and supporting materials from Gorove/Slade. (Ex. 33.)
20. On June 16, 2014, the Applicant submitted a draft order. (Ex.35.)
21. On June 24, 2014 the Applicant submitted its final list of proffered public benefits and amenities and draft conditions, as required by 11 DCMR § 2403.20. (Ex. 16.)

22. At its June 30, 2014 public meeting, the Commission considered the post-hearing filings. The Commission concluded the Applicant's and OP's responses did not adequately address its concerns. The Commission therefore deferred final action to allow the Applicant and OP another chance to address the concerns the Commission expressed at the conclusion of the hearing.
23. On September 15, 2014, the Applicant submitted its second post-hearing submission attaching revised plans, supplemental trash pickup analysis, a career fair flyer, and a draft Community Benefits Agreement ("CBA"). (Ex. 40.)
24. On September 22, 2014, ANC 8E submitted a report in opposition to the project. (Ex. 42.) The letter stated that ANC 8E voted to oppose the project in a 6-0 vote. The letter did not state whether the matter was considered at a properly noticed public meeting, whether the meeting was open to the public, or the number of members that constitute a quorum.
25. On September 24, 2014, the Applicant submitted a letter stating that the draft CBA attached to its September 15th submission was being negotiated as a private agreement between the Applicant and the ANC, and stating that it was not altering its statement of the proffered public benefits and amenities submitted on June 24, 2014, which did not include the CBA. (Ex. 43.)
26. On September 26, 2014, Karlene Armstead, Single Member ANC District Commissioner for ANC 8E06 submitted a request to re-open the record and submit a letter in support of the project. (Ex. 44, 45.) Her letter stated that she was sending the letter on her own behalf. Her letter further stated that the ANC did not vote on or authorize the ANC's submission dated September 22, 2014.
27. On September 26, 2014, ANC 8E Chairman Anthony Muhammad submitted a letter, dated September 25, 2014, that questioned the veracity of the contents of Ms. Armstead's letter. (Ex. 47.) The letter did not comment on the substance of the application before the Commission.
28. On September 26, 2014, Sandra Seegars submitted a request to re-open the record and submit a letter stating her support for the positions stated in ANC 8E's report in opposition to the project. (Ex. 46, 48.)
29. On September 26, 2014, Schyla Pondexter-Moore submitted a request to re-open the record. (Ex. 49.) The Commission Chairman denied this request.
30. At its September 29, 2014 public meeting, the Commission considered the post-hearing submissions. The Commission noted that the ANC's September 22nd report did not

meet the requirements of the Zoning Regulations, 11 DCMR § 3012.5, that require ANC reports to state that the ANC vote occurred at a properly noticed meeting with a quorum. The Commission therefore indicated that it would defer action to allow the ANC to submit a revised report that satisfied these requirements, and that it hoped that the parties would use the additional time to resolve the other issues expressed in the ANC's post-hearing submissions.

31. On October 8, 2014, ANC 8E submitted a second report and attached a resolution in opposition to this project. (Ex. 50.) The resolution states that it was approved at ANC 8E's July meeting. Neither the meeting minutes, nor the attached resolution, state that the matter was considered at a properly noticed public meeting.
32. At its October 20, 2014 public meeting, the Commission considered the additional post-hearing submission made by ANC 8E. The Commission noted that the ANC's second report did not conform with the requirements of 11 DCMR § 3012.5, again deferred action to permit the ANC to submit a revised report that complied with the applicable Zoning Regulations, and left the record open for a revised ANC report and any responses by the parties. The Commission also suggested that the Applicant attempt additional outreach to resolve the issues expressed in the ANC's resolution.
33. On November 12, 2014, the Applicant submitted a letter detailing its community outreach efforts. (Ex. 51.)
34. On November 12, 2014, ANC 8E submitted a third report. (Ex. 52.) The cover letter attached to the report indicated that the matter was considered at a properly noticed meeting with a quorum present, and that a majority of those present voted to adopt the report. The report states that the ANC opposed the application, and listed several issues and concerns as forming the basis for that opposition.
35. On November 13, 2014, Sandra Seegars filed a motion to re-open the record to receive a second report from her on the application. (Ex. 53.) The Commission Chairman denied this request.
36. On November 19, 2014, the Applicant filed a response to ANC 8E's November 12th report. (Ex. 54.) The letter responds to each of the issues and concerns stated in ANC 8E's November 12th report.
37. At its December 8, 2014 public meeting, the Commission considered the additional filings by the Applicant and ANC 8E. The Commission again deferred taking action on the application and asked the Applicant and ANC 8E to try a final time to attempt to reach an amicable resolution of the issues expressed in the ANC's report, and left the record open to receive reports from ANC 8E and the Applicant.

38. On January 12, 2015, ANC 8E Chairman Anthony Muhammad submitted a letter stating that ANC 8E had a tie vote concerning the project at its January 5, 2015 meeting. (Ex. 56.) The letter contained several other assertions regarding the ANC's ongoing discussions with the Applicant.
39. On January 19, 2015, the Applicant submitted a letter discussing its community outreach efforts and contesting assertions contained in Mr. Muhammad's January 12, 2015 letter. (Ex. 57.)
40. The Commission took final action to approve the application at its public meeting on January 26, 2015.

The PUD Project

41. The Applicant proposes to build a mixed-use development composed of retail and residential uses. The overall project will have a density of 3.56 floor area ratio ("FAR"), less than the maximum permitted of 6.0 under the C-2-B PUD requirements, and will include approximately 99,205 square feet of residential uses, comprising 85 units and approximately 15,566 square feet of commercial space. The building will be constructed to a maximum height of 83.5 feet with a maximum of seven stories. The project will have an overall lot occupancy of approximately 67.5%, and will include 25 surface parking spaces.

Development under Existing Zoning

42. The Property is currently zoned C-1. The Applicant is seeking to rezone the Property to the C-2-B Zone District as part of this application.
43. The C-1 zoning classification is designed to provide convenient retail and personal service establishment for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development. (11 DCMR § 700.1.) C-1 Zone Districts permit some community facilities, housing, and mixed uses, as well as the usual neighborhood shopping and service establishments as a matter-of-right. (11 DCMR § 700.3.)
44. The maximum permitted matter-of-right height in the C-1 Zone District is 40 feet, with a maximum of three stories. (11 DCMR § 770.1.)
45. The maximum permitted matter-of-right density in the C-1 Zone District is 1.0 floor area ratio ("FAR"), all of which may be devoted to either residential or nonresidential uses. (11 DCMR § 771.2.)

46. The maximum percentage of lot occupancy in the C-1 Zone District is 60% for a building devoted to residential use. (11 DCMR § 772.1.) Moreover, pursuant to § 774.1 of the Zoning Regulations, a rear yard with a minimum depth of 20 feet must be provided for each structure in the C-1 Zone District. No side yard is required for most structures, but if a side yard is provided it must be a minimum of two inches wide for each foot of height, but not less than six feet. (11 DCMR § 775.5.)
47. Where a court is provided for a building or portion of building devoted to residential uses, at any elevation in the court, the width of the court must be a minimum of four inches per foot of height, measured from the lowest level of the court to that elevation, but not less than 15 feet. (11 DCMR § 776.3.) In the case of a closed court for a building or portion of a building devoted to residential uses, the minimum area must be at least twice the square of the width of court based upon the height of court, but not less than 350 square feet. (11 DCMR § 776.4.)
48. An apartment house or multiple dwelling in the C-1 Zone District is required to provide one parking space for each dwelling unit. (11 DCMR § 2101.1.) The loading requirement for an apartment house or multiple dwelling with 50 or more dwelling units in all zone districts is one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep. (11 DCMR § 2201.1.)
49. Development of the Subject Property under the PUD guidelines for the C-1 Zone District would allow a maximum building height of 40 feet, and a maximum density of 1.0 FAR, all of which may be devoted to residential or nonresidential uses. (11 DCMR §§ 2405.1 and 2405.2.)

Development under Proposed C-2-B Zone District

50. The Applicant proposes to rezone the Property to C-2-B in connection with this application. The C-2-B Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia with high-density residential and mixed uses. (11 DCMR § 720.6.) The C-2-B Zone Districts are located on arterial streets, in uptown centers, and at rapid transit stops. (11 DCMR § 720.7.) The C-2-B Zone District includes the following development requirements:
 - a. A maximum matter-of-right height of 65 feet with no limit on the number of stories (§ 770.1), and a maximum height of 90 feet under the PUD requirements (§ 2405.1);

- b. A maximum matter-of-right density of 3.5 FAR, all of which may be devoted to residential use, but not more than 1.5 of which may be devoted to nonresidential uses (§ 771.2);
- c. Under the PUD requirements, a maximum density of 6.0 FAR, all of which may be devoted to residential use, but not more than 2.0 of which may be devoted to nonresidential uses (§ 2405.2);
- d. A maximum lot occupancy of 80% for a building or portion thereof devoted to a residential use (§ 772.1);
- e. A minimum rear yard depth of 15 feet (§ 774.1);
- f. If provided, a side yard at least two inches wide per foot of building height, but not less than six feet (§ 775.5);
- g. If provided, a minimum court width of four inches per foot of height, but not less than 15 feet (§ 776.3) and in the case of a closed court, a minimum area of at least twice the square of the width of court, but not less than 350 square feet (§776.4);
- h. For an apartment house or multiple dwelling, one off-street parking space for each three dwelling units and for a retail or service establishment, one off-street parking space for every 750 square feet in excess of 3000 square feet (§ 2101.1); and
- i. For an apartment house or multiple dwelling with 50 or more dwelling units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep; and for a retail or service establishment with 5,000-20,000 square feet, one loading berth at 30 feet deep, one loading platform at 100 square feet, and no service/delivery loading space (§ 2201.1).

Development Incentives and Flexibility

51. The Applicant requested the following areas of flexibility from the Zoning Regulations:
- a. *Flexibility from Loading Requirements.* The Applicant requests relief from the loading requirements. Pursuant to § 2201.1 of the Zoning Regulations, the Applicant is required to provide one loading berth at 55 feet deep; one loading platform at 200 square feet; and one service/delivery space at 20 feet deep for the residential uses in the building; and one loading berth at 30 feet; one loading

platform at 100 square feet; and no service/delivery space. However, due to the anticipated needs of the residents and retail tenants, the Applicant is seeking flexibility to provide one loading berth at 55 feet deep, one loading platform at 200 feet, and one service/delivery space at 20 feet deep. The service/delivery space will be for residential use and curbside loading would be provided for retail use to eliminate the need for a curb cut off Barnaby Street. The Commission finds that the requested flexibility is in accordance with the Comprehensive Plan's recommendations to consolidate loading areas within new developments and minimize curb cuts on streets to the greatest extent possible. In addition, the loading areas are likely to be used by the residents primarily when they move in or out of the building, and any subsequent use by residents will be generally infrequent and can be restricted to times which pose the least potential conflicts with retail users. Therefore, the Commission finds that flexibility from the loading requirements of § 2201.1 of the Zoning Regulations as described in this paragraph is appropriate in this case;

- b. *Flexibility from the Parking Requirements.* The Applicant is required to provide 43 parking spaces. The Applicant is providing 25 standard spaces. Therefore, flexibility is required from § 2101.1. The Commission finds that the proposed parking is adequate for the Property and will not have any adverse impacts; and
- c. *Additional Areas of Flexibility.* The Applicant also requests flexibility in the following areas:
 - i. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - ii. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
 - iii. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;

- iv. To remove the Capital Bikeshare facility if Capital Bikeshare is unwilling to provide a location or is commercially unreasonable in its terms;
- v. To remove the covered bus shelter if DDOT is unwilling to authorize it. If DDOT authorizes the covered bus shelter, to make a minor change to the location of the covered bus shelter if required by DDOT or the Public Space Committee; and
- vi. To make a minor change to the location of the vaults; and to change from street loading to loading through the public alley and reduce the number of parking spaces; if required by DDOT or the Public Space Committee.

Public Benefits and Amenities

52. 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.* The building's front façade would be mainly a tan colored brick with sienna colored brick accents, precast trim and painted aluminum windows. The ground-floor retail areas show up to 18-foot ceiling heights and a residential entrance lobby at a height of 15 feet. A significant portion of the residential upper floors are set back from the alley to reduce the massing confronting the residential buildings across the alley. Streetscape improvements around the building's frontage on Wheeler Road and Barnaby Street would take advantage of the 15-foot-wide building restriction line. The currently underutilized property would be developed with a mix of retail uses that are considered neighborhood-serving for the community. The retained retail uses would benefit from the relocation to new contemporary spaces and the additional retail area would accommodate new businesses where none previously existed to create a more vibrant and updated streetscape along Wheeler Road;
 - b. *Transportation Features.* The parking area that currently exists along the building's frontage at Wheeler Road would be eliminated. Instead, 25 residential parking spaces would be accessed through the alley system from either Wheeler Road or Barnaby Street. Adequate on-street parking exists for patrons who may drive to the local businesses. Two bicycle storage areas, one with 30 long-term bicycle parking spaces for residents and one with 10 long-term bicycle parking spaces for retail patrons, would be located on the ground floor and the applicant would discuss with DDOT the possibility of a bike share station in public space outside the building. The applicant intends to install a transit screen in the

residential lobby for residents' convenience. Moreover, the Applicant will implement and maintain the Transportation Demand Management ("TDM") measures described in the DDOT Report (Ex. 25), which include:

- Identify a TDM Leader;
 - Provide 30 long-term bicycle parking spaces on the ground floor of the building and an additional 24 short-term bicycle parking spaces outside the building;
 - Provide a transportation information screen in the lobby that would show real time arrival/availability for nearby buses, trains, carshare, and Bikeshare;
 - Make information available on transportation alternatives and services;
 - Provide an on-site business center;
 - Reserve a location outside the building for a future Capital Bikeshare station; and
 - Provide an enhanced bus shelter adjacent to the site on Barnaby Street;
- c. *Housing and Affordable Housing.* The application indicates that the project would provide all of its 85 units as affordable to households making up to 60% of area median income ("AMI"). This substantially exceeds the amount of affordable housing that would be required under the Inclusionary Zoning requirements of Chapter 26 of the Zoning Regulations. The site plan indicates the location and unit mix of the units. It is commendable that the units would be designed to meet the needs of disabled persons, including Type "A" units, which are fully accessible and Type B units which would be capable of being easily converted to Type "A" units to support persons with disabilities;
- d. *Environmental Benefits.* The building would include two levels of green roof which would function both as an amenity and a stormwater management feature, which currently does not exist on the property. The plan shows 4,511 square feet of pervious pavement in the rear parking area to minimize the runoff from the property into the alley. In addition, landscaping and streetscape improvements would be provided around the Wheeler and Barnaby Road perimeter. The plans provide additional details of these improvements and landscape features. The project includes sustainable design features such that the building would be able to achieve a minimum of 50 points of the Green Communities Criteria; and
- e. *Uses of Special Value.* The Applicant is proposing to provide updated space for neighborhood retailers. The inclusion of a substantial number of affordable, family-sized units in the project is also supported. The applicant has indicated a willingness to partner with a social service provider to provide training and employment opportunities to residents;

53. The Commission finds that the project benefits and amenities as outlined above are reasonable trade-offs for the requested development flexibility.

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

54. The Property is designated in the Low Density Commercial land use category on the District of Columbia Comprehensive Plan Future Land Use Map. The Low Density Commercial designation is used to define shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. The C-1 and C-2-A Zone Districts are generally consistent with the Low Density Commercial designation, although other districts may apply.

55. Even though the Future Land Use Map prescribes Low Density Commercial for the site the Commission finds that this is one of the rare instances in which “the application of other zones”, in this case C-2-B, is appropriate. (10A DCMR § 225.8.)

56. The Commission finds that the project advances a number of policy objectives for the site.

- a. The Generalized Policy Map designates the site as a Neighborhood Commercial Center where mixed-use infill development should be encouraged to provide new retail and service uses, and additional housing and job opportunities. (10A DCMR § 223.18.) The project will meet these objectives; and
- b. The project also advances a number of the Comprehensive Plan’s policy objectives for the site, particularly policies in the Land Use Element encouraging mixed-use development including upper-story housing to promote the revival of established commercial centers on the east side of the city, and policies in the Housing Element encouraging the expanding housing supply, and ensuring housing affordability:

(1) Land Use Element

The Comprehensive Plan recognizes that District neighborhoods on the east side of the city “lack well-defined centers or have centers that struggle with high vacancies and a limited range of neighborhood-serving businesses,” (10A DCMR § 312.2), and recommends that “[e]stablished centers should be expanded to in areas where the existing range of goods and services is insufficient to meet community needs.” (10A DCMR § 312.6.) In response, the Comprehensive Plan suggests the following:

Many District neighborhoods, particularly those on the east side of the city, lack well-defined centers or have centers that struggle with high vacancies and a limited range of neighborhood-serving businesses. Greater efforts must be made to attract new retail uses to these areas by improving business conditions, upgrading storefronts and the street environment, and improving parking and pedestrian safety and comfort. The location of new public facilities in such locations, and **the development of mixed use projects that include upper story housing, can encourage their revival.** (10A DCMR § 312.2 (emphasis added).)

The project will serve as an anchor for economic and civic development of the Congress Heights and Washington Highlands neighborhoods. The creation of high-quality mixed use development, such as the project, is an important economic generator. The density requested by the map amendment allows the Applicant to provide neighborhood serving retail with residential uses above. Through infill development, the Applicant will reuse vacant land and fill a gap in the urban fabric that is currently detracting from the character of the neighborhood. The project will improve the visual quality of the neighborhood through high quality redevelopment and public space improvements.

(2) Housing Element

The project increases the supply of housing, through a mixed-use project that includes commercial uses below housing, on an under-utilized site located in an existing commercial center, which is supported by the following policies of the Comprehensive Plan's Housing Element:

Expanding the housing supply is a key part of the District's vision to create successful neighborhoods. Along with improved transportation and shopping, better neighborhood schools and parks, preservation of historic resources, and improved design and identity, the production of housing is essential to the future of our neighborhoods. It is also a key to improving the city's fiscal health. The District will work to facilitate housing construction and rehabilitation through its planning, building, and housing programs, recognizing and responding to the needs of all segments of the community. The first step toward meeting this goal is to ensure that an adequate supply of appropriately zoned land is available to meet expected housing needs. (10A DCMR § 503.1.)

Provide suitable regulatory, tax, and financing incentives to meet housing production goals. These incentives should continue to include zoning regulations that permit greater building area for commercial projects that

include housing than for commercial projects that do not include housing. (10A DCMR § 503.3.)

Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing. (10A DCMR § 503.4.)

Promote mixed use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations. (10A DCMR § 503.5.)

In addition, the Project includes 85 residential units, all of which will be affordable to families earning less than 60% of AMI. The project includes 35 units that will be two-bedroom units and 20 that will be three-bedroom units, ensuring that they will be appropriately sized for families. This advances the following policies of the Comprehensive Plan's Housing Element:

Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city. (10A DCMR § 504.6.)

Consistent with the Comprehensive Housing Strategy, work toward a goal that one-third of the new housing built in the city over the next 20 years should be affordable to persons earning 80 percent or less of the area wide median income (AMI). Newly produced affordable units should be targeted towards low-income households in proportions roughly equivalent to the proportions shown in Figure 5.2. (10A DCMR § 504.7.)

Provide zoning incentives to developers proposing to build low- and moderate-income housing. Affordable housing shall be considered a public benefit for the purposes of granting density bonuses when new development is proposed. Density bonuses should be granted in historic districts only when the effect of such increased density does not significantly undermine the character of the neighborhood. (10A DCMR § 504.14.)

Provide a larger number of housing units for families with children by encouraging new and retaining existing single family homes, duplexes,

row houses, and three- and four-bedroom apartments. (10A DCMR § 505.6)

57. The Commission further finds that the proposed PUD is consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, 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. In order to manage growth and change in the District, the Comprehensive Plan encourages, among other factors, the growth of both residential and nonresidential uses. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. (§ 217.6.) The proposed PUD is fully consistent with each of these goals. Redeveloping the Property into a residential development will further the revitalization of the neighborhood;
 - 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 proposed development furthers each of these guiding principles with the construction of affordable housing, as well as commercial uses that will create additional retail and employment opportunities. In addition, as part of the PUD process, the Applicant has worked with the ANC and local community groups to ensure that the development 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,

and the conference rooms will be offered to community organizations for workforce development training services;

- d. *Connecting the City.* The proposed development will help to implement a number of the guiding principles of this element. The project includes streetscape improvements to provide improved mobility and circulation through the project, as well as the overall neighborhood. (§ 220.2.) 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; and
 - e. *Building Green and Healthy Communities.* The proposed development 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, which includes Green Communities elements, will also help to facilitate pedestrian and bicycle travel.
58. Even though the proposed C-2-B zoning is more intensive than what is called for in the Future Land Use Map, the project does much to advance the other policies of the Comprehensive Plan cited above, thus, the Commission concludes that it is not inconsistent with the Comprehensive Plan as a whole.

Office of Planning Reports

59. By report dated February 26, 2014, OP stated that it supports the application and that the proposed PUD is not inconsistent with the Comprehensive Plan. Therefore, OP recommended that the Commission schedule a public hearing on the application. (Ex. 11.)
60. By report dated May 19, 2014, OP recommended final approval of the application. (Ex. 23.) OP stated that the proposal would benefit the Congress Heights neighborhood given the level and amount of family-oriented affordable housing provided, the mix of uses, and the provision of neighborhood-serving retail. OP stated that it supports the C-2-B designation for the site, which is not inconsistent with the 2006 Comprehensive Plan's Future Land Use Map and policy objectives that encourage residential infill.

61. By report dated June 16, 2014, OP provided additional support for why the proposed PUD-related map amendment is not inconsistent with the Comprehensive Plan in this particular circumstance. (Ex. 34.)
62. By report dated September 15, 2014, OP responded to the Commission's request for further analysis, concluding that of the Project was not inconsistent with the Comprehensive Plan, despite its seven-story building height.

DDOT Report

63. The District Department of Transportation ("DDOT") submitted a memorandum dated May 19, 2014, recommending support of the project provided the Applicant adopt a Loading Management Plan as outlined in the report. (Ex. 25.) DDOT indicated that the Applicant must submit a formal loading zone request to DDOT to determine if the need for loading facilities warrants curbside loading. DDOT also indicated that if the request for curbside loading is denied, the Applicant could apply for DDOT Emergency No Parking signs to establish a temporary loading zone.
64. Based upon the reports and testimony of the Applicant's expert in transportation analysis and planning, the Commission finds that given the minimal number of vehicle trips to be generated by the project, the project can be approved as proposed by the Applicant without creating any objectionable traffic or parking impacts on existing and future roadway users or the adjacent residential community. The Commission further finds that the Applicant's proposed TDM measures include a number of features that will ensure the loading and delivery operations perform well, and that the Applicant has adopted the Loading Management Plan recommended by DDOT. Moreover, the Commission further finds that the Project will have no impact on pedestrians or intersections.

Other Contested Issues

65. The Commission was concerned that the light color of the penthouse/7th level of the building drew unnecessary attention to the top of the building and made it appear larger. In response to Commission comments, the Applicants revised the color scheme of the top level of the building to make it darker and less noticeable. (Ex. 40A, p. 16.1.) The Commission is satisfied that this change addresses its concern.
66. The Commission was also concerned about the safety of those occupying the outdoor space at the top of the building. In response, the Applicant revised the design of the railings at the top of the building to move them further back from the edge of the building and clarify that the height of the railing is 42 inches. (Ex. 40A, p. 14-15.) The Commission is satisfied that these changes addressed its concerns.

67. The Commission requested that the Applicant consider connecting the retail spaces to the loading dock via a rear corridor so it would not be necessary to move trash through the alley. The Applicant responded that it studied ways to provide the rear corridor, but could not do so for a variety of reasons. (Ex. 40.) Instead, the Applicant suggested an alternative trash removal plan that included a second trash room in the building. (Ex. 40B.) The Commission is convinced that both the original trash removal plan, and the Applicant's suggested alternative, are adequate to serve the needs of the project, and that neither trash plan will create any adverse impacts.
68. The Commission was also concerned about the comments made by ANC 8E and members of the community which suggested that the Applicant had not done sufficient community outreach. The Commission deferred final action several times to allow the Applicant and community to meet, and hoped that the issues between them would be resolved. Although the Zoning Regulations do not impose a community outreach obligation, the Commission does expect applicants to engage in such conduct and in this case believes that the Applicant has met its expectations. The Commission notes that the Applicant has provided assurances that it will continue to meet with the community as the project continues to progress to completion.

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, FAR, lot occupancy, 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.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development
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 Property. The impact of the project on the surrounding area is 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 tradeoffs 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 Property 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.

ANC Review and Report:

9. The Commission is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) ("ANC Act")) to give great weight to the affected ANC's recommendation.

There are a number of threshold procedural requirements that an ANC's recommendation must meet in order for it to be given great weight. These procedural rules are particularly important in cases such as this one, where the affected ANC offers multiple reports with conflicting advice.

The ANC Act requires that an affected ANC must consider its advice at a meeting that was properly noticed, and that is open to the public, D.C. Official Code § 1-309.10(d)(1), and that meeting must contain a quorum. (D.C. Official Code § 1-309.11(b)(1).)

The Zoning Regulations require that the ANC's letter indicate when the public meeting to consider the application was held (11 DCMR § 3012.5(b)), whether proper notice of that meeting was given by the ANC (11 DCMR § 3012.5(c)), the number of members of the ANC that constitute a quorum and the number of members present at the meeting (11 DCMR § 3012.5(d)), and finally, the vote on the motion to adopt the report. (11 DCMR § 3012.5(g).)

(a) Letters that do not meet the threshold requirements to be given great weight.

There were several letters submitted by representatives of ANC 8E that do not meet these threshold requirements:

- i. The first was the letter submitted on ANC 8E letterhead by Commission Chairman Anthony Muhammad dated May 13, 2013. (Ex. 21.) The letter did not indicate whether the matter was considered at a properly noticed public meeting, or whether the ANC voted on the matter;
- ii. The second was a letter submitted by ANC 8E on September 22, 2014. (Ex. 42.) The letter stated that ANC 8E voted to oppose the project in a 6-0 vote. The letter did not state whether the matter was considered at a properly noticed public meeting, whether the meeting was open to the public, or the number of members that constitute a quorum;
- iii. The third was a letter submitted on ANC 8E letterhead dated September 23, 2014. (Ex. 45.) The letter was signed by Single Member District Commissioner Karlene Armstead, who represents ANC Single Member District 8E06. Her letter stated that she was sending the letter on her own behalf. Her letter further stated that ANC did not vote on or authorize the ANC's submission dated September 22, 2014;
- iv. The fourth was a letter submitted on ANC 8E letterhead by Commission Chairman Anthony Muhammad dated September 25, 2014 that questioned the veracity of the contents of Ms. Armstead's letter. (Ex. 47.) The letter did not comment on the substance of the application before the Commission;
- v. The fifth was submitted on October 8, 2014, and comprised of what appear to be the minutes of ANC 8E's public meeting held on October 6, 2014. Attached to the meeting minutes was a resolution in opposition to the application. The resolution states that it was approved at ANC 8E's July meeting. Neither the meeting minutes, nor the attached resolution established whether the matter was considered at a properly noticed public meeting; and
- vi. Finally, a letter was submitted dated January 12, 2015 on ANC 8E letterhead that articulates a number of issues. (Ex. 56.) However, the letter does not indicate the matter was considered at a properly noticed public meeting that was open to the public and/or whether a quorum was present. In addition, the letter states that the ANC's vote on the matter was tied.

The Zoning Commission deferred taking action on the application at its public meetings held on September 29, 2014 and October 20, 2014, to allow ANC 8E to submit a written report that met the procedural threshold requirements discussed above. As discussed in greater detail below, ANC 8E did submit a report dated November 19, 2015, that satisfied the procedural requirements and that the Commission accorded it great weight

(b) ANC 8E's report that the Commission considered and gave great weight.

ANC 8E's report dated November 12, 2014 indicated that it was adopted by a vote of a majority of the ANC members present at a properly noticed meeting at which a quorum was present. The report states that the ANC opposed the application, and listed several issues and concerns as forming the basis for that opposition. The Commission carefully considered the advice and gave it great weight in reaching its decision.

Great weight requires the acknowledgement of the ANC as the source of the recommendations and explicit reference to each of the ANC's concerns. The written rationale for the decision must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In doing so, the Commission must articulate specific findings and conclusions with respect to each issue and concern raised by the ANC. (D.C. Official Code § 1-309.10(d)(3)(A) and (B).)

i. Parking

The report stated that the ANC was concerned about the availability of off-street parking in the area, given that the Applicant was requesting flexibility from the Zoning Regulations to provide 25 off-street spaces when 43 were required for the project.

The Commission believes that the 25 off-street spaces are sufficient to meet expected demand given that the nature of the project, its location relative to nearby public transit options, and the traffic demand management measures that are required by this Order. Further, the Commission was further persuaded by DDOT's finding in its report that the availability of curbside spaces in the vicinity would provide sufficient parking if parking demand exceeded the available on-site parking supply. DDOT concluded that even at the time of day when parking demand peaked, only half of the available spaces in the curbside spaces were taken. Finally, the Commission is convinced the public benefits of this

project, particularly the affordable housing provided, justify the requested parking relief.

ii. Loading and Trash

The report stated that ANC 8E was concerned about the project's loading facilities, given that relief was requested to provide less than the required amount of loading facilities. The report further stated that it objected to curbside loading; the ANC preferred one trash bin, rather than the two trash areas; and noted an objection to storing trash bins in the alley.

DDOT submitted a report analyzing the project's loading facilities, and concluded stating that it believed the project's loading facilities were adequate to serve the needs of the building. The Commission is persuaded by DDOT's analysis, which was thoughtful and thorough, and is therefore not persuaded by the ANC's advice.

With respect to the Applicant's curbside loading proposal, the Commission notes that it is DDOT, not the Commission, that is responsible for determining whether to approve a curbside loading zone. DDOT stated in its report that it will consider a request to approve a curbside loading zone for the project if it receives one, and that such an approval was not a certainty. DDOT also noted that based on its analysis, the existing alley network is sufficient to serve the loading needs of the project. DDOT finally noted that it was recommending a revised loading management plan that took into account the possibility that the Applicant's proposed loading zone on Barnaby Street would be denied. The Commission incorporated the terms of DDOT's revised loading plan into the conditions of this Order.

Turning to trash, the Commission was convinced by the analysis of the two trash pick-up alternatives submitted with the Applicant's post-hearing submission on September 15, 2014 (Ex. 40B), that the project's trash pick-up facilities (under both alternatives), in concert with the required loading plan, were adequate to prevent any adverse effect related to trash pick-up.

iii. Roof Structure Setback

ANC 8E objected to the proposed roof structure design for a number of reasons, namely, that the Applicant's plans were not sufficiently clear in showing the amount of relief required, that the relief was unjustified, and that its design was unsafe.

The Applicant submitted revised plans after the hearing. The revised plans show roof railings set back further from the edges of the roof, and clearly show the extent to which the roof structure (referred to as the 7th level in the revised plans) is set back from the roof line of the 6th level. The Commission believes that these changes adequately addressed the ANC's concerns.

The Commission believes that relief required at the top of the building is justified by its public benefits.

iv. Floor Plan

ANC 8E objected to the position of the kitchen relative to the bathrooms, but did not specify to which of the several dwelling unit designs this comment referred to. The Commission does not believe that this advice is persuasive because the layouts submitted by the Applicant show adequate separation between the kitchens and bathrooms.

v. Quality of Design

ANC 8E stated that it believed that the building materials were of insufficient quality. The Commission reviewed the materials submitted by the Applicant and believes that they are of adequate quality to justify approval.

vi. Community Outreach

ANC 8E made a number of allegations regarding the Applicant's community outreach efforts, most notably that the Applicant and ANC were unable to reach an agreement regarding a proposed community benefits agreement that would exist independently of the proffered public benefits of the project that are described in this Order. The Commission evaluated the public benefits proffered by the Applicant and has judged them to be adequate to justify approval of the PUD.

vii. Building Height

ANC 8E stated that the building was too tall, and that its height was not in conformity with the Comprehensive Plan.

The Commission believes that this project is near the upper limit of what would be an acceptable building height, but ultimately concludes that it is

an appropriate height given the public benefits of the project. And as discussed above, the Commission concludes the project is not inconsistent with the Comprehensive Plan.

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 great weight to OP's recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.
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 for the District of Columbia **ORDERS APPROVAL** of the application for the consolidated review and approval of a planned unit development and a related zoning map amendment to rezone Lots 820 and 821 in Square 5925 from the C-1 Zone District to the C-2-B Zone District subject to the following guidelines, conditions, and standards:

A. PROJECT DEVELOPMENT

1. The PUD shall be developed in accordance with the plans prepared by SGA Companies, Inc., marked as Exhibits 31A and 31B in the record (the "Plans") as modified by Exhibits 33 and 40 and as further modified by the guidelines, conditions, and standards in this Order;
2. The PUD shall have a maximum FAR of 3.56 and a gross floor area of 114,771 square feet;
3. The maximum height of the building shall be 83.5 feet; and
4. The project shall include a minimum of 25 striped off-street surface parking spaces.

B. PUBLIC BENEFITS

1. The project shall include a total of 85 residential units, with a maximum residential gross floor area of approximately 93,395 square feet. Eight percent of the residential gross floor area will be set-aside pursuant to 11 DCMR § 2603 for moderate-income households as those households are defined by 11 DCMR

§ 2601. All of the remaining residential gross floor area will be reserved for households with a total annual income adjusted for household size equal to 60% or less of the Metropolitan Statistical Area median for 40 years. The Applicant shall make best efforts to obtain financing to permit 16 units to be offered to households earning 30% or of the Metropolitan Statistical Area median for 40 years;

2. **For so long as the project is in existence**, the project shall offer the conference room and business center, free of charge, at least once a month, for the Opportunities Industrialization Center (OIC) and the United Planning Organization (UPO) to provide services to the residents of the building and the community; and
3. **The Applicant shall submit with its building permit application** a Green Communities checklist confirming that the project includes sustainable design features such that the building would be able to achieve a minimum of 50 points of the Green Communities Criteria.

C. **TRANSPORTATION MEASURES**

1. **For the life of the project**, the Applicant shall implement and maintain the Transportation Demand Management measures described in the DDOT Report (Exhibit 25), which includes:
 - (a) Identify a TDM Leader;
 - (b) Provide 30 long-term bicycle parking spaces on the ground floor of the building and an additional 24 short-term bicycle parking spaces outside the building;
 - (c) Provide a transportation information screen in the lobby that would show real time arrival/availability for nearby buses, trains, carshare, and Bikeshare;
 - (d) Make information available on transportation alternatives and services;
 - (e) Provide an on-site business center;
 - (f) Reserve a location outside the building for a future Capital Bikeshare station; and

- (g) Provide an enhanced bus shelter adjacent to the site on Barnaby Street;
and
2. **For the life of the project**, the Applicant shall implement and maintain a Loading Management Plan consisting of the following elements:
- (a) Designate a loading management coordinator to coordinate all loading and trash activities for the building;
 - (b) Require all residential tenants to notify the loading coordinator before moving in or out;
 - (c) Limit delivery trucks to no greater than 30 feet in length. In the rare instance when larger truck deliveries are unavoidable, deliveries will be scheduled between the hours of 10:00 a.m. and 3:00 p.m. and 8:00 p.m. and 6:00 a.m.;
 - (d) Tenants requiring a moving truck must provide the loading coordinator the following information: time and date that the truck is anticipated to arrive, size of the truck being used, and name of the moving service, if applicable; and
 - (e) All tenants and retailers will be provided with information regarding loading restrictions, rules, and suggested truck routes at lease signing.

D. MISCELLANEOUS

- 1. The Applicant is granted flexibility from the loading requirements (§ 2201.1) and parking requirements (§ 2101.1), consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of this Order;
- 2. The Applicant shall also 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, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - (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 without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtain

wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;

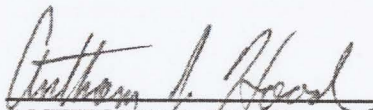
- (c) To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;
 - (d) To remove the Capital Bikeshare facility if Capital Bikeshare is unwilling to provide a location or is commercially unreasonable in its terms. If a Capital Bikeshare station is provided, to make a minor change to the location of the Capital Bikeshare station if required by DDOT or the Public Space Committee;
 - (e) To remove the covered bus shelter if DDOT is unwilling to authorize it. If DDOT authorizes the covered bus shelter, to make a minor change to the location of the covered bus shelter if required by DDOT or the Public Space Committee; and
 - (f) To make a minor change to the location of the vaults; and to change from street loading to loading through the public alley and reduce the number of parking spaces; if required by DDOT or the Public Space Committee;
3. **Prior to the issuance of the first building permit for the project**, the Applicant shall record a covenant in 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 DCRA. Such covenant shall bind the Applicant and all successors in title to construct on and use the Subject Property in accordance with this Order or any amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the Office of Zoning for the case record;
4. The PUD approved by the Zoning 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 as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order; and
5. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human

Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.*, ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

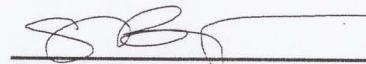
On May 29, 2014, upon the motion of Commissioner Miller, as seconded by Vice Chairperson Cohen, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On January 26, 2015, upon the motion of Commissioner Miller, as seconded by Vice Chairperson Cohen, 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 April 17, 2015.



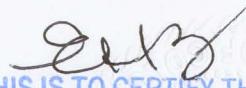
ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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RECORDING FEES \$25.00
SURCHARGE \$6.50


THIS IS TO CERTIFY THAT THIS IS A TRUE COPY

Recorder of Deeds, D.C.

JUL 21 2017