

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-01A**

Z.C. Case No. 14-01A

Jemal's Hecht's, LLC

(PUD Modification & Related Map Amendment @ Square 4037)

May 18, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on May 18, 2015, to consider an application from Jemal's Hecht's, LLC (the "Applicant"), for modifications to an approved planned unit development ("PUD") and a related Zoning Map amendment for a portion of Lot 8¹ in Square 4037. 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 Hearings

1. Pursuant to Z.C. Order No. 14-01, dated July 17, 2014, and effective on August 8, 2014, the Commission approved a PUD and related Zoning Map amendment for the western 345.93 linear feet of Square 4037 (the "Approved PUD Site") from the C-M-2 District to the C-3-C District. The Approved PUD Site includes approximately 119,037.97 square feet of land area (2.73 acres) and is bounded by New York Avenue, N.E. to the north, private property to the east, Okie Street, N.E. to the south, and Fenwick Street, N.E. to the west.
2. The approved PUD includes approximately 559,245 square feet of gross floor area (4.7 floor area ratio ("FAR")) and involves the adaptive reuse of the historic Hecht Company Warehouse building, the construction of a two-story addition atop the four-story wing on the eastern side of the warehouse building, and a one-story addition atop the main portion of the warehouse building. The first and second floors of the approved project contain retail and service uses, comprised of approximately 196,343.8 square feet of gross floor area, plus approximately 5,590 square feet of additional retail space in the cellar level. Floors three through seven contain approximately 362,901.3 square feet of gross floor area devoted to residential and residential amenity spaces, comprised of approximately 338 dwelling units. The approved PUD has a maximum density of 4.70 floor area ratio ("FAR") and a maximum building height of 95.15 feet not including roof structures.
3. On December 22, 2014, the Applicant filed an Application with the Commission for a modification of the approved PUD and the Zoning Map Amendment to extend the southern

¹ The original PUD Order (Z.C. Order No. 14-01) references Lots 7 and 804 in Square 4037 as the PUD site. Square 4037 has since been subdivided, such that the portion of Square 4037 where the PUD is located is now entirely within Lot 8.

portion of the Approved PUD Site eastward by approximately 16'-5.5" by 108'-6" (1,785.7 square feet), and to rezone this land area from the C-M-3 District to the C-3-C District to be consistent with the Approved PUD Site, as shown on Sheet 5 of the architectural plans and elevations included in the record at Exhibit 23A (the "Plans"). The total land area of the Approved PUD Site plus the additional 1,785.7 square feet (together referred to as the "Revised PUD Site") is 120,823.6 square feet. The PUD modification application was requested to permit the construction of a new free-standing, two-story commercial building adjacent to the existing warehouse building.

4. By report dated January 30, 2015 (Exhibit 13), the Office of Planning ("OP") recommended setdown of the application. On February 9, 2015, the Commission voted to schedule a public hearing on the application.
5. On February 27, 2015, the Applicant submitted a prehearing statement (Exhibit 15). On March 20, 2015, a description of the application and the notice of the public hearing in this matter were published in the *D.C. Register* (Exhibit 18). On March 12, 2015, the notice of the public hearing was mailed to all property owners within 200 feet of the Revised PUD Site, as well as to Advisory Neighborhood Commission ("ANC") 5D, the ANC in which the Revised PUD Site is located.
6. On April 28, 2015, the Applicant submitted a supplemental statement in support of the application (Exhibit 23), which provided updated architectural plans and elevations and an explanation of the Applicant's community engagement activities.
7. By report dated May 8, 2015 (Exhibit 25), OP submitted its final report recommending approval of the application and noting that the request is not inconsistent with the Comprehensive Plan Future Land Use Map or Generalized Policy Map and would not change the materials facts upon which the original PUD was decided. By report dated May 8, 2015 (Exhibit 26) the District Department of Transportation ("DDOT") submitted a report indicating that it had no objection to the requested approval so long as tree plantings are maximized along Okie Street, N.E. during the public space permitting process.
8. The public hearing on the Application took place on May 18, 2015. The parties to the case were the Applicant and ANC 5D. No requests for party status were filed for this case and no individuals appeared at the public hearing to testify in support of or in opposition to the application. Benjamin Keeney of Antunovich Associates was accepted as an expert in architecture. Andrea Gourdine of Douglas Development Corporation addressed the Commission on behalf of the Applicant.
9. At the conclusion of the public hearing, the Commission voted 5-0-0 to approve the PUD Modification.

PUD Modification

10. The Applicant seeks approval to modify the architectural plans and elevations approved in Z.C. Case No. 14-01 (Exhibit 29A1-A4) to construct a new free-standing, two-story commercial building adjacent to the existing warehouse building, and to extend the southern

portion of the Approved PUD Site eastward by approximately 16'-5.5" by 108'-6" (1,785.7 square feet). The Applicant also seeks a Zoning Map amendment to rezone the 1,785.7 square feet of land area to be added to the Approved PUD Site from the C-M-3 District to the C-3-C District to be consistent with the Approved PUD Site's zoning designation. The additional land area increases the Approved PUD Site by approximately 1.02%. The PUD complies with the building lot control regulations of 11 DCMR § 2517, which permits two buildings to be located on a single record lot.

11. The new building will have approximately 8,074 square feet of gross floor area, which is an increase of 1.4% from the 559,245 square feet of gross floor area that was approved for the original PUD in Z.C. Order No. 14-01. The total proposed gross floor area for the modified PUD is 567,319 square feet. The Revised PUD Site will have a total land area of 120,823.6 square feet and will maintain the approved density of 4.7 FAR.
12. The new building is located in an area of the Approved PUD Site that was originally approved for use as a circular driveway for vehicular pick-up and drop-off for the warehouse building. The approved driveway was approximately 169 feet long and 24 feet wide, with ingress and egress from Hecht Avenue to the east. The modified design changes the driveway configuration to provide a one-way drive aisle with ingress from Hecht Avenue and egress onto Okie Street. *See Sheet 13 of the Plans.*
13. The design of the new building is a modern, noticeable counterpart to the iconic, historic warehouse. The structure will be made of high-end materials, constructed with ample amounts of clear glazing and with a striking, perforated steel rain screen panel system creating a contemporary yet earthy aesthetic. The new structure will have a maximum height of approximately 38 feet, 1.5 inches. Entrances to the retail space will be located on Okie Street, Hecht Avenue, and from the driveway to the north.
14. The new building incorporates a number of architecture and urban design standards and best practice principles appropriate for the project, including (i) creating a streetscape environment that is pleasant, safe, and effective as a pedestrian experience for walking, shopping, socializing and conducting business; (ii) designing according to smart growth principals with increased density on an underutilized site with infrastructure in place and with convenient access to the Metrorail, shopping, and the workplace; (iii) integrating architecture that is appropriate in scale and character for a mixed-use site, but respectful of the adjacent lower scale residential fabric and industrial uses; and (iv) establishing achievable sustainable design features for the project.
15. Loading facilities will not be provided for the new building and are not required pursuant to 11 DCMR § 2200.5. Instead, loading will occur in the private driveway on the west side of the new building, which is 24 feet wide and permits adequate space for vehicles to maneuver around parked loading trucks. Loading activities will occur during off-peak hours to minimize conflicts with peak circulation of other on-site uses. Parking is also not provided for the new building and is not required pursuant to 11 DCMR § 2120.3. Parking will be available for the PUD in the above-ground parking garage located directly across Hecht Avenue and also owned by the Applicant.

Zoning Map Amendment

16. Pursuant to Z.C. Order No. 14-01, the Zoning Commission rezoned the Approved PUD Site from the C-M-2 District to the C-3-C District. The Applicant now requests a Zoning Map amendment to rezone the 1,785.7 square feet to be added to the Approved PUD Site from the C-M-3 District to the C-3-C District. The C-3-C District permits medium-high density development, including office, retail, housing, and mixed-use development (11 DCMR § 740.8) and includes the following development requirements:
- A maximum matter-of-right height of 90 feet with no limit on the number of stories (§ 770.1), and a maximum height of 130 feet under the PUD requirements (§ 2405.1).
 - A maximum matter-of-right FAR of 6.5, and a maximum FAR of 8.0 under the PUD requirements (§ 2405.2).
 - A maximum lot occupancy of 100 percent (§ 772.1).
 - A minimum rear yard depth of 2.5 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet (§ 774.1).
 - If provided, a side yard at least two inches wide per foot of building height, but not less than six feet (§ 775.5).
 - For a building devoted to non-residential uses, if provided, a minimum court width of three inches per foot of height, but not less than 12 feet (§ 776.1), 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 250 square feet (§ 776.2).
 - For a retail establishment in excess of 3,000 square feet, one off-street parking space for each additional 750 square feet of gross floor area (§ 2101.1).
 - For a retail establishment with more than 100,000 square feet of gross floor area, one loading berth at 30 feet deep and two loading berths at 55 feet deep, one loading platform at 100 square feet and one loading platform at 200 square feet, and one service/delivery space at 20 feet deep (§ 2201.1).
17. The proposed C-3-C District for the 1,785.7 square feet of land area is appropriate for the proposed use and will ensure consistency with the zone designation of the Approved PUD Site, which the Commission previously found was not inconsistent with the Comprehensive Plan. See Z.C. Order No. 14-01, Finding of Fact No. 45.

Flexibility under the PUD Guidelines

18. Pursuant to Z.C. Order No. 14-01, the Zoning Commission granted flexibility from the roof structure requirements for the redevelopment of the historic warehouse building. The modified PUD does not require any additional flexibility from the Zoning Regulations. Nonetheless, some flexibility may be necessary that cannot be anticipated at this time. Thus, the Applicant also requests flexibility 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 materially change the exterior configuration of the structure.
 - 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 vary the retail entrances to respond to applicable code or other issues necessary for the end retail users.

Compliance with PUD Evaluation Standards

19. The Commission found in Z.C. Case No. 14-01 that a number of public benefits and amenities will be created as a result of the PUD (*see* Z.C. Order No. 14-01, Finding of Fact Nos. 34-40); that the project is not inconsistent with the Future Land Use Map or the Generalized Policy Map of the Comprehensive Plan (*see* Z.C. Order No. 14-01, Finding of Fact No. 41); and that the project will further the specific objectives and policies of many of the Comprehensive Plan's major elements (*see* Z.C. Order No. 14-01, Findings of Fact Nos. 42-44).
20. The OP report filed in this application indicates that the modified project will continue to provide a number of public benefits and amenities. The OP report also indicated that the project, as modified, is consistent with the written elements of the Comprehensive Plan, particularly policies for Industrial Land, the Upper Northeast Element, the New York Avenue corridor, and Historic Preservation. *See* Exhibit 25.
21. Accordingly, the Commission finds that the modified PUD continues to meet the applicable PUD evaluation standards of 11 DCMR § 2405.

Public Benefits and Amenities

22. In Z.C. Order No. 14-01, the Commission found that the proposed public benefits and project amenities were reasonable trade-offs for the requested development flexibility. *See* Z.C. Order No. 14-01, Conclusion of Law No. 7. This application does not modify the previously approved benefits and amenities, and the Commission finds that they continue

to be consistent with the Comprehensive Plan and appropriate and reasonable for development of the PUD.

Office of Planning Reports

23. By report dated January 30, 2015 (Exhibit 13), OP recommended setdown of the applications for a PUD modification and related Zoning Map amendment. The OP report noted that the application would not be inconsistent with the Comprehensive Plan Future Land Use Map and Generalized Policy Map, and that it would not threaten the stability of adjacent Production, Distribution, and Repair (“PDR”) uses, nearby residential uses, or other mixed-use commercial uses in the general area. The OP setdown report also noted that the project would not be inconsistent with the recently approved map amendment for the Approved PUD Site.
24. By report dated May 8, 2015 (Exhibit 25), OP recommended approval of the application. The OP report restated that the application is not inconsistent with the Future Land Use Map and Generalized Policy Map, and would not change the material facts upon which the original PUD was decided, since no further changes to other aspects of the approved PUD are proposed. The OP report noted that the PUD modification would enhance the viability of the overall project by providing additional retail options while not increasing the overall density of the approved PUD.
25. The Commission agrees with OP’s findings that the application is not inconsistent with the Comprehensive Plan and will not change the material facts upon which the Commission approved the original PUD. The Commission concurs with OP’s recommendation to approve the application.

DDOT Report

26. By report dated May 8, 2015 (Exhibit 26) DDOT submitted a report indicating that it had no objection to the requested approval so long as tree plantings are maximized along Okie Street, N.E. during the public space permitting process. The DDOT report also noted that (i) the proposed curb cut on Okie Street to realign the private street off of Hecht Avenue is acceptable; (ii) the new curb cut will eliminate three previously proposed street trees on Okie Street; (iii) loading operations for the new building will occur on the proposed private street and is consistent with DDOT standards; and (iv) the proposed action does not modify the impacts and mitigations identified in DDOT’s report dated June 4, 2014, and included at Exhibit 27 of Z.C. Case No. 14-01. The Commission concurs with DDOT’s finding of no objection to the application.

Community Support

27. On September 9, 2014, at a duly noticed, regularly scheduled public meeting of ANC 5D, at which a quorum was present, ANC 5D voted unanimously to support the application. Several months later, on April 14, 2015, the Applicant presented the application to ANC 5D for a second time, and again ANC 5D voted unanimously to support the project. The ANC’s

letters of support are included at Exhibits 4G and 23B of Z.C. Case No. 14-01A. The Commission concurs with the ANC's recommendation to approve the project.

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 modification to a previously approved consolidated PUD. Any modifications proposed to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission. The proposed modification shall meet the requirements for and be processed as a second-stage application, except for minor modifications and technical corrections as provided for in 11 DCMR § 3030. 11 DCMR §2409.9. The Commission treated this modification request as a second-stage PUD application.
3. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, or for yards and courts.
4. Development of the property included in this Application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
5. The PUD modification meets the minimum area requirements of section 2401.1 of the Zoning Regulations and complies with the applicable height, bulk, and density standards of the Zoning Regulations. The commercial use of the new building is fully appropriate for the site, and the impact of the use on the surrounding area and the operation of city services is acceptable given the quality of the public benefits in the project.
6. Approval of the PUD modification is appropriate because the proposed use is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed use will promote the orderly development of the Revised PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
7. The Commission is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC. In this case, ANC 5D voted unanimously to support the modification application and recommended that the

Commission approve the Application. The Commission has given ANC 5D's recommendation great weight in approving the modification Application.

8. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.
9. The PUD modification 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 to modify an approved planned unit development and a related Zoning Map amendment for a portion of Lot 8 in Square 4037. For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Revised PUD Site. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Revised PUD Site, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner. The approval of this PUD modification is subject to the guidelines, conditions and standards set forth below, in addition to those listed in Z.C. Order No. 14-01

A. Project Development

1. The project shall be developed in accordance with the plans and materials submitted by the Applicant at Exhibit 29A in Z.C. Case No. 14-01, as modified by the plans and elevations submitted by the Applicant at Exhibit 23A in Z.C. Case No. 14-01A (the "Plans") and as modified by the guidelines, conditions, and standards of this Order.
2. In accordance with the Plans, the Applicant shall extend the southern portion of the Approved PUD Site eastward by approximately 16'-5.5" by 108'-6" (1,785.7 square feet) in order to locate a new free-standing, two story commercial building adjacent to the existing warehouse building. The 1,785.7 square feet to be added to the Approved PUD Site shall be rezoned from the C-M-3 District to the C-3-C District. The new building shall have approximately 8,074 square feet of gross floor area and a maximum height of approximately 38'-1.5." The Revised PUD Site shall have a total land area of 120,823.6 square feet and shall include approximately 567,319.1 square feet of gross floor area (4.7 FAR).
3. In approving this modification, the Commission incorporates the design and zoning flexibility granted in Z.C. Order No. 14-01, Decision No. A.3. With respect to the new building, the Applicant shall have the flexibility in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators,

and toilet rooms, provided that the variations do not change the exterior configuration of the structure;

- b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on the availability at the time of construction;
- c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;
- d. To vary the retail entrances to respond to applicable code or other issues necessary for the end retail users; and

B. Public Benefits and Transportation Demand Management

- 1. The Applicant shall continue to provide the public benefits and project amenities proffered in Decision Section B of Z.C. Order No. 14-01. The Applicant shall also continue to provide the transportation demand management (“TDM”) measures set forth in Decision Section C of Z.C. Order No. 14-01.

On May 18, 2015, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission APPROVED the Application by a vote of 5-0-0 (Anthony J. Hood, Marcie I. Cohen, Peter G. May, Michael G. Turnbull, and Robert E. Miller to approve).

On June 29, 2015, upon the motion of _____, as seconded by _____, the Zoning Commission ADOPTED this Order at its public meeting by a vote of __-__-__ (Anthony J. Hood, Marcie I. Cohen, Peter G. May, Michael G. Turnbull, and Robert E. Miller 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 _____.

ANTHONY J. HOOD
Chairman
Zoning Commission

SARA BARDIN
Director
Office of Zoning

