

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-12E
Z.C. Case No. 14-12E
Clarion Gables Multifamily Trust, L.P. and EAJ 1309 5th Street LLC
(Second-Stage Planned Unit Development @ Square 3591)

[January 13], 2020

Pursuant to notice, the Zoning Commission for the District of Columbia (the “**Commission**”) held a public hearing on November 25, 2019 to consider an application (the “**Application**”) from Clarion Gables Multifamily Trust, L.P. (“**Gables**”) and EAJ 1309 5th Street LLC (“**EDENS**,” and together with Gables, the “**Applicant**”), for review and approval of a second-stage planned unit development (“**PUD**”) for Lots 809, 810, 7020, 7022, 7024-7030, 7032, and 7035 in Square 3591, with an address of 1329 5th Street, N.E. (the “**North Parcel**”).¹ The Commission considered the Application pursuant to the approved first-stage PUD and Zoning Map amendment contained in Z.C. Order No. 14-12 (the “**Map Amendment**”, where the approved first-stage PUD, associated consolidated PUD, together with the Map Amendment, are, as amended, the “**Approved PUD**”) and pursuant to Subtitles X and Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “**Zoning Regulations**,” or “**ZR16**,” and to which all citations to regulations herein are made unless otherwise specified). For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

PROCEDURAL BACKGROUND

1. On June 3, 2019, the Applicant filed the Application for review and approval of a second-stage PUD pursuant to the Approved PUD and requested that the Commission set down the Application for a public hearing. (Exhibit [“**Ex.**”] 2.)
2. At a public meeting of the Commission on July 29, 2019, the Commission unanimously voted to set down the Application for a public hearing. (Transcript of Zoning Commission Public Meeting [“**Tr. 1**”] at 40-44 (Jul. 29, 2019).)

¹ These lots are the portions of record Lot 5, Square 3591 north of and including the urban plaza space located at the south of the building approved by this Order. The North Parcel also sometimes has an address of 1325 5th Street, N.E.

Notice

3. On June 6, 2019, the Office of Zoning (“**OZ**”) sent notice of the public hearing to the affected Advisory Neighborhood Commission (“**ANC**”) 5D; the affected ANC Single Member District 5D01; the Office of Planning (“**OP**”); the District Department of Transportation (“**DDOT**”); the Department of Consumer and Regulatory Affairs (“**DCRA**”); the Office of the Attorney General; the District Department of the Environment (“**DOEE**”); the DC Housing Authority – Relocation Committee; the DC Council’s At-Large Councilmembers; Councilmember McDuffie; and property owners owning property within 200 feet of the Union Market PUD Site (as hereinafter defined). (Ex. 19.)
4. OZ also published notice of the November 25, 2019 public hearing in the *D.C. Register* on October 11, 2019 as well as through the calendar on OZ’s website. (66 DCR 013369.) The Applicant posted notice of the Property pursuant to the Zoning Regulations. (Exs. 17 and 22.)

Parties

5. The parties to the case were the Applicant and ANC 5D, the ANC in which the North Parcel is located. ANC 5D submitted two letters expressing its unanimous support for the Application. There were no requests for party status.

The Approved PUD and Applicable Zoning Regulations

6. The Approved PUD included three related elements: (i) a first-stage PUD that established the height and massing, program of uses, and vehicular access considerations for the mixed-use building (the “**North Building**”) to be located on the North Parcel, its below-grade parking garage, and related exterior improvements, (ii) a consolidated PUD that approved the height and massing, program of uses, vehicular access considerations, and detailed design elements of the mixed-use building (the “**Future South Building**”) to be located on the southern portion (the “**South Parcel**”) of the overall site that is subject to the Approved PUD (the “**Union Market PUD Site**”), and (iii) the Map Amendment, rezoning the entire Union Market PUD Site from the C-M-1 Zone District to the C-3-C Zone District. (Ex. 2.)
7. This Application pertains only to the North Parcel and seeks approval for the final design of the North Building, including all landscaping, site circulation, and materials, as shown in the Plans. The South Parcel and the plans for the Future South Building are subject to the consolidated PUD approved as part of the Approved PUD in Z.C. Order No. 14-12 and are not part of this Application. (Ex. 2.)
8. The Approved PUD was approved prior to September 6, 2016. Accordingly, the Application is vested under the substantive provisions of the 1958 Zoning Regulations (“**ZR58**”), which continue to apply to the Project (as hereinafter defined). (*See* 11-A DCMR § 102.3(a).) However, the Application is to be considered pursuant to the procedural requirements of ZR16, and the Commission conducted the public hearing on the Application accordingly.

PUD SITE AND PROJECT

The North Parcel and the Union Market District

9. The North Parcel and South Parcel are currently improved with two structures: on the South Parcel is the unique, artisanal ground floor market and second-story event space known as, respectively, “The Market” at Union Market and “Dock 5” in the existing south building (“**Existing South Building**”), and on the North Parcel, is an existing, predominantly vacant warehouse (“**Existing North Building**”, together with the Existing South Building, the “**Existing Buildings**”). (Ex. 2.)
10. The North Parcel is located within the Northeast quadrant of the District. It is bounded to the south by the South Parcel and its Existing South Building, to the north by a vacant lot where the original Union Market Terminal sheds are currently located and which is now used for maintenance storage to the north (the “**JBGS-Gallaudet Property**”), to the east by 6th Street, N.E., and to the west by 5th Street, N.E. (Ex. 2.)
11. The North Parcel is within the Union Market District, a warehouse district that both currently and historically has accommodated many of DC’s food wholesalers. The Union Market District now features PUDs, of varying degrees of density and at varying stages of development, surrounding approximately two central blocks of low-rise historic warehouse, light industrial, and mercantile structures at the heart of the neighborhood. (Ex. 2.)
12. The North Parcel is situated within the eastern portion of the Union Market District, less than 1/3 mile from the NoMA-Gallaudet University Metrorail station, which is served by the Red Line, and for which the D.C. Council recently approved a capital project, in part to enhance pedestrian access to and from the Union Market District. (Ex. 2.)
13. The area between the Existing South Building and the Existing North Building is characterized by a private service plaza that facilitates the loading and offloading of trucks. Both of the Existing Buildings were originally designed for wholesale distribution. The Existing South Building is now a center of activity for the Union Market District. (Ex. 2.)
14. The JBGS-Gallaudet Property and the property immediately to the south of the Existing South Building, together with other nearby properties, are subject to a first-stage PUD approved in Z.C. Case No. 15-24. Immediately east of the Union Market District is the Gallaudet University campus. To the north and west of the Union Market District are New York Avenue, N.E. and the wide rail corridor that leads to Union Station, which is just a few blocks to the southwest of the Union Market District. Florida Avenue, N.E. serves as the southern boundary of the neighborhood. To the north, bisected by New York Avenue, N.E. is the mixed-use Ivy City, and beyond Gallaudet University to the east is the primarily-residential Trinidad neighborhood. Eckington is located to the west across the regional rail corridor. (Ex. 2.)

15. The 45-acre Union Market area is generally in the PDR-1 zone (previously the C-M-1 Zone District), but several sites have been rezoned C-3-C (under ZR58) and MU-9 (under ZR16) in accordance with the recommendations of the Florida Avenue Market Study Small Area Plan (“**Small Area Plan**”). (*See, for example*, Z.C. Order Nos. 06-40 through 06-40C, 11-25, 14-07, 15-01, 15-24, 16-10, and 17-14.) The Union Market District, and the Union Market itself, have been hubs of economic activity for entrepreneurial and start-up businesses. Food-based industries, technology, media, mixed-media, and “maker” uses are all currently present in near Northeast, with the Union Market District a center for such economic activity. (Ex. 2.)
16. The North Parcel consists of approximately 42,078 square feet of land area, all of which is contiguous. The North Parcel is within the C-3-C Zone District by virtue of the vested Approved PUD. (Ex. 2.)

The Project

17. The Applicant’s initial submission described the project (the “**Project**”) to be constructed on the North Parcel pursuant to the Application. (Ex. 2.) The Project consists of: (a) the North Building, a new approximately 317,950 gross square foot, eleven-story mixed-use building, which contains street-activating ground floor retail/commercial and “PDR/Maker” uses (defined below), a ground floor residential lobby and residential amenity uses, and upper story multifamily residential uses, (b) a new urban plaza (“**Plaza**”) that separates the North Building from the Existing South Structure (and eventually from the Future South Building) (in Z.C. Order No. 14-12, the Plaza was sometimes referred to as the “Urban Plaza”), and (c) three-and-a-half levels of below-grade parking with approximately 310 parking spaces (plus or minus 10 percent) to serve the Project, the Existing South Building (and the Future South Building), and surrounding properties in the Union Market District. (Ex. 2.)
18. The Project has a total floor area of up to approximately 317,950 square feet of gross floor area (“**GFA**”) and a floor area ratio of 3.71 (with respect to the overall record lot—Lot 5—that comprises the Union Market PUD Site), which is the FAR equivalent of approximately 7.56 when considering only the Project on the North Parcel. The Project, together with the approved footprint for the Future South Building has an overall lot coverage of approximately 84 percent (with a lot coverage of only approximately 77 percent when considering the North Parcel only), less than the 100 percent permitted in the C-3-C Zone District. The maximum height of the North Building is 120 feet. (Exs. 2 and 20D.)
19. The overall height and density of the Project are approximately the same as were set forth in the Approved PUD. The North Building includes approximately 23,053 square feet of non-residential uses and approximately 287,530 square feet of residential uses, excluding the penthouse amenity space. The proposed residential gross floor area in the aggregate constitutes a net reduction of approximately 7,050 square feet relative to the Approved PUD. The reduction in gross floor area in this Application is the result of the Applicant providing appropriately-scaled floor plates, articulation, and an over-sized court on the

north side of the Project, all of which together create interesting exterior architecture and improve access to light and air. (Ex. 2.)

20. The North Building includes approximately 15,568 square feet of shared amenity space in the penthouse that was not contemplated in the Approved PUD because ZR58 did not allow such use at the time the Approved PUD was considered by the Commission. (Ex. 2.)
21. Of the approximately 23,053 square feet of non-residential uses on the ground floor of the Project, no less than half will be constructed to “PDR/Maker” use specifications² and five percent (5%) of such approximately 23,053 square feet will be reserved for “PDR/Maker uses”³ for a period of five (5) years. (Ex. 2.)
22. The Project’s site plan addresses its important context in Union Market and activates the surrounding public realm. The overall plan under the Approved PUD calls for the hardscaped public Plaza to separate the two approximately 120-foot buildings. The Plaza is intended to be an active, pedestrian-friendly space that is both a public amenity and community-gathering place for area residents and workers in the Union Market District and ANC 5D as well as a destination for visitors from Ward 5, DC, and the broader metro region. (Ex. 2.)
23. The ground floor articulation and orientation of the North Building and the Existing South Building encourage the Plaza to provide a pedestrian access way between 5th Street and 6th Street, N.E. and a central place for gathering. The massing of the North Building is consistent with the height and density for other buildings approved on the blocks between 5th and 6th Streets, N.E. and with the massing and orientation approved for the Future South Building and reinforces street grid of the Union Market District. The North Building forms strong edges along each of the surrounding streets, creating an enhanced sense of place. (Ex. 2.)

² PDR Maker construction specifications shall mean construction to include “(a) a structural slab load (ground floor) live load of 125 pounds per square inch; (b) clear height of approximately 16 feet from ground-floor slab to bottom of structure above; (c) an electrical supply of 50 watts per square foot; (d) a loading dock that includes a 48-inch raised loading dock and/or levelers, servicing but potentially not located immediately adjacent to the relevant area; (e) an open floor plan layout; (f) a sound attenuation for mixed-use that satisfies NC-25 minimum noise criteria and includes seven-inch-thick minimum concrete podium slab; (g) HVAC designed for one ton per 300 square feet; and (h) ventilation (Fresh Air / Make-Up Air) louvers at façade.”

³ PDR Maker uses shall include: “(a) production, sale, and/or distribution of food and beverages (provided that the onsite consumption of food and beverages shall only be permitted when associated with such production, sale, and/or distribution user); (b) food incubators and food hubs; (c) robotics and 3-D manufacturing; (d) small-scale production, distribution or repair of goods and related accessory sales; (e) curation and sale of small-scale production goods; (f) new and locally-owned small businesses as certified with the Department of Small & Local Business Development; (g) “creative economy” uses including incubators, graphic design, product or industrial design, engineering and design, technology design and production, design and product curation, fashion design, horticultural design, green businesses and sustainable design, specialty sports and recreation uses, media/communications production and distribution; and (h) “arts” uses including arts, design and creation uses as defined in Subtitle B § 200.2(e) of the Zoning Regulations and entertainment, assembly and performing arts as defined in Subtitle B § 200.2(n) of the Zoning Regulations.” Notwithstanding anything to the contrary in the Zoning Regulations or ZR58, such uses shall be deemed permissible in the Project, whether as primary uses or as accessory to other uses in the Project.

24. The existing grading of the site and its location between Gallaudet University and the vibrant 5th Street, N.E. retail and wholesale corridor will direct pedestrian activity to collect at and move through the Plaza. The grade of the North Parcel rises from south to north. As a result, the Plaza level sits a half-story above the south entrance of The Market. This allows the existing ground floor market to be just a few steps below the grade of the Plaza and the second-level Dock 5 to be just a few steps above it. The ground floor retail/commercial level of the North Building is at-grade with the Plaza. (Ex. 2.)
25. The Project is consistent with ZR58 and the Approved PUD with respect to all development standards. The Project occupies approximately 39 percent of the overall record lot area, and when accounting for the approved Future South Building, the Project and Future South Building together will occupy 84 percent of the overall record lot that comprises the Union Market PUD Site, which is the same amount authorized in the Approved PUD and still much less than the 100 percent allowed in the C-3-C Zone District. The Project alone occupies just 77 percent of the North Parcel. Front yards are not required for the North Building under the Approved PUD or the C-3-C zoning, and no front yard is provided. The North Building's rear yard complies with the Approved PUD and the C-3-C requirements, and the Project has no side yards, in accordance with the design contemplated in the Approved PUD and as allowed in the C-3-C Zone District. The Project includes one open court and one closed court, both of which comply with ZR58⁴. The Project's habitable and mechanical penthouse structures comply with the relevant requirements.⁵ The Project's overall green area ratio of 0.2 satisfies the 0.2 required in the C-3-C Zone District, and the value established for the North Parcel in the Approved PUD. (Ex. 2.)
26. At the ground floor level, the North Building contains approximately 23,053 square feet of retail/commercial space (including PDR/Maker space), plus a residential lobby, residential amenity areas, and back-of-house functions. The retail/commercial area includes a space potentially accessible from 5th Street, N.E., the Plaza, and 6th Street, N.E. and will be able to be further divided as necessary to accommodate particular tenants. The ground floor

⁴ The Applicant removed an area of flexibility approved under Z.C. Order No. 14-12 for a non-compliant closed court at the north of the Project. The proposed court in such location is now compliant.

⁵ The penthouse on the north side of the Project, a side building wall, is set back from the adjacent wall a distance equal to one-half of its height (i.e., a ratio of 2:1 for the 12-foot penthouse wall, which is set back a distance of 6 feet). This 2:1 setback is consistent with the intent of Subtitle C, Section 1502.1. Under Section 1502.1(d), “[A] [p]enthouse[] . . . on a roof shall be setback from the edge of the roof upon which it is located as follows: A distance equal to one-half (0.5) of its height from any side building wall of the roof upon which it is located that is not adjoining another building wall and not meeting the conditions of paragraphs Subtitle C §§ 1502.1(c)(1) through (5)” where Section 1502.1(c)(3) provides: “[A penthouse shall be set back at a ratio of 1:1 when located] on a building [not used as a rowhouse, flat, semi-detached, or detached dwelling and not in the R-1 through R-F zones] that is located adjacent to a property that has a lower permitted matter-of-right building height.” Here, the JBGS-Gallaudet Property is subject to a PUD and Map Amendment with a maximum permitted height of 120 feet. Given that the adjacent PUD requires that such adjacent building be constructed to 120 feet, a height identical to that contemplated for the Project, Section 1502.1(c)(3) does not apply in the instant situation, thereby allowing the Project to utilize Section 1502.1(d) for the relevant penthouse setback.

layout can accommodate numerous pedestrian entrances in order to activate the Plaza and the surrounding streets. (Ex. 2.)

27. Above the ground level is a mezzanine level, which serves as a visual connection to the residential amenity spaces on the second level and creates visual connections with the non-residential spaces adjacent to the residential lobby. The space is envisioned as a semi-public community-activated space with congregating zones to accommodate individual and small groups. The upper levels of the North Building feature efficient double-loaded corridors with two elevator banks. The penthouse of the North Building also contains amenity space for residents. (Ex. 2.)
28. The Project's residential program contains a mix of studio, 1-bedroom, 2-bedroom, and 2-bedroom-plus-den units. The Project has dedicated amenity space for resident events as well as numerous private outdoor balconies and terraces. The North Building satisfies and improves upon the Inclusionary Zoning ("IZ") set aside requirements of the Approved PUD by dedicating nine percent (9%) of the residential GFA to affordable units. Of such IZ units, 30% are proposed to be set aside for households earning no more than 50% of the Washington DC Median Family Income ("MFI"), while the remainder of such affordable housing units are to be set aside for households earning no more than 60% MFI, for the life of the project. Such IZ set aside amount and affordability levels exceed the public affordable housing public benefit approved in the Approved PUD. (Ex. 2.)
29. The Project's architectural design and detailing are a contemporary interpretation of Union Market's mercantile heritage. The primary building materials are (i) a light, warm brick that relates to the typical masonry of the historic building stock and defines the primary residential block and the entire ground floor of the building, and (ii) a metal cladding that defines a floating volume evokes the metal sheds, dock doors, and transportation elements within and alongside the masonry fabric of the nearby Union Market Historic District. The ends of the Project's metal clad volume, which is held by the larger masonry armature, cantilever slightly and are fully glazed, to create a signature feature at the east and west elevations defining the entry to the public plaza. A large glazed and articulated bay element on the south elevation of the metal clad volume hosts residential units, helps modulate the long façade, and marks the gateway to the deeper portion of the Plaza where larger events will take place. (Ex. 2.)
30. At ground level, the east, west, and south elevations of the North Building feature windows to connect, physically and visually, the new retail/commercial and residential lobby spaces to the street, the Plaza, and the adjacent retail/commercial spaces. The east elevation of the North Building includes retail/commercial at the south corner and the garage entrance at the north edge, while the west elevation features the residential lobby entry to the north and retail/commercial at the south corner and elsewhere along 5th Street, N.E. The south façade consists entirely of retail/commercial frontage addressing the Plaza. (Ex. 2.)
31. The Project's retail/commercial and building signage, intended to be contextual in scale and character, though still in keeping with modern design, is shown to a conceptual extent in the Plans. (Ex. 2.)

32. The Project features a variety of landscaping improvements at street level, at the second-story terrace level, and on the various rooftop areas of the building, including on the streetfront canopies. The Plaza is the focal point of the proposed improvements. The Plaza offers an active, flexible and authentic experience that builds upon The Market, Dock 5, and the Project's proposed retail/restaurant uses, allowing the space to function as an extension of these uses that interacts with the public realm. The Plaza features a predominantly hardscape surface, which ties in aesthetically with the overall Union Market District. Movable site furnishings, dining areas, planters and other site elements allow for flexibility to accommodate larger events, service, vehicular access and other programmed uses. The Applicant anticipates that performances, special events, and the daily bustle of commercial activity in the Market and Dock 5, combined with the addition of residents and possibly future office workers, will ensure the Plaza is active with pedestrian life and serves as the heart of the Union Market District. The proposed Plaza design is in accordance with the first-stage PUD approved by the Approved PUD. (Ex. 2.)
33. The 5th and 6th Street, N.E. frontages adjacent to the Project feature wide sidewalks with outdoor seating/café spaces, planting areas, street trees, and unique, large canopies, with green plantings atop. Vegetation is also included at the rooftop level as a green amenity for building occupants and for the environmental and stormwater benefits. The Project's lighting plan ensures pedestrian comfort and safety and also serves as an organizing and distinctive design element. (Ex. 2.)
34. The design of the public spaces adjacent to the North Parcel is in accordance with Union Market Streetscape Guidelines, which the Applicant has worked to finalize with DDOT and OP. One design feature that emerges from the Streetscape Guidelines is the inclusion of the Project's large canopies. The Project's canopies in public space feature green roofs as a sustainability measure. Along 5th Street, N.E., canopies, rather than street trees, are emphasized as the streetscape level "greening" and shading element. Canopies in the area around the North Parcel reflect the historic mercantile character of the section across the streets of the Union Market District, which historically has had few, if any, street trees. (Ex. 2.)
35. Retail/commercial and other activating uses occupy most of the Project's ground-level in order to prioritize pedestrians over other transit modes and encourage pedestrian interaction with the uses on the North and South Parcels and the Plaza itself. (Ex. 2.)
36. The Project contains three-and-a-half levels of below-grade parking to serve the residential and retail/commercial uses. The residential spaces will be access-controlled, but the retail/commercial spaces will be available to the public generally. The Project is anticipated to include up to approximately 310 parking spaces (+/- 10%), which is a significant narrowing of the parking count flexibility established in the Approved PUD and is at the lower end of the previously-approved range (which was 300-475 spaces). As established in the Approved PUD, the Project's garage includes parking spaces for the uses on the South Parcel and potentially elsewhere in the Union Market District. (Ex. 2.)

37. In addition, the first below-grade level of the garage includes a secure bicycle storage room with capacity for approximately 111-119 long-term bicycle spaces. The bicycle storage room also has access via the parking ramp from 6th Street, N.E., the retail jump elevator from 5th Street, N.E., and the pair of residential elevators from 5th Street, N.E. An additional approximately 17-27 short-term bicycle parking spaces are provided in public areas around the North Parcel. In accordance with the Approved PUD, the Project's garage includes long-term bicycle parking for the future retail/commercial uses in the Future South Building. (Ex. 2.)
38. The Project contains a total of two (2) 30-foot loading berths with adjacent platforms and one (1) smaller retail/commercial trash compactor space. The two fully-enclosed loading spaces serving both the retail/commercial and residential uses are located on the ground level on the north side of the North Building via a shared entry area with the parking garage entrance. Accordingly, the Project requires flexibility from the loading requirements of ZR58 with respect to number of loading berths and loading spaces. (Ex. 2.)
39. The Project contains three curb cuts, all as previously configured under the Approved PUD. The first curb cut is located at the northern end of the North Parcel from 6th Street, N.E. All access to the garage and loading areas for the North Building occurs via this single curb cut. Existing curb cuts serving the two existing buildings are to be removed and rededicated to pedestrian space or vegetation. The other two curb cuts are at the 5th Street, N.E. and 6th Street, N.E. ends of the Plaza. Loading access to The Market/Future South Building is from the Plaza, and the Applicant anticipates that some vehicular access to the Plaza is necessary to accommodate loading and events located in the Plaza or at Dock 5. The Project's loading does not necessitate any truck backing up into public right of ways. (Ex. 2.)
40. The North Parcel and South Parcel are theoretical lots drawn in accordance with Section 2517 of ZR58. As such, the North Building utilizes a measuring point for height from the top of the sidewalk adjacent to the building along 6th Street, N.E. Such height measurement is in accordance with Section 2517.4 of ZR58 which notes that the height of a building is to "be measured from the finished grade at the middle of the front of the building." The North Building and Future South Building each comply with, and are less than, the FAR limitation of 8.0 for each theoretical lot. Each building utilizes half of the width of 5th Street, N.E. for its respective rear yard. (Ex. 2.)
41. The Project is designed to LEED Gold v4 (which is the functional equivalent of LEED Platinum 2009, the regime in effect at the time the Approved PUD became effective). The Project's level of sustainability exceeds that required under the Approved PUD. Specific sustainable design features include, among other things, provision of photovoltaic solar panels on the penthouse roof. (Exs. 2 and 20D.)
42. The Project is in accordance with the parameters set forth in the Approved PUD and does not propose any modifications to the Approved PUD, excepting only (a) the Project includes additional public benefits not required under the Approved PUD, and (b) that the Project includes a residential amenity space in the penthouse, which was a general concept

not yet approved and effectuated by the Commission at the time the Approved PUD was adopted but which is permitted now even for projects vested under ZR58. Though the Project is slightly smaller by gross floor area relative to the North Building in the Approved PUD and removed some of the relief and flexibility approved in the Approved PUD, it is otherwise in accordance with the parameters established in the first-stage PUD, allowing for modest deviations resulting from the furtherance of the design of the Project. To such end, the overall lot occupancy grew by a de minimis amount relative to the approved first-stage PUD parameters for the North Building. At the first-stage, the Project's architecture had not been designed beyond a conceptual massing stage. Now that the Project's architecture is more fully-designed, in order to provide an articulated ground floor that accomplishes all of the goals of this Project—including the build out of half of the ground floor to accommodate PDR/Maker uses—such modest increase in the lot occupancy is desirable. (Ex. 2.)

43. The Project is consistent with the parameters for the North Building contained in the Approved PUD. The Project has been designed to comply with the Conditions that apply to the North Parcel under the Approved PUD, and the Applicant does not seek any modifications to the Conditions or to the approved first-stage PUD plans in the Approved PUD. (Ex. 2.)
44. Although construction of the Future South Building has not yet begun, EDENS has already commenced to deliver, and in some instances already completed, many of the public benefits required under the Approved PUD. (Ex. 2.)
45. The Project simplifies and reduces flexibility included in the Approved PUD. Whereas the Approved PUD allowed flexibility to provide either office or residential uses on the upper stories, the Applicant seeks approval in the Application only for residential uses in the North Building. The parking is being delivered within range of parking spaces previously approved (i.e., 300-475) and that range has narrowed considerably. In addition, whereas previously the parking authorized under the Approved PUD was going to be delivered at a later time, under the Application, it will be delivered in the first phase of permanent new construction at the Union Market PUD Site (i.e., the Project). The Applicant also removed an area of flexibility approved under Z.C. Order No. 14-12 for a non-compliant closed court on the north side of the Project because such proposed court is now compliant. (Ex. 2.)

Revisions to Project in Response to Setdown Comments

46. In its July 19, 2019 report (the “**OP Setdown Report**”) OP made several requests for additional information and made multiple suggestions regarding the Project's public benefits and design. (Ex. 12; *see also* Finding of Fact [“**FF**”] ¶¶ 71 and 73.) At the July 29, 2019 public meeting during which the Commission considered whether to set the Applicant down for a hearing, the Commission concurred with the OP Setdown Report but did not raise any new questions or make any additional suggestions for the Project. (Tr. 1 at 40-44.)
47. In its September 19, 2019 and November 5, 2019 pre-hearing filings, the Applicant responded to the requested information and suggestions with supplemental information and

changes to the Project, including, for instance, adding solar panels to the roof of the Project, adding electric vehicle charging stations to the Project's garage, and making changes to the Project's façades. (Exs. 14 and 20; FF ¶¶ 72 and 74.)

Relief Requested

48. The Applicant requested zoning flexibility with respect to loading as previously contemplated in the Approved PUD. The Applicant does not newly request this zoning flexibility in the Application; instead, it was contemplated in the Approved PUD order. (Ex. 2.)
49. The Approved PUD expressly gave the Commission to establish the loading program for the North Building as part this Application. (*See* Z.C. Order No. 14-12 at FF ¶¶ 26, 37(a), n.2.) Given the program for the Project, ZR58 would have required up to two (2) 55-foot loading berths, one (1) 30-foot loading berth, two (2) 20-foot loading spaces, one (1) 200 square foot loading platform, and one (1) 100 square foot loading platform for both the retail/commercial and residential uses for the North Building. Instead, the Project provides two 30-foot loading berths and one 20-foot delivery/compactor space, along with adjacent loading platforms, essentially reducing one (1) 55-foot berths to a 30-foot berth, and eliminating one (1) 55-foot berth and a loading space.
50. The proposed amount of loading complies with the now-applicable zoning regulations, which have relaxed the more onerous loading requirements of ZR58. The previously-approved loading flexibility would not be required under ZR16's loading requirements, suggesting that the relief is not inconsistent with the intent of the Zoning Regulations and zone plan now in effect. In addition, as part of the Approved PUD, the Applicant prepared and the Commission approved a comprehensive Loading Management Plan for the Project (*see* Ex. 19D in Z.C. Case No. 14-12) which will continue to govern and will allow the two buildings to operate loading harmoniously. The loading flexibility will not tend to adversely affect any neighboring properties. (Ex. 2.)
51. The Map Amendment was approved as part of the Approved PUD and is not a new development incentive in this Application. (Ex. 2.)

EVIDENCE IN FURTHERANCE OF THE PUD EVALUATION STANDARDS

The Project Provides Public Benefits and Amenities

52. This Application advances the robust package of public benefits required under the Approved PUD (the “**Approved Public Benefits**”) and adds public benefits not previously required (the “**Project Public Benefits**”). (Exs. 2 and 32.)
53. The Approved Public Benefits include high quality design and architecture, efficient planning, sustainability measures, and pedestrian and transportation management as well as a comprehensive and diverse package of housing and affordable housing, employment

benefits, and special measures such as community events, educational programs, security, signage, street design guidelines, and community services. (Ex. 2; Ex. 2H.)

54. New to the Application, the Project Public Benefits include:

- a. Enhanced housing and affordable housing: The Applicant increased its original proffer of setting aside 8% of the residential GFA as affordable at 80% MFI to 9% of residential GFA at a mix of 30% at 50% MFI and 70% at 60% MFI. In addition, the Applicant committed to provide five (5) “family-sized” units with two-bedrooms-plus-a-den, reserving four (4) such units as affordable. The Approved PUD did not require any such two-bedroom-plus-den units. (Ex. 32.) The Project includes a greater number of housing units than could be developed on the Property as a matter-of-right. Likewise, the Project includes affordable housing in excess of the amount required under the IZ regulations.
- b. Enhanced sustainable design: The Applicant increased its original commitment from LEED Silver 2009 to LEED Gold v4 (the equivalent of LEED Platinum 2009). The Approved PUD did not have any requirement for solar panels or accommodations for electric vehicles or electric bicycles but the Applicant enhanced the Project to include no less than 2,000 square feet of area on the roof to be utilized for solar panels and related access ways and equipment and to include accommodations for electric cars and electric bicycles. (Ex. 32.)
- c. New Reservation for PDR/Maker uses: The Applicant proffered an additional commitment to build-out no less than half of the non-residential portion of the ground floor of the Project for PDR/Maker use specifications and to reserve five percent (5%) of the Project’s ground floor exclusively for such uses for a period of five (5) years. (Ex. 32.)

55. Other Project Public Benefits include:⁶

- a. Superior Urban Design and Architecture: The Project’s design is reflective of superior architectural and urban design characteristics relative to any matter-of-right development. Key indicia of superior architecture are the Project’s contemporary yet contextual form, its material selection, and its inclusion of high-quality private outdoor spaces.
- b. Superior Landscaping: The Project’s landscaping and hardscaping are also superior to any matter-of-right development. The flexible design of the Plaza and the well-landscaped and programmed rooftops are indicative of the Project’s superior landscaping.

⁶ For clarity, the public benefits identified in this FF ¶ 55 were contemplated in the Approved PUD but are made part of the package of Project Public Benefits insofar as each is the subject of a Condition of approval of this Order.

- c. Site Planning and Efficient Land Utilization: The Project makes efficient use of a significant site that is near a Metrorail location, places all parking underground and helps to complete a maturing multi-neighborhood commercial center.
- d. Transportation Infrastructure: The Project's pedestrian prioritization and transportation measures were found to be public benefits in the Approved PUD and remain so as part of this Application. The Project's vehicular parking entrance and exit as well as the loading for the buildings is accessed from the 6th Street, N.E. at the east side of Union Market. Accordingly, the Project minimizes vehicle-pedestrian conflicts by locating loading off of 6th Street, N.E. and reduces truck sidewalk crossings and maneuvering from 5th Street, N.E.
- e. Employment and Training Opportunities: As part of the Approved PUD, the Applicant, through EDENS, entered into a First Source Employment Agreement with the Department of Employment Services to achieve the goal of utilizing District of Columbia residents for at least 51 percent of the new construction jobs created by the Project.

In addition, the Applicant enhanced the transportation mitigation commitment for bicycle sharing memberships from \$14,000 in the aggregate for the South Building and North Building together to \$40,000 for the North Building alone (i.e., \$54,000 total). Because the Project is not expected to have any greater transportation impact than the program for the North Parcel originally approved as part of the Approved PUD, this enhanced mitigation amount could be considered a project amenity rather than additional mitigation. This additional sum for the Project's future residents in no way increases the existing commitment applicable to the South Building pursuant to Condition C.1(f) of the Approved PUD, which commitment remains \$14,000 for the primarily residential Future South Building option or \$15,000 for the primarily office Future South Building option.

- 56. The Project's requested zoning and design flexibility is minor and was generally before the Commission and factored into the Commission's analysis as part of the Approved PUD. Nonetheless, the Applicant greatly expanded upon the Approved Public Benefits with the enhanced and new Project Public Benefits. The Map Amendment does not factor into this analysis because it was already approved for the North Parcel as part of all of the approvals in the Approved PUD on the basis of the Approved Public Benefits.
- 57. The Project Public Benefits individually and as a whole are not inconsistent with the District of Columbia Comprehensive Plan ("**Comprehensive Plan**"), Small Area Plan, and other adopted public policies for the North Parcel because the Project Public Benefits are part of the Project, which itself is not inconsistent with such policies. (Ex. 2.)
- 58. All of the IZ units proffered as part of the Project are in excess of the IZ that would be required by the underlying zone insofar as the underlying zone (formerly C-M-1, now PDR-1 prohibits residential uses). (Ex. 2.)

The Project Has No Unacceptable Impacts

59. The Applicant prepared a detailed analysis of the Project’s potential impacts, which analysis included a Comprehensive Transportation Review (“CTR”) and an Analysis of Potential Impact of the Development on Displacement, Rents, Property Values, and Gentrification. (Exs. 2, 18A, and 27.)
60. The Project is anticipated to have favorable impacts with respect to land use, housing, open space, design, massing, design, economics, culture, safety, and the environment. The Project is not anticipated to have any impacts with respect to the provision of public facilities or District services. (Ex. 2.)
61. The Project is not anticipated to have any adverse impacts with respect to transportation or during construction. However, the Applicant has committed to mitigate any such impacts through a comprehensive set of parking, loading, and transportation demand management conditions. (Exs. 2 and 18A.)
62. The Project is not anticipated to have any adverse impact on housing costs that have already been occurring in the surrounding neighborhoods, but instead is anticipated to help to mitigate negative impacts of such increases and deliver many other positive impacts. The Project will provide: a significant increase in the total number of housing units, which will help to correct the imbalance between housing demand and supply; affordable units; and other neighborhood benefits. These are exactly the types of benefits that are vital to offsetting the negative impacts of increases in apartment rents occurring in D.C. The Project is not anticipated to create any displacement of residents of any income level or of any businesses in the neighborhood. (Ex. 27.)

The Project Is Not Inconsistent with the Comprehensive Plan

63. The Project is not inconsistent with the Comprehensive Plan, Small Area Plan, or other adopted public policies applicable to the North Parcel. As part of the approval of the Approved PUD, the Commission made extensive findings regarding the consistency of the first-stage PUD with the Comprehensive Plan. (*See* Z.C. Order No. 14-12 at FF ¶¶ 40-45 (“The Commission finds that the . . . approved PUD is not inconsistent with the Comprehensive Plan and promotes the policies of its Land Use, Transportation, Housing, and Urban Design Citywide Elements and its Upper Northeast Area Element.”) (citations omitted) and Conclusion ¶ 6 (“Approval of this PUD and related map amendment is appropriate because the proposed development is consistent with the desired future character of the area, and is not inconsistent with the Comprehensive Plan.”). In the Approved PUD, the Commission made particularized findings with respect to the Comprehensive Plan’s Land Use Element, Transportation Element Housing Element, Urban Design Element, and Area Element. (*Id.*) The Approved PUD also includes findings of facts regarding consistency with the Small Area Plan. (*Id.* FF ¶ 28.) Finally, the Applicant provided supplemental analysis with respect to the Ward 5 Industrial Land Transformation Study and the Project advances multiple specific goals and objectives in such Study. (Ex. 14A.)

64. Given the extensive findings in the Approved PUD Order, the clear conclusions of law in the Approved PUD Order, and the consistency between the Project and the approved first-stage PUD, the Project is not inconsistent with the Comprehensive Plan or other adopted and applicable public policies. (Ex. 2.)

The Project Satisfies the PUD Criteria

65. The Project's mix of uses, Project Public Benefits, and the community engagement process that accompanied the Application all exceed what would be provided under matter-of-right standards. Specific aspects of the Project superior to a matter-of-right development include:
- a. Housing/Affordable Housing: The Project provides more housing than what could be constructed on the North Parcel without a PUD because the underlying zone entirely prohibits any residential use. In addition, the amount of housing included in the Project and the amount of affordable housing in the Project exceed the amount and level of affordable housing that would be required in a matter-of-right development pursuant to either ZR58's or ZR16's IZ requirements. (Ex. 2.)
 - b. Public Benefits: The Project's construction as part of the overall Approved PUD supports the significant package of Approved Public Benefits that accompanied that approval, plus the enhanced Project Public Benefits together greatly exceed what would be provided in a matter-of-right development and generally apply to the area within in the boundaries of ANC 5D. (Ex. 2.)
 - c. Community Engagement: Finally, the Project is undergoing a comprehensive public review process with multiple opportunities for neighbor, community group, and public agency participation. Those opportunities would not have existed for a matter-of-right development of the North Parcel. (Ex. 2.)
66. The Project advances the Project Public Benefits and Approved Public Benefits. Such Public Benefits fulfill goals set forth in the Comprehensive Plan and the Small Area Plan, the priorities of District agencies and stakeholders, and the preferences, needs, and concerns of the ANC and community residents identified during Applicant's community engagement process regarding the Approved PUD. Accordingly, the Public Benefits package is a meaningful series of commitments that satisfy the intent and purposes of the PUD process. (Ex. 2.)
67. Through the development of an underutilized parcel proximate to a Metrorail station, the Project affirmatively improves major public interests and priorities through such project aspects as housing and affordable housing, additional ground level street-activating uses, and a signature urban gathering space in the Plaza. The development of an underutilized lot with new housing and retail/non-residential ground floor uses advances the public health, safety, welfare, and convenience goals of the District by converting fallow lots to productive use, avoiding the health and safety problems often associated with vacant industrial spaces, and providing uses that promote public welfare and convenience. Accordingly, the Project advances these purposes of the Zoning Regulations. (Ex. 2.)

68. The approved C-3-C zoning for the Project continues to be consistent with the purposes of the Zoning Regulations for the same reasons as identified in the first-stage PUD. Broadly, the C-3-C Zone District is intended to accommodate major business and employment centers and to provide substantial amounts of employment, housing, and mixed uses. 11 DCMR §§ 740.1 and 740.2. Within this framework, the C-3-C Zone District is intended to contain medium-high density development. *Id.* § 740.8. Here, the C-3-C Zone District is appropriate for this location: a site located near a Metrorail station and in a densifying neighborhood that supports a significant amount of District-focused existing and emerging economic activity. The C-3-C Zone District allows for a broad mix of residential, office/employment, retail and other neighborhood-serving uses that are called for at such a location, and the C-3-C Zone is accordingly suitable for the Project’s mix of residential, retail, and other potential ground floor uses. Moreover, the Project’s mix of uses, height and density are consistent with the character of the C-3-C Zone District. The Project’s development of an underutilized lot further encourages the stability of the C-3-C Zone District and strengthen the surrounding neighborhoods anchored to that economic center.

RESPONSES TO THE APPLICANT’S FILINGS

OP Reports

69. In its Setdown Report dated July 19, 2019, OP recommended that the Application be set down for a public hearing. OP also noted that the Commission concluded that the Approved PUD completed the Comprehensive Plan analysis. (Ex. 12.)
70. In its report to the Commission in advance of the public hearing dated November 15, 2019 (“**OP Hearing Report**”), OP requested additional information, recommended an additional condition of approval, and encouraged further enhancing the public benefits. The OP Hearing Report did not make a final written recommendation. (Ex. 21.)
71. In the Setdown Report, OP requested information about the Project regarding: (a) affordable housing, including floor plans showing the location, number, and types of IZ units and depth of affordability; (b) the IZ requirement for the North Building;⁷ (c) the rooftop, including proposed structures; (d) the Plaza including identifying specific hardscape materials to be used, images of outdoor furniture, including benches, and any landscaping that would be incorporated into the space; (e) the number and location of EV charging stations; (f) the streetscape plans and the use of public space in compliance with the Union Market Streetscape Guidelines; (g) the anticipated tenants of the ground floor and how the tenants would meet the goals of the Ward 5 Industrial Land Transformation Study; (h) the types of materials to be used; (i) window details illustrating window mullions and depth from the façade; (j) sign plan, including sign types, illumination, and building locations; (k) the use of bolder color and pattern on the building, particularly in the black metal clad portion; (l) how the street space can be enhanced with artwork, parklets, café

⁷ The Applicant provided a detailed analysis of the amount of affordable housing required of the North Building pursuant to the Approved PUD. (Exs. 14, 20, and 25.) Ultimately, the Commission does not need to make a finding on the vested status of the North Building under the Approved PUD because the Applicant voluntarily agreed to reduce the Project’s MFI mix to the levels encouraged by OP and the Commission.

seating adjacent to the street edge; and (m) the sidewalk transition along curbsless the 5th Street, N.E. (*Id.*)

72. The Applicant provided responses to all of these requests in its subsequent filings. (Exs. 14, 20, 25, 26A, and 32.)
73. In the Setdown Report, OP also recommended specific changes and enhanced proffers: (a) increase the amount of affordable housing in the proposal; (b) provide 3-bedroom units; (c) commit to providing permanent retail entrances on 5th Street, N.E. and 6th Street, N.E.; (d) commit to providing solar panels on the roof and locate solar panels on the green roof; (e) increase the amount of PDR/Maker Space on the ground floor to half of the floor area (11,527 square feet), and to dedicate the space to that use for the life of the Project; (f) explore moving the lobby to the southeast corner of the property along 6th Street, N.E. and the Plaza to free up additional retail space along 5th Street, N.E.; (g) explore redesigning the canopies and the loggia on 5th Street, N.E. to make such canopies a more visible and prominent feature of the façade and impose minimum dimensional standards; and (h) review lighting treatments for the underside of the canopies, and the addition of repeating horizontal support beams to punctuate a procession along the building frontage similar to the precedent image shown on the applicant's package. The OP Hearing Report requested: (i) clarification regarding the required level of affordability for the North Building under the Approved PUD and that the Applicant reserve the Project's affordable units at no more than 60% MFI; (j) clarification regarding whether the loading flexibility was previously approved as part of the Approved PUD; (k) extending the commitment for the PDR/Maker use from five years to twenty; (l) a condition of approval that the industrial specifications be included on the Final Plans; and (m) an update on the status of the First Source Employment Agreement. (Exs. 12 and 21.)
74. In response to OP's requests, the Applicant committed to: (a) increasing the amount of affordable housing in the Project; (b) reserving all of the Project's affordable units at no more than 50% or 60% MFI as shown on the Final Plans; (c) providing family-sized, two-bedroom-plus-a-den units, and reserved 80 percent of such units as affordable; (d) designing the Project such that retail entrances can be located on 5th Street, NE and 6th Street, NE; (e) providing no less than 2,000 square feet of roof area for the location of solar panels; (f) retaining the residential lobby in its originally proposed location; (g) redesigning the canopies and loggia as shown in the Final Plans (as hereinafter defined); (h) revising the lighting treatments and other design details as shown in the Final Plans; (i) clarifying the loading flexibility requested; (j) maintaining its initial proffer regarding PDR/Maker space uses; and (k) including the requested PDR/Maker specifications in the Final Plans. The Applicant also provided a copy of its First Source Employment Agreement with the Department of Employment Services. (Exs. 14, 20, 25, 26A, and 32.)

DDOT Report

75. On November 20, 2019, DDOT filed a report regarding the Project. DDOT made the following findings: (a) the Project's access is consistent with DDOT standards; (b) the Applicant's Loading Management Plan (as hereinafter defined) sufficiently mitigates the

request for loading relief; (c) the Applicant proposes to design into the Project the ability to construct knock-out panels along the north edge of the Project's garage in order to facilitate access to the JBGS-Gallaudet Property to the extent necessary; (d) the vehicle parking supply is within the range of the Approved PUD; (e) the bicycle parking satisfies the Zoning Regulations; (f) the Project's public space improvements are consistent with the Union Market Streetscape Guidelines; (g) there was no need to perform an additional traffic capacity analysis as part of the Project because the transportation analysis in the Approved PUD was performed on the basis of office use on the North Parcel, and office use generates more vehicle trips than the residential use proposed as part of the Application; and (h) the Project's transportation demand management ("TDM") is a strong basis for achieving the proposed transportation mode split identified in the CTR, but additional financial incentive for bikeshare membership was likely appropriate. (Ex. 23.)

76. In addition, DDOT suggested additional TDM measures and follow-up items including: (a) standard TDM measures such as provision of information and further coordination with DDOT; (b) provision of an electronic transportation information screen; (c) enhanced bicycle sharing memberships; (d) a commitment to designing the Project to accommodate the aforementioned knock-out panel in the garage to the extent necessary; (e) an acknowledgement letter from the owner of the JBGS-Gallaudet Property, which lot would be the beneficiary of such knock-out panels; (f) installation of electric vehicle charging stations; (g) continued coordination with DDOT on sequencing and construction-period matters; and (h) coordination with DDOT on the Project's projections into public space. (*Id.*)
77. In response to the items in DDOT's report, the Applicant committed to: (a) DDOT's additional standard TDM measures; (b) an electronic transportation information screen; (c) the enhanced bicycle sharing memberships; (d) design the Project to accommodate the aforementioned knock-out panel to a future garage on the JBGS-Gallaudet Property to the extent necessary; (e) work to obtain (and actually did obtain and file in the record) a letter from the neighboring property owner; (f) installing seven electric vehicle charging stations in the Project's garage; (g) continuing to work with DDOT during the building permit and construction phases of the Project; and (h) further coordination regarding the Project's projections. (Exs. 20, 25, 26A, and 32.)

ANC 5D Report

78. ANC 5D filed two letters in this proceeding. On June 21, 2019, the ANC filed a letter noting its unanimous support for the Project. As part of the Applicant's post-hearing submission, it included a second letter, dated December 10, 2019, from the ANC, wherein the ANC acknowledged that it had reviewed and appreciated the Applicant's revised proffers and voted accordingly. The ANC requested that the Commission give its written filings great weight. (Exs. 11 and 32A.)

No Other Agencies/Persons/Groups

79. Apart from OP, DDOT, and ANC 5D, no other agency, person or organization filed written comments in the record of this proceeding.⁸

PUBLIC HEARING OF NOVEMBER 25, 2019

80. On November 25, 2019, the Commission held a duly-noticed public meeting in accordance with its rules and regulations. (Transcript of Zoning Commission Public Meeting (Nov. 25, 2019) [“Tr. 2”].) The Applicant presented two witnesses on behalf of the Applicant, and three experts: Mr. Frank Andre as an expert in architecture, Mr. Robert Schiesel as an expert in transportation analysis and engineering, and Mr. Matt Renault as an expert in landscape architecture. The Commission had previously accepted Messrs. Andre and Schiesel as experts in their respective fields and newly elected to accept Mr. Renault as an expert. (*Id.* at 6-7.) Thereafter, the Applicant’s representatives and the experts presented testimony about the Project. (Ex. 26A; Tr. 2 at 9-31.)
81. At the public hearing, the Commission asked numerous questions of the Applicant and requested additional information as follows: (a) provide more information or alternative designs for the north façade of the Project; (b) revise the design of the trellis on the Project’s rooftop; (c) revise the lighting program for the Project; (d) provide more detail in the Project’s signage plans; (e) provide a code compliant alternative design for the “surround”; (f) provide more information about the controls and use of the Plaza; (g) increase the solar panel commitment; (h) improve the LEED level of the Project; (i) modify the requested design flexibility; (j) commit to improving the degree of affordability of the Project’s affordable units; (k) enhance the Project’s bicycle membership sharing commitment; (l) provide precedent examples of existing buildings using the same light brick materials proposed for the Project; and (m) provide electrical outlets in the long-term bicycle storage room to accommodate future e-bicycle usage. (Tr. 2 at 31-71; 76-77.)
82. At the public hearing, OP expressed support for the Project. OP encouraged the Applicant to include more affordable housing and at deeper levels of affordability in the Project. OP also encouraged the Applicant to commit to reserve the space dedicated to PDR/Maker uses for a period longer than five years. (Tr. 2 at 71-73.) DDOT noted that any open items in the Applicant’s written filings were satisfied in its presentation and requested an acknowledgement from the owner of the JBGS-Gallaudet Property regarding the Applicant’s efforts to provide vehicular access to the JBGS-Gallaudet Property via knock-out panels in the Project’s garage.
83. At the public hearing, there was no testimony in support of or in opposition to the Project. (Tr. 2 at 79.)

⁸ Although no other agencies filed comments in this proceeding, OP held an interagency meeting regarding the Project on October 24, 2019, during which meeting, the Applicant heard comments from DC Water, DOEE, the Department of Housing and Community Development, and the Department of Parks and Recreation. The Applicant’s responses to those other agency comments are included in the record at Ex. 20.

Post Hearing Submissions

84. Following the public hearing, the Applicant filed a statement summarizing its responses to the Commission's requests for more information. In such statement the Applicant: (a) provided more information and alternative designs for the north façade of the Project; (b) revised the design of the trellis on the Project's rooftop; (c) revised and provided more information regarding the lighting program for the Project; (d) provided more detail in the Project's signage plans (included in the record as Ex. 32F, "**Storefront and Signage Plans**"); (e) provided a code compliant alternative design for the "surround" on the west façade of the Project; (f) provided more information about the controls and use of the Plaza; (g) increased the solar panel commitment; (h) improved the LEED level of the Project; (i) modified the requested design flexibility; (j) committed to improving the degree of affordability of the Project's affordable units; (k) enhanced the Project's bicycle membership sharing commitment to \$40,000 for the North Building and \$14,000 for the Future South Building; (l) provided precedent examples of existing buildings using the same light brick materials proposed for the Project; and (m) provided electrical outlets in the long-term bicycle storage room to accommodate future e-bicycle usage. (Ex. 32.)
85. In response to the Commission and OP comments at the public hearing, the Applicant reviewed the benefits and amenities package holistically and enhanced its affordable housing commitment while maintaining its PDR/Maker use commitment. (Ex. 32.) The Commission finds that the Applicant's position on the proffered PDR/Maker use commitment is reasonable. (Tr. 2 at 61.) In response to DDOT comments at the public hearing, the Applicant provided the requested letter of acknowledgement from the owner of the JBGS-Gallaudet Property regarding the knock-out panels in the Project's garage in its post-hearing submission. (Ex. 32L.)
86. Apart from the ANC letter included with the Applicant's post-hearing submission, there were no further agency reports filed after the public hearing. The Application was not, and was not required to be, referred to the National Capital Planning Commission. (11-Z DCMR §§ 603.1(b), 603.4(a).)

CONCLUSIONS OF LAW

Procedural and Jurisdictional Conclusions

1. A PUD application must adhere to certain procedural requirements. 11-X DCMR § 307.1; 11-Z DCMR §§ 205, 300, 400-08, 600-06, 700-707. The Commission must hear any PUD in accordance with the contested case procedures its Rules of Practice and Procedure. 11-X DCMR § 300.3. The Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements, and (ii) the Applicant, OZ, OP, and this Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations. FF ¶¶ 1-8, 16.

2. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. 11-X DCMR § 301. The Application satisfies these minimum area and contiguity requirements. FF ¶ 16.
3. The Project is vested under the substantive provisions of ZR58 because it is a second-stage PUD proceeding in accordance with a first-stage PUD approved prior to September 6, 2016. 11-A DCMR § 102.3(a).
4. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (the “Act”). The Conditions of this Order require that the Project and the Applicant comply with the Act.

Evidentiary Standards

5. The Applicant has the burden of proof to justify the granting of the Application according to the PUD evaluation standards. 11-X DCMR §§ 304.2, 500.2. The Commission’s findings in relation to a PUD must be supported by substantial evidence. *See Howell v. District of Columbia Zoning Comm’n.*, 97 A.3d 579 (D.C. 2014). Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support” the conclusions contained herein. *D.C. Library Renaissance Project v. District of Columbia Zoning Comm’n.*, 73 A.3d 107, 125 (D.C. 2013). The Applicant’s filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission’s analysis and conclusions contained herein. FF ¶¶ 72, 74, 80, and 84-85. Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards and has carried its burden of proof sufficiently to allow the Commission to approve the Application.
6. The Commission is required to give “great weight” to the issues and concerns of the affected ANC. D.C. Code § 1-309.10(d)(3)(A). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted). The Commission has considered the written testimony from the ANC. FF ¶ 78. The Commission concludes that the Applicant appropriately engaged in dialogue with the ANC and addressed, to the extent maximum practicable the legally relevant issues and concerns of the ANC. The ANC supports the Project. The Commission affords the requisite great weight to the legally relevant issues and concerns contained in the ANC’s written submissions.
7. The Commission is also required to give great weight to the written reports of OP. D.C. Code § 6-623.04; 11-Z DCMR § 405.8. The Commission has reviewed the OP Setdown Report and OP Hearing Report and heard testimony from OP and finds that OP supports the Application but did not provide an express recommendation to approve or deny the Application. FF ¶¶ 69-73. The Commission gives great weight to OP’s support of the Application and concurs with OP’s conclusions and findings, particularly those with respect to the Project’s consistency with the Comprehensive Plan and Small Area Plan. Since the Commission agrees with the OP’s reports and OP’s overall support, the

Commission concludes it has properly granted OP's reports the great weight that they are due.

Consistency with the PUD Process, Zoning Regulations, and Plan

8. Pursuant to ZR16, the purpose of the PUD process is "to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) Results in a project superior to what would result from the matter-of-right standards; (b) Offers a commendable number or quality of meaningful public benefits; and (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan." 11-X DCMR § 300.1. The Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Project is a high-quality development that is superior to what could be constructed on the Property as a matter-of-right via the underlying zoning. *See* FF ¶ 65. The Commission previously concluded that the Approved Public Benefits are meaningful and are commendable both in number and quality and hereby makes analogous findings with respect to the Project Public Benefits. *Id.* ¶¶ 54-55. Finally, the Commission has found that the Project does not injure but instead advances the public health, safety, welfare or convenience, *id.* ¶ 67, and is not inconsistent with the Comprehensive Plan. *Id.* ¶¶ 63-64.
9. The PUD process is intended to "provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan." 11-X DCMR § 300.2. The Commission has found that the Project generally conforms to the requirements of the Zoning Regulations except for the few areas of articulated zoning relief, which are nonetheless consistent with the intent and purposes of the Zoning Regulations. FF ¶ 68. The Commission sees no reason to disturb its previous findings that the Map Amendment and Approved PUD are not inconsistent with the Comprehensive Plan or other adopted public policies applicable to the North Parcel, including without limitation, the Small Area Plan and adopts those same findings with respect to the Project. *Id.* ¶¶ 63-64. Therefore, this Commission concludes that Project does not circumvent the Zoning Regulations and is not inconsistent with the Comprehensive Plan or such other adopted public policies.

Evaluation Standards

10. The Commission must grant approval to any second-stage PUD application that it finds in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, provided such approval may be subject to conditions. 11-X DCMR § 309.2. The Commission finds that the Application is in accordance with the Zoning Regulations and the purposes thereof, the PUD process, and the Approved PUD. FF ¶ 68. Accordingly, the Commission concludes that it must approve the Application subject to the Conditions of this Order.

11. As part of a PUD application, the Commission may, in its discretion, grant relief from any building development standard or other standard (except use regulations). 11-X DCMR §§ 303.1, 303.11. The Applicant seeks the zoning relief pursuant to the Commission's discretion to grant relief from any development standards of the Zoning Regulations. The Commission has found that such items of relief do not impair the purposes of the Zoning Regulations and are not inconsistent with the Comprehensive Plan. FF ¶¶ 63-64. The Commission concludes it may exercise its discretion to grant the requested development incentives subject to the Conditions hereof.
12. ZR16 defines public benefits as "superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title." 11-X DCMR § 305.2. Such public benefits must satisfy the public benefit criteria: (a) benefits must be tangible and quantifiable items; (b) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) benefits must primarily benefit the geographic boundaries of the ANC; and (d) monetary contributions shall be permitted only if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. *Id.* §§ 305.3, 305.4. Based on this Commission's findings regarding the public benefits as well as the Conditions of this Order, the Commission concludes that the Project Public Benefits benefit the surrounding neighborhood or the District as a whole to a significantly greater extent than would a matter-of-right development and otherwise satisfy the public benefit criteria.
13. The PUD provisions require the Commission to evaluate whether the Application: "(a) is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site." 11-X DCMR § 304.4. The Commission has reviewed the entire record and issued findings to support its conclusion that the Application satisfy the PUD evaluation standards. In particular, the Commission concludes the Project is not inconsistent with the Plan as a whole, accepting the Applicant's analysis on this point and giving great weight to OP's analysis on this point. The Commission also notes its earlier findings regarding the Approved PUD's consistency with the Comprehensive Plan, and sees no reason to disturb those findings now in light of the absence of any contrary evidence in the record in this proceeding. The Commission accepts the entirety of the Applicant's and the District's impact analysis contained in the record regarding potential impacts of the Project and concludes that the Project does not have any unacceptable impacts. The Commission further concludes that the Project includes the Project Public Benefits all of which satisfy the public benefits criteria and none of which are inconsistent with the Plan.

14. This Commission must undertake a “comprehensive public review” of the PUD application “in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits.” 11-X DCMR § 300.5. In deciding on the Application, this Commission must “judge, balance, and reconcile the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” *Id.* § 304.3.
15. The Commission’s review of the Application has been comprehensive. The Commission has reviewed the entire record and has identified and examined the concerns and statements about the Project raised by the ANC and District agencies. FF ¶¶ 69-79. The Commission has appropriately considered the substantial evidence presented by the Applicant. The Commission grants appropriate weight to the reports and testimony of the various reviewing District agencies and the ANC. *See id.* There are no items in the record that the Commission has excluded from its consideration notwithstanding in some instances this Order does not contain precise citation to such items.
16. The Project warrants the requested flexibility and development incentives in light of the Project’s extensive and comprehensive Project Public Benefits and Approved Public Benefits. The development incentives directly support the Project’s provision of Public Benefits. *Id.* ¶¶ 52-58. The Public Benefit-supporting nature of the development incentives affords the Public Benefits ample margin to justify any potential adverse effects. *Id.* ¶¶ 59-62. The Project has largely been designed to avoid such effects. However, to the extent such effects exist as a result of the Project—for instance with respect to potential transportation impacts—the magnitude of the Public Benefits and the Applicant’s mitigation efforts provide sufficient justification for the Project notwithstanding such potential effects. *Id.* Moreover, the Project Public Benefits generally accrue most significantly to the area immediately surrounding the Project. *Id.* ¶ 65(b). Therefore, those most likely to be adversely affected by the Project nonetheless also benefit most from it. The Commission concludes that the Project’s development incentives are warranted in light of the Project Public Benefits and the Approved Public Benefits, when considering the specific nature of the area surrounding the Project and the Project’s overall consistency with the Comprehensive Plan.
17. Accordingly, the Project Public Benefits justify the modest Project-specific development incentives and flexibility, and the Application satisfies the PUD requirements.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a second-stage PUD, subject to the following guidelines, conditions, and standards:

A. PROJECT DEVELOPMENT

1. The Project and the Plaza shall be constructed in accordance with the plans prepared by HCM and Mahan Rykiel, dated [January __, 2020] and included in the record at Ex. [__], modified by the guidelines, conditions, and standards herein (the “**Final Plans**”).
2. The Property shall be subject to the requirements of the C-3-C Zone District except as set forth herein or modified hereby as shown on the Final Plans. The Project shall be constructed to a maximum height of 120 feet and as measured from the measuring point on 6th Street, N.E. pursuant to the Final Plans. The Project shall have flexibility from the loading requirements of ZR58 and to allow a habitable penthouse for residential amenities, all as set forth in the Final Plans. The Applicant shall have flexibility in the following areas:
 - a. To provide a range in the number of residential units in the Project of plus or minus ten percent (10%) relative to the number depicted on the Final Plans and accordingly adjust the type and location of affordable units to reflect the final unit mix of the Project;
 - b. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - c. To vary the final selection of the exterior materials within the color ranges of the 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, dimensions and locations, including curtainwall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, 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 or to address the structural, mechanical, design, or operational needs of the building uses or systems;
 - d. To vary the final design of retail frontages, including locations of doors, design of show windows and size of retail units and signage, to accommodate the needs of specific retail tenants;
 - e. To vary the selection of plantings in the landscape plan depending on seasonal availability within a range and quality as proposed in the Final Plans or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DCRA, or other applicable regulatory bodies;

- f. To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Plans do not change;
- g. To revise the design of the public space surrounding the Property and the landscape and/or streetscape design of the Project, including, without limitation, the gate element(s) between the Plaza and the adjacent sidewalks (in accordance with the Final Plans), to the extent necessary to obtain approvals from District agencies and/or service to the Property from utilities or as would otherwise be in accordance with the Streetscape Design Guidelines;
- h. To make refinements to the approved parking configuration, including layout and number of parking spaces plus or minus ten percent (10%);
- i. To vary the amount, location and type of green roof, solar panels, planted canopies (over the Plaza only), and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Project achieves a minimum GAR of 0.2 based on the area of the North Parcel only and provides a minimum of 2,000 square feet of roof area containing solar panels and related equipment;
- j. To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Final Plans and remain compliant with all applicable penthouse setback requirements;
- k. To vary the final design and layout of the indoor and outdoor amenity and plaza spaces to reflect their final design and programming and to accommodate special events and programming needs of those areas from time to time;
- l. To vary the final design of the ground floor frontage, including the number, size, design, and location of windows and entrances, signage, awnings, canopies, and similar storefront design features, to accommodate the needs of the specific tenants within the parameters set forth in the Storefront and Signage Plans;
- m. To vary the final condition of the north façade of the Project (including without limitation modifying or removing windows and/or masonry) in accordance with the alternative design as shown on sheet [] of the Final Plans, or within the areas dashed in red on sheet [] of the Final Plans in the event a structure is approved to be built to the JBGS-Gallaudet Property line where the portions of such adjacent structure exist;

- n. To utilize the ground floor space for any uses in the retail; service; eating and drinking establishment; PDR/Maker uses; arts, design, and creation; daycare; entertainment, assembly, and performing arts; office/research lab use categories; or any other lawful use in the C-3-C/MU-9 zone;
- o. To change the location and dimensions of the knock out panels in the garage in order to accommodate, on terms reasonably acceptable to the Applicant, an internal connection to a future building on the JBGS-Gallaudet Property; and
- p. To vary the design of the “surround” on the upper stories of the 5th Street, NW façade of the Project to allow construction of a projection-compliant design in accordance with the alternative design as shown on sheet [] of the Final Plans.

B. PUBLIC BENEFITS

1. **For the life of the Project**, the Project shall provide housing in excess of a matter-of-right development of the Property, including affordable housing as set forth in the following chart and in accordance with the location and proportional mix of units (by bedroom count) as shown on Sheet A44 of the Final Plans, subject to Condition A.2(a), and the Project’s total residential GFA shall not exceed the total residential GFA shown here; provided, however, that any reduction in the total amount of residential GFA (and/or number of units) in the Project shall be accompanied by a corresponding reduction in the amount of market rate GFA (and number of units) and affordable housing GFA (and number of units) in proportion to the percentages listed here:

Residential Unit Type	Total Residential Gross Floor Area (“GFA”)/ Percentage of Total Residential GFA	Units	Reserved for households earning equal to or less than:	Affordability Control Period	Tenure (rental or sale)
Total	287,530 sf of GFA (100%)	300	N/A	N/A	N/A
Market Rate	261,652 sf of GFA (91%)	276	N/A	N/A	N/A
Affordable Housing	7,763 sf of GFA (2.7%)	7	50% MFI	Life of Project	Rental
	18,113 sf of GFA (6.3%)	17	60% MFI	Life of Project	Rental

The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this Condition.

2. **Prior to the issuance of a building permit for the Project**, the Applicant shall submit to the Zoning Administrator a copy of the executed First Source Agreement for the Project.

3. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with evidence that the Project has or will achieve the requisite number of prerequisites and points necessary to secure LEED Gold v4 certification or higher from the U.S. Green Building Council.
4. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with information showing that solar panel systems installed on the Project occupy no less than 2,000 square feet of roof area.
5. **Prior to the issuance of a building permit for the Project**, the Applicant shall demonstrate that the plans contained in the building permit application for the Project satisfy the PDR/Maker use construction specifications as follows: (a) a structural slab load (ground floor) live load of 125 pounds per square inch; (b) clear height of approximately 16 feet from ground-floor slab to bottom of structure above; (c) an electrical supply of 50 watts per square foot; (d) a loading dock that includes a 48-inch raised loading dock and/or levelers; (e) an open floor plan layout; (f) a sound attenuation for mixed-use that satisfies NC-25 minimum noise criteria and includes seven-inch-thick minimum concrete podium slab; (g) HVAC designed for one ton per 300 square feet; and (h) ventilation (Fresh Air / Make-Up Air) louvers at façade.
6. **For a minimum of five (5) years after the date of issuance of the first certificate of occupancy for the Project**, the Applicant shall reserve a minimum of five percent (5%) of the non-residential gross floor area of the ground floor of the Project for one or more of the following PDR/Maker uses: (a) production, sale, and/or distribution of food and beverages (provided that the onsite consumption of food and beverages shall only be permitted when associated with such production, sale, and/or distribution user); (b) food incubators and food hubs; (c) robotics and 3-D manufacturing; (d) small-scale production, distribution or repair of goods and related accessory sales; (e) curation and sale of small-scale production goods; (f) new and locally-owned small businesses as certified with the Department of Small & Local Business Development; (g) “creative economy” uses including incubators, graphic design, product or industrial design, engineering and design, technology design and production, design and product curation, fashion design, horticultural design, green businesses and sustainable design, specialty sports and recreation uses, media/communications production and distribution; and (h) “arts” uses including arts, design and creation uses as defined in Subtitle B, Section 200.2(e) of the Zoning Regulations and entertainment, assembly and performing arts as defined in Subtitle B, Section 200.2(n) of the Zoning Regulations.
7. **Prior the issuance of a Certificate of Occupancy for the Project**, the Applicant shall convert the intersection of 4th Street, N.E. and Morse Street, N.E. from two-way controlled stop to all-way controlled stop in accordance with DDOT standard requirements.

C. MITIGATION

1. **For the life of the Project**, the Applicant shall implement the following measures with respect to the Project's loading (the "**Loading Management Plan**"):
 - a. The Project's property manager shall designate a loading facility manager ("**Loading Manager**"). The Loading Manager shall coordinate with tenants/residents to schedule deliveries and will be on duty during delivery hours;
 - b. The Loading Manager shall schedule deliveries so as to not exceed the Project's loading facility capacity, and in the event that an unscheduled delivery vehicle arrives while the Project's loading facility is full, the Loading Manager shall direct the driver of such vehicle to return at a later time when the loading facility has adequate capacity;
 - c. The Loading Manager shall require all loading activity to take place on private property and not in public right-of-way and shall provide notice to all retail and residential tenants of this requirement;
 - d. The Project's property manager shall provide all tenants and residents with information regarding loading dock restrictions, rules, and suggested truck routes at lease signing and shall encourage tenants and residents to utilize trucks 30 feet or shorter in length;
 - e. The Project's property manager shall require all residential tenants to schedule move ins/move outs in advance of the occurrence of same and in a manner that coordinates with the retail delivery schedule;
 - f. The Loading Manager shall not permit trucks using the loading facility to idle and shall require such trucks to follow all District guidelines for heavy vehicle operation including but not limited to 20 DCMR § 900 (Engine Idling), the requirements set forth in DDOT's "Freight Management and Commercial Vehicle Operations" document, and the primary access routes listed in DDOT's "Truck and Bus Route System" as applicable from time to time; and
 - g. The Loading Manager shall disseminate to drivers from delivery services that frequently utilize the loading facility (1) suggested truck routing maps and (2) other applicable materials as needed to encourage compliance with District law and DDOT's truck routes and shall post such documents in a prominent location within the service area.
2. **During the period of construction of the Project**, the Applicant shall maintain access on and across the Property to loading facilities and operations for the South Building; provided, however, that the Applicant shall not be prohibited from loading the South Building from adjacent rights of way during the periods of

paving, surfacing, and/or subsurface work on the Plaza subject to applicable public space permitting requirements.

3. **For the life of the Project**, the Applicant shall install and maintain (a) electric vehicle charging stations within the garage that can accommodate a minimum of six (6) vehicles at any given time, and (b) at least five (5) electrical outlets in each of the long-term bicycle storage rooms to supply power to electric bicycles.
4. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall incorporate into the parking garage design the ability to remove a portion of the garage demising wall as knock out panels (“**Knock Out Panels**”) connecting the adjacent property at 1331 5th Street, NE (Parcel 129/112) (the “**Neighboring Property**”) to its garage ramp and a related curb cut on 6th Street, N.E. as shown on sheet [] of the Final Plans. The Applicant shall work cooperatively with the Neighboring Property owner and/or developer to enter into an agreement on terms reasonably acceptable to the Applicant to provide the Neighboring Property with the Knock Out Panels of no less than a 22 feet of width which will provide vehicular access to the Neighboring Property’s garage through the Project’s garage; provided, however, that such vehicular access to the Neighboring Property’s garage shall be only a secondary entrance to the Neighboring Property, and such Neighboring Property garage shall have a primary entrance elsewhere, and it being understood that the Applicant shall have the right to insist that as part of any such agreement terms providing for, without limitation, commercially reasonable insurance, indemnity, and cost-sharing obligations from the owner or developer of the Neighboring Property.
5. **For the life of the Project**, the Applicant shall implement the following with respect to the Project’s transportation demand:
 - a. The Applicant shall identify a “TDM Leader” (for planning, construction, and operations), who shall distribute and market to the residents and tenants of the building various transportation alternatives and options in existence from time to time, which materials shall include TDM materials to new residents and tenants in a welcome package;
 - b. The Applicant shall provide the TDM Leader’s contact information to DDOT and report TDM efforts and amenities to goDCgo staff once per year;
 - c. The TDM Leader shall receive TDM training from goDCgo to learn about and implement the TDM Conditions for this Project;
 - d. The Applicant shall post all TDM commitments online, publicize the availability of the same, and allow the public to see what commitments have been promised;

- e. The Applicant shall provide website links to CommuterConnections.com and goDCgo.com on Project-related websites;
- f. The Applicant shall offer for lease, at market rates and on market terms, at least two (2) parking spaces in the Project to a car-sharing service in the Project's underground parking garage
- g. The Applicant shall unbundle the fee it charges for parking from the base rent under a lease or the purchase price of a residential unit and shall set the minimum parking fee at the average market rate, where the market rate is determined by the average price in garages within 0.25 miles of the Project;
- h. The Applicant shall install a "Transportation Information Center Display" on an electronic screen within the residential lobby of the Project, which Display shall contain information related to local transportation alternatives;
- i. The Applicant shall meet or exceed the Zoning Regulations' requirements for bicycle parking, including the requirement to provide secure interior bicycle parking and short-term exterior bicycle parking around the perimeter of the Property, and long-term bicycle storage rooms pursuant to the Final Plans; and
- j. The Applicant shall provide all new tenants with a car share or bike share membership up to the maximum value of \$40,000 cumulative for the Project.

D. MISCELLANEOUS

- 1. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia relating to the North Parcel that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA (the "**PUD Covenant**"). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of OZ.
- 2. The change of zoning to the C-3-C Zone District with respect to the North Parcel shall be effective upon the recordation of the PUD Covenant.
- 3. The PUD shall be valid for a period of two (2) years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three (3) years of the effective date of this Order.
- 4. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual

harassment is a form of sex discrimination, which is 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.

VOTE FINAL ACTION: _-_-_ ([Peter A. Shapiro, Vice Chairman Robert E. Miller, Chairman Anthony J. Hood, Michael G. Turnbull and Peter G. May] to **APPROVE**).

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on _____.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

ANTHONY HOOD
Chairman, Zoning Commission

SARA B. BARDIN
Director, Office of Zoning

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.