

November 22, 2019

VIA HAND DELIVERY AND IZIS

Anthony J. Hood, Chairman
Zoning Commission for the District of Columbia
441 Fourth Street, NW, Suite 200S
Washington, DC 20001

Re: Z.C. Case No. 14-12E: Application of Clarion Gables Multifamily Trust, L.P. and EAJ 1309 5th Street LLC (collectively, the “Applicant”) to the District of Columbia Zoning Commission for a Second-Stage PUD at 1329 5th Street, NE (the “Property”) – Applicant’s Response to OP’s Nov. 15, 2019 Report

Dear Chairman Hood and Commissioners:

On behalf the Applicant, we hereby submit this response to the reports filed by the Office of Planning (“OP”) on November 15, 2019 in the above-referenced proceeding at Exhibit 21 (“OP Hearing Report”) and the District Department of Transportation (“DDOT”) on November 21, 2019 at Exhibit 23 (“DDOT Report”) with respect to the above-referenced application for a second-stage PUD for the mixed-use multifamily residential building with ground floor retail, PDR/maker, other neighborhood-serving uses, and below-grade parking located on the Property (the “Project”). The Property is within the boundaries of the first-stage PUD approved as part of Z.C. Case No. 14-12 (the “Approved PUD”). A public hearing on this application is scheduled for November 25, 2019.

The first section of this letter follows the format and numbering in the OP Hearing Report and addresses only those items that OP called out as expressly requiring additional information relative to the report that OP filed on July 19, 2019 and filed in the above-referenced proceeding at Exhibit 12. Shown below in underlining is language from the OP Hearing Report that did not appear in prior OP reports. The second section of this letter addresses open items from the DDOT Report.

OP Comment/Question	Applicant Response
2. The applicant should provide clarification regarding the IZ requirement for the North Building <u>The Order for ZC 14-12 does</u>	The Applicant notes that it has voluntarily increased its affordable housing proffer relative to what is required by Z.C. Order No.

not specify the affordable housing requirement for the North Building. The applicant asserts that the North Building is obligated to comply with the amount of IZ required at the time the Order was adopted, which was 8% of the gross floor area at no more than 80% AMI, and points to OP's reports as supporting that fact. However, OP's reports merely provide recommendations to the Zoning Commission, while the Order establishes the conditions of approval. While it is clear that the North Building was required to comply with the Zoning Regulations regarding IZ units for the North Building at the time that the PUD was approved, the Zoning Regulations have since been amended to require rental units to be provided at a greater depth of affordability at 60% MFI. The fact that the affordable housing provision for the North Building was not captured in the Order does create ambiguity regarding the depth of affordability that is required for this project.

14-12: the Applicant increased its proffer from 8% to 9% and committed to reserve 30% of the residential GFA at 50% AMI.

As noted in the Applicant's earlier filings, the findings of fact in Z.C. Order No. 14-12 and the Conditions of that order are clear: 8% of the residential gross floor area of the North Building must be set aside as affordable housing for households earning 80% AMI.

- Z.C. Case No. 14-12 Finding of Fact ¶ 38 provides: “(a) Affordable Housing (§ 2403.9(f)) – The Applicant will set aside eight percent (approximately 8,860 gross square feet) of the residential units as affordable housing for the life of the Project, if the upper four floors of the South Building are constructed for residential use. Two of these units comprised of not less than 20% of the affordable gross floor area set aside (or the equivalent of approximately 1,772 gross square feet, comprised of any unit type) will be set aside for residents earning no more than 50% of AMI. ***The remainder of the Project's affordable units will be set aside for households earning no more than 80% of AMI.***” (emphasis added).
- The Order defines the “Project” as “The application proposes a mixed-use development incorporating retail and either office or residential uses” and as used throughout clearly refers to both the North Building and the South Building. Thus, the recitation of the Project's affordable housing commitment was a heightened degree of affordability for the South Building (i.e., the 2 units at 50% AMI) and the balance, in the South Building and North Building, at 80% AMI.

	<p>Z.C. Order No. 14-12 and other documents cited below are re-attached here for ease of reference as <u>Exhibit A</u>.</p> <p>The Conditions of Z.C. Order No. 14-12 memorialize that finding of fact.</p> <ul style="list-style-type: none">• Condition A.1 incorporates by reference the content of the final “Plans,” which refers back to exhibits in the record of Z.C. Case No. 14-12. Within the approved Plans, Exhibit 19G at page 4 recites: “The Applicant will provide 8% of the potential residential component as affordable housing at 80% of the Washington, DC Area Median Income.” This statement applies to the North Building (and also applied to the entire South Building at the time such Exhibit 19G was filed).• However, the affordable housing content of Exhibit 19G was superseded in part by discussions between the Applicant, OP, and the Commission, which lead the Applicant to increase the affordability proffer, but only for the South Building. See Exhibit 44A at page 37. (The attached portion of Exhibit 44A excerpts only those pages referencing the housing proffer.)• Condition B.1 confirms the affordable housing requirement applicable to the North Building and the South Building: “The Applicant shall set aside in the South Building two inclusionary zoning units, containing approximately 1,722 of gross square feet, for households with an annual income of no more than 50% of AMI. <i>The remaining inclusionary units shall be for households with incomes not exceeding 80% of AMI in accordance with the Inclusionary Zoning requirements.</i>” (emphasis added).
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Thus, the Order requires a mix of 50% and 80% AMI units for the South Building and only 80% AMI units for the North Building.

The OP reports that followed Exhibit 19G also indicate that the North Building’s affordable housing would be at 80% AMI. See Z.C. Case No. 14-12, Exhibit 20 (“The applicant has indicated that any housing provided in this development would comply with IZ, providing 8% of the units at 80% AMI.”). OP’s report at Exhibit 39 in Z.C. Case No. 14-12 references only the affordable housing proffer and not the proffer for the North Building.

In addition, the proffer for the North Building and the South Building must be understood in the context of the above-cited provision of ZR58. The above-referenced Finding of Fact ¶ 38 cites 11 DCMR 2403.9(f), which provides in relevant part that “Housing and affordable housing [is a benefit of a proposed PUD]; except that affordable housing provided in compliance with § 2603 shall not be considered a public benefit **except to the extent it exceeds what would have been required through matter of right development under existing zoning.**” The existing zoning on the Project site, i.e., C-M-1 (now PDR-1) does not permit any residential development as a matter of right. Thus, all of the North Building’s affordable housing proffered constituted a public benefit under Section 2403.9(f) because no housing was allowed in the C-M-1 zone.

The Inclusionary Zoning requirements applied required the 80% AMI threshold of ZR58 that applies to the North Building and not the now-effective 60% MFI threshold because the North Building is vested under ZR58 pursuant to 11-A DCMR § 102.3(a). There are no circumstances applicable to the North Building that would cause the now-effective 60% MFI threshold to apply to the North Building.

<p>16. The applicant should identify on the plans that 11,527 square feet on the ground floor will be constructed to PDR/Maker specifications and provide the specifications on the plans <u>The applicant has identified that the details have been provided in the submission; however, OP has requested that the specifications be provided in the plans so that they carry forward and are easily enforced by DCRA. Preferably, a note with the specifications would be provided on the Ground Level Plan (sheet A25). The plans should also note the location of the proffered PDR/Maker Space, which would consist of 5% of the ground floor area.</u></p>	<p>An updated Sheet A25 is attached here as <u>Exhibit B</u>, and per OP’s comment such revised Sheet A25 includes the PDR/Maker specifications recited elsewhere in the Applicant’s filings.</p>
<p>19. Additional information regarding the types of materials to be used, including material type, color, and samples, demonstrating that the proposed building materials will be of a high-quality <u>A material board should be provided at the hearing.</u></p>	<p>The Applicant will provide physical samples of the Project’s materials at the public hearing.</p>

<p>22. OP continues to encourage the applicant to explore the relocation of the lobby to the southeast corner of the property along 6th Street and the Plaza so that retail can be provided along 5th Street <u>OP appreciates the applicant’s analysis regarding the residential lobby but continues to prefer for the lobby entrance to be located on 6th Street, which would maximize 5th Street for pedestrian-driven uses.</u></p>	<p>The Applicant appreciates OP’s comments on this concept but continues to prefer the 5th Street residential entrance due to its consistency with the approved first-stage PUD pedestrian entrance design, to include a mix of uses along 5th Street, NW, and to avoid locating the residential entrance to the Project adjacent to the parking and loading entrance. For the sake of efficient reference, repeated here is the Applicant’s reasoning from its previous filing (i.e., Exhibit 20 at page 5):</p> <p>Locating the residential entry on the 5th Street, NE façade has many advantages for the residential entry to the building.</p> <p>There is no requirement in the Union Market Streetscape Guidelines that 5th Street, NE be exclusively retail. Instead, 5th Street’s retail uses, the predominant existing and planned use along that street, will benefit from some residential activity, as the pedestrians originating from and heading to that entry will generate foot traffic at times of day when retail traffic is often lighter (e.g., weekday mornings). In addition, the 5th Street, NE residential entry avoids potential pedestrian-vehicular conflicts that might emerge if the entry was located on 6th Street, NE next to the Project’s parking and loading entry (a design practice that DDOT discourages). Finally, the proposed location of the residential lobby is consistent with the approved first-stage PUD which showed a residential entrance at the proposed location. The Applicant sees no reason to deviate from the approved design.</p>
<p><u>[New Item in OP Hearing Report] Ensur[e] the rental IZ units (other than those proffered at 50 % MFI) comply with the 60 % MFI requirement for IZ rental units.</u></p>	<p>As noted above, the Project reserves 30% of the affordable housing units at 50% MFI and 70% at 80% MFI. The Project does not include any units at 60% MFI.</p>

<p><u>[New Item in OP Hearing Report] Extend[] the commitment for makerspace to at least twenty (20) years.</u></p>	<p>The Applicant is not able to extend the period of the use restriction on the PDR/Maker use space beyond the restriction period of other nearby PUDs.</p> <p>The Applicant is a strong supporter of PDR/Maker uses and of the entrepreneurs and small businesses that constitute the PDR/Maker community in the Union Market District. However, the Applicant is concerned that a 20-year commitment to such uses could result in undesirable vacant space if demand does not exist for the Union Market District’s 155,000 square feet of space dedicated to such uses. Twenty years is simply too long of a period to be able to predict how PDR/Maker tenants demands and preferences might change. The Applicant’s previous comments regarding PDR/Maker use demand in the District are elaborated upon below.</p> <p>The Applicant’s preference to retain flexibility to respond to market conditions is consistent with and memorialized in the Comprehensive Plan. That is, “Action LU-3.1.A: Industrial Zoning Use Changes” encourages “[p]rovid[ing] a new zoning framework for industrial land, including: . . . Creating a Mixed Use district where residential, commercial, and lesser-impact PDR uses are permitted, thereby accommodating live-work space, artisans and studios, and more intensive commercial uses.” 10-A DCMR § 314.17. The rezoning of the Property to the C-3-C zone district accomplishes the first part of that objective, which continues: “<u>The zoning changes should continue to provide the flexibility to shift the mix of uses within historically industrial areas</u> and should not diminish the economic viability of existing industrial activities or the other compatible activities that now occur in PDR areas.” <i>Id.</i> Thus, the Comprehensive Plan very clearly contemplates not ossifying the Union Market District with a prescribed mix of uses that cannot adjust or respond to changing conditions.</p>
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As a long-term investor and owner of place-based retail, EDENS's goal is to protect and cultivate the uniqueness of the Union Market District. EDENS has been and is a leader in promoting the local "Maker" economy in DC. To date, EDENS has delivered over 100,000 square feet of PDR/Maker space in the Union Market District. Through the process of incubating hundreds of PDR/Maker users, EDENS has discovered that these PDR/Maker tenants need a tremendous amount of support. EDENS has supported such users and has created a platform for those users to thrive and succeed. Through the experience of creating 1309 5th Street, NE (Union Market itself), Dock 5, Lab 1270, Maurice Office, 550 Penn, Cotton and Reed, and, most recently, Veer & Wander, EDENS has learned that the PDR/Maker economy requires incubation. Merely reserving PDR/Maker space does not guarantee PDR/Maker uses and often leads to dead retail and empty space. EDENS will continue to build the local economy by fostering a thriving commercial ecosystem that provides incubation and mentorship for PDR/Maker uses, which requires an evolving mix of uses and commercial typologies without requirements.

EDENS's experience has taught them that the ground floor needs to be dynamic and allowed to evolve freely in order to ensure the long-term success of the Union Market District. Given the current dynamic state of retail, the pressures being placed by e-commerce, and shifting consumer habits, EDENS needs to preserve the ability to have a diversity of ground floor uses including traditional retail and protect the vitality of the Union Market District. It is difficult right now to attract any type of retail tenant, but particularly difficult to attract a maker tenant and EDENS is concerned that mandating longer term requirements will create an unhealthy ecosystem, dark storefronts, and lower foot traffic and ultimately negatively impact the long-term viability of the place. EDENS had difficulty agreeing to the 5-year term but was able to come to a broader agreement with OP for this and other PUDs in the Union Market District, but due to the required flexibility described above and the changing nature of retail, is not able to increase the commitment beyond the 5-year commitment already made.

As noted above, the Applicant is designing approximately half of the Project's first floor to accommodate PDR/Maker use specifications. Such space will accommodate PDR/Maker use specifications if demand for such space exists in the future.

<p><u>[New Item in OP Hearing Report] [The Applicant should provide] [clarification regarding the loading flexibility that has been requested for the North Building, since it does not appear that relief was requested for the North Building as part of the First Stage PUD.</u></p>	<p>The Project’s loading flexibility was requested in the Applicant’s initial Second Stage PUD filing: “[T]he Applicant requests one area of zoning flexibility—with respect to loading—as previously contemplated in [Z.C. Order No. 14-12.]” Z.C. Order No. 14-12 at Finding of Fact 32, note 2 previously stated that “The Applicant will likely include a request for additional loading flexibility for its North Building as part of its [second-stage] PUD application.” The loading flexibility requested for the North Building was clearly contemplated in the first-stage PUD order, and the instant request is not inconsistent with the first-stage PUD.</p> <p>The Applicant’s initial Second Stage PUD filing elaborated on the practical justification for the requested loading flexibility: zoning-compliant loading is not necessary for the functioning of the North Building and would not be required if the Project were proceeding pursuant to ZR16.¹ However, because the Project is vested under ZR58 pursuant to 11-A DCMR § 102.3(a), as noted above, flexibility from the loading provisions of ZR58 is required here.</p>
<p><u>[New Item in OP Hearing Report] The applicant is required to submit a First Source Employment Agreement for each building to the Department of Consumer and Regulatory Affairs (DCRA). The applicant should provide an update to the Zoning Commission regarding this benefit.</u></p>	<p>Condition B.16 of Z.C. Order No. 14-12 requires that a First Source Employment Agreement is executed prior to the issuance of a Certificate of Occupancy for the South Building. However, as the Applicant noted in its initial filing it has already entered into such an agreement with the Department of Employment Services. See <u>Exhibit C</u>.</p>

¹ “ZR58 requires no fewer than one 55-foot loading berth and one 20-foot delivery space for the North Building. Instead, the Project provides two 30-foot loading berths and one 20-foot delivery/compactor space, essentially reducing one 55-foot berth to a 30-foot berth and a compactor space. The Applicant believes that the proposed amount of loading is sufficient for the Project given that it complies with the now-applicable zoning regulations, which have relaxed the more onerous loading requirements of ZR58 and generally favor pedestrians and bicycles over vehicles.”

DDOT Comment/Question	Applicant Response
<p>1. “DDOT has no objection to the [Application] provided the following conditions are satisfied . . . Implement the following additional TDM elements for the life of the project, unless otherwise noted . . . Provide an annual bikeshare membership to each residential unit of the North Building for three (3) years after the building opens. Relatedly, Mitigation Measure (f) from the ZC Case No. 14-12 Zoning Order should be clarified such that it applies to the South Building <u>and there is no expense cap on incentives for the North Building.</u>” (emphasis added).</p>	<p>The Applicant agrees with DDOT’s proposed conditions except with respect to enhanced annual bikeshare membership DDOT proposes. The Applicant agrees to provide carshare or bikeshare memberships to residents up to a cap of \$14,000 cumulative for the North Building. This effectively doubles the Applicant’s commitment in the approved PUD, which required \$14,000 in the aggregate for the North Building and the South Building.</p> <p>The Applicant’s position is an enhancement beyond the following condition of the first-stage PUD: “Prior to the issuance of the Certificate of Occupancy for the North Building, the Applicant shall provide the following financial incentives to its tenants or residents in the South Building, as applicable: . . . all new tenants will be provided with a car share or bike share membership <u>up to the maximum value of \$14,000 cumulative for the Project</u>” (underlined emphasis added).</p> <p>The Applicant does not believe that an uncapped bikeshare mitigation condition is appropriate in this instance, especially in light of the anticipated traffic impacts of the Project’s residential use being less impactful than the previously-approved office use, as DDOT acknowledges.²</p>

² From the DDOT Report at page 3: “The capacity analysis completed as part of the Stage 1 review was based on a predominant office use for the North Building, which would likely generate significantly more vehicle trips compared to residential uses. As such, the analysis from the Stage 1 review represents a conservative estimate of anticipated vehicular impacts that are not likely to be fully realized and therefore the Stage 1 capacity analysis remains valid.” (emphasis added)

<p>2. “DDOT has no objection to the [Application] provided the following conditions are satisfied . . . Provide the following commitments related to the knock-out panels and shared access with the adjacent property . . . <u>Provide</u> a letter of acknowledgement from the adjacent property owner to the north confirming awareness of the knock-out panels.”</p>	<p>The Applicant agrees with DDOT’s requests regarding the knock-out panels and shared access to the future building to the north, except that the Applicant cannot strictly commit to providing a letter of acknowledgment from the adjacent property owner. Rather, the Applicant will use reasonable efforts to request such a letter. The adjacent property owner may decline to provide one, and the Applicant has no ability to compel such property owner to do so. Note also that the Applicant’s agreement with DDOT’s request on this matter is necessarily contingent upon the requested flexibility to relocate and redesign the garage as necessary to accommodate the knock out panels.</p>
<p>3. “The Applicant is expected to continue to work with DDOT on the following matter . . . All building projections require coordination to ensure they are compliant with the Building Code. Of note, the plans show a thick gray band that extends into public space and encircles the oriel window projections on 5th Street and 6th Street. This is not a type of projection specifically allowed by regulation and would likely require a modification from the Construction Code.”</p>	<p>The Applicant agrees with DDOT’s continued coordination but requests the flexibility to remove or modify the embellishment cited by DDOT in the event the modification from the Construction Code is not approved by DCRA.</p>

Thank you for your attention to this application and for the opportunity to present on November 25th.

Respectfully submitted,

/s/ Jeffrey C. Utz

/s/ David A. Lewis

Enclosures

Certificate of Service

I certify that on or before November 22, 2019 (except where noted below), I delivered a copy of the foregoing document and attachments via e-mail, hand delivery, or first-class mail to the addresses listed below.

/s/ David A. Lewis

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