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March 14, 2016

## VIA IZIS AND EMAIL


Zoning Commission  
of the District of Columbia  
441 4<sup>th</sup> Street, N.W., Suite 210  
Washington, DC 20001

Re: **Z.C. Case No. 15-22**  
**Applicant's Draft Findings of Fact and Conclusions of Law**

Dear Members of the Commission:

On behalf of 301 FL Manager, LLC, as Applicant in the above-referenced case, we hereby submit draft Findings of Fact and Conclusions of Law, as requested by the Commission at the February 22, 2016, public hearing on this matter.

Sincerely,



Kyrus L. Freeman  
Jessica R. Bloomfield

Enclosure

cc: Advisory Neighborhood Commission 6C (with enclosure, Via Email)  
Tony Goodman, Single Member District 6C06 (with enclosure, Via Email)  
Stephen Gyor, D.C. Office of Planning (with enclosure, Via Email)  
Jonathan Rogers, District Department of Transportation (with enclosure, Via Email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA ZONING COMMISSION FOR  
THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 15-22  
Z.C. Case No. 15-22  
301 FL MANAGER, LLC  
CONSOLIDATED PUD AND RELATED MAP AMENDMENT  
@ SQUARE 772N**

**DATE, 2016**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on February 22, 2016, to consider applications for a consolidated planned unit development (“PUD”) and related zoning map amendment filed by 301 FL Manager, LLC (“Applicant”). The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby **APPROVES** the applications.

**FINDINGS OF FACT**

**The Applications, Parties, Hearings, and Post-Hearing Filings**

1. On September 4, 2015, the Applicant filed applications with the Commission for consolidated review of a PUD and a related Zoning Map amendment from the C-M-1 District to the C-3-C District for property located at 301 Florida Avenue, NE (Lot 803 in Square 772N) (the “PUD Site”).
2. The PUD Site has a land area of approximately 8,720 square feet and is a triangular lot with approximately 203.7 linear feet of frontage on Florida Avenue, NE to the northeast, approximately 178.8 linear feet of frontage on N Street, NE to the south, and approximately 97.5 linear feet of frontage on 3rd Street, NE to the west. The PUD Site is the only lot in Square 772N.
3. The PUD Site is presently improved with a one-story building and associated surface parking, and is surrounded by a variety of uses including low- to high-density residential, industrial warehouse, and commercial uses. The Applicant proposes to raze the existing building in connection with redevelopment of the PUD Site, and to construct a mixed-use building composed of retail and residential uses (the “Project”).
4. The Project will have approximately 66,010 square feet of gross floor area (7.57 floor area ratio (“FAR”)) and a maximum building height of 101 feet. Approximately 61,173 square

feet of gross floor area will be devoted to residential use (approximately 56 units, plus or minus 10%) and approximately 4,837 square feet of gross floor area will be devoted to retail use. The Applicant will dedicate 8% of the residential gross floor area as Inclusionary Zoning (“IZ”) units, consistent with Chapter 26 of the Zoning Regulations. Approximately 3% of the Project’s residential gross floor area (two units) will be set aside for households earning up to 50% of the area medium income (“AMI”) and approximately 5% of the Project’s residential gross floor area (two units) will be set aside for households earning up to 80% of the AMI.

5. By report dated November 13, 2015 (Exhibit [“Ex.”] 15), the District of Columbia Office of Planning (“OP”) recommended that the application be set down for a public hearing. At its public meeting on November 3, 2015, the Commission voted to schedule a public hearing on the application.
6. The Applicant submitted a prehearing statement on December 2, 2015 (Ex. 17) and a public hearing was timely scheduled for the matter. On December 18, 2015, the notice of public hearing was mailed to all owners of property located within 200 feet of the PUD Site; Advisory Neighborhood Commission (“ANC”) 6C, the ANC in which the PUD Site is located; ANC 5D, the ANC located across Florida Avenue to the north of the PUD Site; and to Commissioner Tony Goodman, the single member district commissioner for 6C06. A description of the proposed development and the notice of the public hearing in this matter were published in the DC Register on December 25, 2015.
7. On February 2, 2016, the Applicant submitted a supplemental prehearing statement in response to comments raised by the Commission and at the setdown meeting. (Ex. 26.) The supplemental submission included the following materials: (i) revised architectural plans and elevations; (ii) a comprehensive transportation review (“CTR”) report prepared by Gorove/Slade Associates and submitted to the District Department of Transportation (“DDOT”) on January 8, 2016; and (iii) a draft escrow agreement that detailed the Applicant’s proposal to contribute \$125,000 to an escrow account for public space improvements adjacent to the PUD Site on N Street, NE.
8. On February 12, 2016, OP and DDOT each submitted a report on the application. The OP report (Ex. 28) recommended approval of the application and provided a list of additional information to be submitted by the Applicant before the public hearing. The DDOT report (Ex. 27) indicated no objection to the application with the following conditions: (i) the Applicant limit the financial incentive as part of the Transportation Demand Management (“TDM”) plan to bikeshare and carshare memberships only and offer annual memberships to all new tenants for a period of five years; and (ii) install a transit information screen in the residential lobby.
9. The Metropolitan Police Department (“MPD”) also submitted a memo (Attachment I to the OP report), in which MPD indicated that the PUD would increase pedestrian and vehicular traffic, but that MPD had no objection to the Project.
10. At its regularly scheduled public meeting on February 13, 2016, for which notice was

properly given and a quorum was present, ANC 6C voted unanimously 5:0:0 to support the application, subject to conditions. (Ex. 25.)

11. The parties to the case were the Applicant and ANC 6C.
12. The Commission convened a public hearing on February 22, 2016, which was concluded that same evening. At the hearing, the Applicant presented four witnesses in support of the applications: Martin Ditto on behalf of the Applicant; Chuong Cao of DEP Designs, architect for the Project; Erwin Andres of Gorove/Slade Associates, Inc., transportation consultant for the Project; and David Landsman of CAS Engineering, civil engineer for the project. Based upon their professional experience and qualifications, the Commission qualified Mr. Cao as an expert in architecture, Mr. Andres as an expert in transportation planning and engineering, and Mr. Landsman as an expert in civil engineering.
13. At the public hearing, the Applicant submitted the following supplemental materials: (i) a chart responding to each of the issues raised by OP and DDOT in their hearing reports; (ii) a copy of the Applicant's PowerPoint presentation presented at the public hearing; and (iii) photographs of the materials board and renderings of the scaled architectural model, which were presented at the public hearing. (Ex. 30).
14. Stephen Gyor and Joel Lawson of OP testified in support of the application at the public hearing. Jonathan Rogers of DDOT also testified in support of the application.
15. Commissioner Tony Goodman of ANC 6C06 testified in support of the application. Commissioner Goodman noted that the Applicant had met with the ANC on numerous occasions and that the ANC appreciates the design of the building and the positive impact it will have on the surrounding neighborhood. Commissioner Goodman asserted that the ANC's vote in support of the application was contingent on the following items: (i) greater clarity on the relevance of the Applicant's proffer for N Street and the scope of work likely to be covered by the proffer; (ii) a more definite statement of specific transportation demand management ("TDM") measures; and (iii) careful examination of the potential for providing more convenient bicycle storage facilities in the building's ground floor or upper residential floors. Commissioner Goodman indicated that the Applicant provided the requested information to the ANC and satisfactorily addressed the ANC's concerns. Commissioner Goodman's testimony was submitted to the record at Ex. 31.
16. The record was closed at the conclusion of the hearing except to receive additional submissions from the Applicant, DDOT, and the ANC, and to receive the Applicant's proposed Findings of Fact and Conclusions of Law.
17. On March 1, 2016, DDOT submitted a supplemental report, which provided additional information requested by the Commission regarding the status of DDOT's Florida Avenue Multimodal Safety Study and the NoMA-Gallaudet University Metrorail station east entrance. (Ex. 34.)
18. On March 7, 2016, the Applicant submitted a post-hearing submission (Ex. 35), which

included the following materials and information requested by the Commission at the public hearing: (i) a detailed site plan showing specific public space improvements for N Street, NE, including 2-foot offset curb extensions, bulb outs, parklets with seating, expanded green areas, enhanced landscaping, and additional short-term bicycle parking spaces; (ii) information regarding the building projections on Florida Avenue, NE, including a site plan, sections, and perspectives showing the bay windows, as well as a copy of DCRA's approval of the projections; (iii) information regarding the cost to certify the building as LEED Gold; (iv) a revised drawing showing a proposed bike gutter along the stair between the building's ground and cellar levels; and (v) a request for flexibility as to the color of the brick veneer proposed for the building.

19. On March 14, 2016, the Applicant submitted its proposed findings of fact and conclusions of law (Ex. \_\_).
20. At the public meeting of March 28, 2016, the Commission reviewed the additional materials submitted by the Applicant. At the close of the meeting, the Commission took proposed action to approve the application. The proposed action was referred to the National Capital Planning Commission ("NCPC") on \_\_\_\_\_, pursuant to § 492 of the Home Rule Act.
21. The Executive Director of NCPC, by delegated action dated \_\_\_\_\_, found that \_\_\_\_\_.
22. The Commission took final action to approve the PUD on \_\_\_\_\_.

### **The PUD Site and Surrounding Area**

23. The PUD Site is located at 301 Florida Avenue, NE, more specifically described as Lot 803 in Square 772N. The PUD Site has a land area of approximately 8,720 square feet and is a triangular lot with approximately 203.7 linear feet of frontage on Florida Avenue to the northeast, approximately 178.8 linear feet of frontage on N Street to the south, and approximately 97.5 linear feet of frontage on 3rd Street to the west. The PUD Site is the only lot in Square 772N and is presently improved with a one-story building and associated surface parking. The PUD Site is surrounded by a variety of uses including low- to high-density residential, industrial warehouse, and commercial uses.
24. The PUD Site is presently zoned C-M-1. The Applicant is seeking to rezone the PUD Site to the C-3-C District in connection with this application. The requested map amendment is consistent with the Council-adopted NoMa Small Area Plan, which recommends developing the PUD Site with a high-rise residential building. The map amendment is consistent with the Comprehensive Plan's Future Land Use Map designation of the PUD Site as mixed-use: Medium Density Residential and Production, Distribution, and Repair ("PDR"). The requested map amendment is also consistent with the Comprehensive Plan's Generalized Policy Map designation of the PUD Site as a Land Use Change Area.

## **Existing and Proposed Zoning**

25. The PUD Site is currently zoned C-M-1. The C-M Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." 11 DCMR § 800.1. The Zoning Regulations note that "heavy truck traffic and loading and unloading operations are expected to be characteristic of C-M Districts." 11 DCMR § 800.2. The C-M-1 District prohibits residential development except as otherwise specifically provided. 11 DCMR § 800.4. As a matter-of-right, property in the C-M-1 District can be developed with a maximum density of 3.0 FAR. 11 DCMR § 841.1. The maximum permitted building height in the C-M-1 District is 40 feet and three stories. 11 DCMR § 840.1.
  
26. The Applicant proposes to rezone the PUD Site to C-3-C in connection with this application. The C-3-C District permits medium-high density development, including office, retail, housing, and mixed-use development. 11 DCMR § 740.8. The C-3-C District permits, as a matter-of-right, a maximum building height of 90 feet with no limit on the number of stories (11 DCMR § 770.1), a maximum height of 130 feet as a PUD (11 DCMR § 2405.1) and a maximum density of 6.5 FAR for any permitted use, but a density of 7.8 FAR for projects subject to IZ. 11 DCMR §§ 771.2 and 2604.1. The maximum percentage of lot occupancy in the C-3-C District for all uses is 100%. 11 DCMR § 772.1. Rear yards in the C-3-C District must have a minimum depth of 2.5 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet. 11 DCMR § 774.1. In the case of a corner lot abutting three or more streets, the depth of rear yard may be measured from the center line of the street abutting the lot at the rear of the building. 11 DCMR § 774.11. A side yard is not required in the C-3-C District; however, when a side yard is provided, it must have a minimum width of two inches per foot of height of building, but not less than six feet. 11 DCMR § 775.5.
  
27. Parking and loading requirements are based upon the proposed use of the property. An apartment house or multiple dwelling in the C-3-C District requires one parking space for each four dwelling units. 11 DCMR § 2101.1. Retail or service establishments in the C-3-C District are required to provide one parking space for each additional 750 square feet of gross floor area over 3,000 square feet. *Id.* An apartment house or multiple dwelling with 50 or more units in all zone districts is required to provide one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. 11 DCMR § 2201.1.
  
28. Consistent with the C-3-C development parameters, the Applicant will develop the PUD Site with a mix of residential and retail uses. A tabulation of the PUD's development data is included on Sheet A.01 of the Architectural Plans and Elevations dated February 22, 2016, and included in the record at Ex. 26A (the "Plans").

## **Description of the PUD Project**

29. As shown on the Plans, the Applicant is seeking consolidated PUD approval and a Zoning Map amendment to redevelop the PUD Site with a mixed-use residential and retail building. The building will contain approximately 66,010 square feet of gross floor area (7.57 FAR) and a maximum building height of 101 feet. Approximately 61,173 square feet of gross floor area will be devoted to residential use (approximately 56 units, plus or minus 10%) and approximately 4,837 square feet of gross floor area will be devoted to retail use. The Project incorporates a high number of large three- and four-bedroom units in order to provide housing that can accommodate families.
30. The Project is sensitive to its varied context and responds in size, form, and in its use of materials. The ground level is programmed with retail uses that will activate the surrounding streets and encourage the use of public transportation, particularly given the PUD Site's location one block away from the NoMa-Gallaudet Metrorail station. The Project includes significant public space improvements, including curb extensions, bulb outs, parklets with seating, expanded green areas, enhanced landscaping, and additional short-term bicycle parking spaces. The Project also includes the closure of four curb cuts.
31. The building design incorporates the synergy of the diverse city scales, contexts, and uses of its unique location. Surrounded by relatively new residential high-rise development of NoMa to the west and southwest, historic Gallaudet University to the east, and light-scale industrial and commercial market development to the north, the Project integrates with the surrounding urban fabric to create a dynamic and harmonious architectural design. The building's massing maintains the appealing proportions of its triangular site, rising from the street level up to eight stories. It is defined by two major massing components: the ground floor base and the seven-story residential top.
32. The ground floor base is largely retail, occupying most of the Florida Avenue and N Street frontages and part of the 3rd Street frontage. The retail will be composed of glass storefronts from sidewalk to ceiling, and will have colorful signs and lighting, landscaping, pedestrian amenities, and sidewalk pavers abutting the retail glass line, all helping to engage the interior use with the exterior and to promote street vitality. Masonry plinths along Florida Avenue, 3rd Street, and N Street are used to separate the building's ground floor residential components from the retail. Masonry plinths and exterior sculptural steel truss columns at the corners of Florida Avenue and N Street and Florida Avenue and 3rd Street anchor and tie the seven-story building top to the ground floor base. At the corner of Florida Avenue and 3rd Street, the connection of the upper story to the street is enhanced by an eight story tower-like bay window that defines the building's lobby entrance as well the arrival point to the 3rd Street retail corridor.
33. The articulation of the upper building massing is a weaving of vertical and horizontal elements and a play on negative and positive building fenestrations. Punch windows for bedroom spaces are carved into the masonry wall, flanked by projecting bay windows that house living spaces; elongated masonry units, concrete precast bands, and horizontally

articulated fiber cement panels are juxtaposed with the vertical window articulations. These design gestures create a balanced scale and rhythmic facade composition to the seven-story building top. The importance of the Florida Avenue façade is highlighted by the layering of a fiber cement panel frame over the masonry facade, creating greater visual depth and interest.

34. The building is designed to achieve LEED Gold equivalent status under the LEED for Homes Rating System, Multi-family Mid-rise, October, 2010. The Project will integrate a host of sustainable features, including street tree planting, landscaping, energy and water efficient systems, construction waste management techniques, methods to reduce stormwater runoff, and ample bicycle parking.
35. The Project will comply with the IZ regulations set forth in Chapter 26 of the Zoning Regulations, which require that 8% of the residential gross floor area of the Project be set-aside for households earning up to 80% of the area median income (“AMI”). As indicated in the IZ Calculation Chart shown below, the Applicant will set aside no less than 8% of the residential gross floor area, as computed by DCRA’s Certificate of Inclusionary Zoning Compliance (“CIZC”) Form, to IZ units. Approximately 5% of the building’s residential gross floor area will be devoted to households earning up to 80% of the AMI (2 units), and approximately 3% of the building’s residential gross floor area will be devoted to households earning up to 50% of the AMI (two units).

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
<b>Total</b>	61,173 sf of GFA (approx. 52,171 sf of net residential area) (100%)	56	NA	NA	NA
<b>Market Rate</b>	56,267 sf of GFA (92%) (approx. 47,987 sf of net residential area)	52	Market Rate	NA	NA
<b>IZ</b>	2,829 sf of GFA (2,413 net sf) (5%)	2	80% AMI	For the life of the project	Rental
<b>IZ</b>	2,077 sf of GFA (1,771 net sf) (3%)	2	50% AMI	For the life of the project	Rental

**Zoning Flexibility**

36. The Applicant requested the following areas of flexibility from the Zoning Regulations:
37. ***Flexibility from the Off-street Parking Requirements.*** Pursuant to 11 DCMR § 2101.1, one parking space is required for each four dwelling units (14 spaces), and one parking space is required for each 750 square feet of gross floor area in excess of 3,000 square feet devoted to retail space (two spaces), for a total of 16 required parking spaces for the Project. However, as shown on the Plans, the Project will not provide any on-site parking spaces, due to the PUD’s triangular shape, lack of alley access, and location at the intersection of two major streets and third street that will be devoted to community purposes.
38. The Commission finds that the characteristics of the PUD Site significantly limit the



potential locations for vehicular ingress and egress. It is practically difficult to construct a ramp providing access to below-grade parking, since the PUD Site is too small and narrow to fit a ramp with a zoning-compliant slope and width, and with enough space to provide the required turning movements to allow vehicles to access a below-grade garage.

39. The Commission also finds that parking cannot be located on the surface of the PUD Site, because doing so would require setting the building back and eliminating significant retail and residential space. To provide the required 16 parking spaces, approximately 4,560 square feet of surface space would be required to comply with 11 DCMR § 2115.10, which requires a minimum of 285 square feet for each parking space. The PUD Site only has 8,720 square feet of land area, such that providing 4,560 square feet for surface parking would take up approximately 52% of the PUD Site. If this amount of surface space was provided along Florida Avenue, the building would have to be set back approximately 22 feet; if it was provided along N Street, the building would have to be set back approximately 25.5 feet; and if it was provided along 3rd Street, the building would have to be set back approximately 46.6 feet. Providing surface parking in any of these locations would result in a major detriment to the building design and program and would eliminate significant retail and residential space. Given the PUD Site's triangular shape and limited dimensions, the Commission finds that providing more than 50% of the lot area for surface parking would limit developable area and adversely impact the siting and construction of the Project.
40. Moreover, the Commission finds that the lack of on-site parking will not result in any adverse impacts. Given the location of the PUD Site in a walkable, mixed-use neighborhood with convenient access to multiple public transportation options, bicycle lanes, car- and bike-share facilities, and an extensive pedestrian network, future residents and retail employees/patrons will not need to use a vehicle to access the PUD Site. The Commission also notes that the OP report indicated that it had no concerns with the parking variance, given the proximity of the PUD Site to mass transit. *See Ex. 28, p. 8.*
41. Finally, the Commission finds that the Project's lack of parking is consistent with the Comprehensive Plan's goals of investing in transit-oriented development, improving pedestrian facilities, and transforming key District arterials into multi-modal corridors that incorporate and balance a variety of mode choices, including public transportation, bicycle, pedestrian, and automobile. The Project will provide on-site bicycle parking and provide a variety of extensive TDM measures. Together, these measures and the ample nearby public transportation options will help further the Comprehensive Plan's goals of connecting District neighborhoods by creating more direct links between the various transit modes and managing the automobile capacity of principle arterials.
42. ***Flexibility from the Loading Requirements.*** The Applicant requests flexibility from the loading requirements of 11 DCMR § 2201.1, which require one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep for the residential use. Loading for the retail use is not required.
43. The Commission finds that due to the PUD Site's small size, irregular shape, and location

at the intersection of three streets, two of which are major thoroughfares, the Applicant cannot provide any on-site loading facilities. The required loading facilities and associated access aisles, driveways, curb cuts, and maneuvering areas would take up a substantial portion of the PUD Site's land area, would eliminate a large portion of the building's ground floor area, and would significantly impair the ability to provide a viable building footprint, adequate retail space, a residential lobby, and required trash rooms, service corridors, and core elements.

44. The Commission finds that the lack of on-site loading facilities will not result in any adverse impacts. The Applicant will coordinate loading activities through a loading management plan, which will ensure that conflicting deliveries are scheduled appropriately and do not result in any on- or off-street conflicts. Moreover, if six residential units were eliminated from the Project, on-site loading would not be required for the building at all. Finally, the Commission notes that OP had no concerns with the loading variance request (*see* Ex. 28, p. 8) and that DDOT had no objection to the variance, finding that the loading management plan will sufficiently address loading impacts. *See* Ex. 27, p. 5.
45. ***Flexibility from the Land Area Requirements for a PUD.*** Pursuant to 11 DCMR § 2401.1(c), a minimum land area of 15,000 square feet is required for a PUD in the C-3-C District. The PUD Site has a land area of approximately 8,720 square feet and therefore does not meet the minimum area requirement of 11 DCMR § 2401.1. Pursuant to 11 DCMR § 2401.2, the Commission may waive up to 50% of the minimum area requirement, provided that the Commission finds, after a public hearing, that the project is of exceptional merit and in the best interest of the city or country.
46. The Commission finds that the Project is of exceptional merit and in the best interest of the city. The Project will incorporate approximately 61,173 square feet of gross floor area devoted to new residential use. Approximately 8% of the residential gross floor area will be set aside as affordable, with two units devoted to households earning up to 80% of the AMI and two units devoted to households earning up to 50% of the AMI. The Project will provide new ground floor retail and eliminate four existing curb cuts, which will activate the street, improve the pedestrian experience, enhance safety, and help to revitalize the neighborhood. Moreover, the Project will include a variety of sustainable features and materials, and will be designed to achieve LEED Gold equivalent status. Finally, the Commission finds that the Project will significantly improve the PUD Site and the surrounding area by replacing an outdated one-story building and surface parking with a high-quality, mixed-use building with exceptional architectural design and public space improvements that are consistent with the surrounding uses and overall urban context.
47. ***Flexibility from the IZ Proportionality Requirement.*** The Applicant requests flexibility from the proportionality requirement of 11 DCMR § 2605.2, which requires that the proportion of studio, efficiency, and one-bedroom IZ units to all IZ units shall not exceed the proportion of market-rate studio, efficiency, and one-bedroom units to all market-rate units. The Project includes approximately 61,173 square feet of gross floor area devoted to residential use, and is therefore required to provide approximately 4,969 square feet of gross floor area devoted to IZ units. The Project includes a total of 56 residential units. The

proposed IZ units include one studio unit, one 3-bedroom unit, and two 4-bedroom units, such that at least one IZ unit will be provided from each unit type in the building. In doing so, the Project's proportion of IZ studio and 1-bedroom units to all IZ units (1:4 = 25%) will exceed the proportion of market rate studio and 1-bedroom units to all market rate units (6:52 = 12%).

48. The Commission finds that the unequal proportionality is due to the relatively few number of total units in the Project and because the Project includes many larger units that are built to accommodate families. There is only one studio/1-bedroom IZ unit in the Project, and the rest of the IZ units are 3- and 4-bedroom units. The Commission notes that OP supported the inclusion of affordable family-sized units and had no concerns with the request for flexibility, since the Applicant's provision of IZ units is "exceeding the intent" of IZ by providing family-sized units. *See* Ex. 28, p. 9. Overall, the Commission finds that the provision of large IZ units is a benefit of the Project and will help increase the District's inventory of large affordable housing for families.

### **Development Flexibility**

49. The Applicant also requests flexibility in the following additional areas:

- a. To be able to provide a range in the number of residential units of plus or minus 10%;
- b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure;
- c. To vary the sustainable design features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the LEED Gold equivalent designation;
- d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, including window frames, doorways, railings, and trim; and other changes to comply with applicable District of Columbia laws and regulations that are necessary to obtain a final building permit;
- e. To use either the Light Pumice or Dark Pumice for the building's brick veneer color, as shown on Sheet A-1.5 of Ex. 35A.
- f. To vary the location and design of the ground floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant

requirements; and to vary the size of the retail area;

- g. To vary the final selection of exterior signage on the building consistent with the Building Code; and
- h. To vary the features, means and methods of achieving (i) the code-required Green Area Ratio (“GAR”) of 0.2, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.

### **Project Benefits and Amenities**

- 50. Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a)). The Project will have a positive impact on the visual and aesthetic character of the immediate neighborhood and will further the goals of urban design while enhancing the streetscape. The Project includes a significant amount of new public space features, including new curb extensions, bulb outs, parklets with seating, expanded green areas, enhanced landscaping, and additional short-term bicycle parking spaces. Moreover, with respect to site planning and efficient and economical land utilization, the Applicant's proposal to replace the existing one-story building and surface parking with a new mixed-use, mixed-income building constitutes a significant urban design benefit. The Project will eliminate four existing curb cuts, thus minimizing pedestrian/vehicle conflicts and improving the pedestrian experience. This is particularly significant given the PUD Site's location immediately across Florida Avenue from Union Market.
- 51. Housing and Affordable Housing (11 DCMR § 2403.9(f)). The Project will create new housing and affordable housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The Project will include a total of approximately 61,173 square feet of residential gross floor area (approximately 56 units). Approximately 5% of the residential gross floor area will be devoted to households earning up to 80% of the AMI, and approximately 3% of the residential gross floor area will be devoted to households earning up to 50% of the AMI. Given that the PUD Site's existing zoning does not permit any residential use as a matter of right, all of the housing and affordable housing proposed for the PUD Site is treated as a project amenity pursuant to 11 DCMR § 2403.9(f). Moreover, the majority of the residential units are anticipated to be larger three- and four-bedroom units to accommodate families, which will result in an important amenity to the District's housing supply.
- 52. Environmental Benefits (11 DCMR § 2403.9(h)). The Applicant will ensure environmental sustainability through the implementation of sustainable design features and strategies to enhance the sustainable nature of the PUD Site's mixed-use, transit-rich location, and to promote a healthy lifestyle that will holistically benefit the Project 's residents while minimizing impact on the environment. The Project provides a host of environmental benefits consistent with recommendations of 11 DCMR § 2403.9(h), which include street tree planting, landscaping, energy and water efficient systems, construction waste management techniques, methods to reduce stormwater runoff, and ample bicycle

parking. Moreover, the Project will be designed to achieve the equivalent of LEED-Gold under the LEED for Homes Rating System, Multi-family Mid-rise, October, 2010.

53. Transportation Benefits (11 DCMR §2403.9(c)). The Applicant incorporated a number of elements designed to promote effective and safe access to the PUD Site, convenient connections to public transit services, and onsite amenities such as bicycle parking. The Applicant will implement the following TDM strategies:

- a. Designate a Transportation Management Coordinator responsible for organizing and marketing the TDM plan;
- b. Restrict future residents from securing residential parking permits (“RPPs”);
- c. Develop a marketing program detailing transportation information;
- d. Provide 56 long-term (secure, interior) and 18 short-term (exterior) bicycle parking spaces;
- e. Install a bicycle maintenance facility in the bicycle room;
- f. Provide a bicycle gutter along the stair between the ground and cellar levels for ease of bicycle access to the bicycle storage room
- g. Provide ridesharing information through Commuter Connections to retail employees;
- h. Install a transit information screen in the residential lobby;

For the first three years of the Project, offer an in-unit bicycle rack for each residential unit; and

- i. For the first five years of the Project, offer each residential unit the option of either a one-time annual car-sharing membership and application fee or a one-time annual Capital Bikeshare membership.

54. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403.9(i)). The Applicant will expend up to \$125,000 for the following design, permitting, and construction work on the north side of N Street, NE, between 3<sup>rd</sup> and 4<sup>th</sup> Streets, NE: (i) extend the sidewalk width by a minimum of two feet, with the final sidewalk width to be subject to DDOT and utility agency approvals; (ii) install enhanced landscaping, which will include oak trees, landscaped beds, drought-tolerant shrubs, ornamental grasses, and perennials, with the final design and location of the enhanced landscaping to be subject to DDOT and utility agency approvals; (iii) install short-term bike racks, with the final design and location of the bike racks to be subject to DDOT and utility agency approvals; (iv) install parklets that will expand public space along the N Street sidewalk and provide seating areas for pedestrians, with the final design and location

of the parklets to be subject to DDOT and utility agency approvals; (v) install bulb-outs to discourage vehicular traffic on N Street, with the final design and location of the bulb-outs to be subject to DDOT and utility agency approvals; and (vi) decrease the cart path width of N Street, NE, with the final design and dimension of the cart path width subject to DDOT and utility agency approvals. The Applicant will allocate the \$125,000 to the work identified in section (i) first, with remaining proceeds allocated to the work identified in sections (ii) through (vi), respectively

55. In addition, the Applicant is committed to creating a vibrant mix of retail and service uses in the Project. The Applicant will market the retail space in the building to a variety of potential tenants and will take the following actions to help attract “maker” uses as tenants:
- a. Retain a retail broker with experience marketing to and securing a variety of tenant types, including makers;
  - b. Sponsor a workshop that encourages the maker movement and sponsor a job fair that targets the maker movement;
  - c. Market the retail space to retail tenants within Union Market; and
  - d. Market the retail space to retail tenants operating in Union Kitchen.

The final selection of retailers for the Project will be a function of market demands, but the Applicant believes that these steps will assist in attracting “maker” retail uses to the project.

### **Comprehensive Plan**

56. The Commission finds that the PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map and Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan and the NoMa Small Area Plan. The PUD significantly advances these purposes by promoting the social, physical, and economic development of the District through the provision of a high-quality residential development with ground-floor retail on the PUD Site, without generating any adverse impacts. The Project will create new neighborhood-serving retail opportunities to meet the demand for basic goods and services, and will promote the vitality, diversity, and economic development of the surrounding area.
57. The District of Columbia Comprehensive Plan Future Land Use Map designates the PUD as mixed-use: Medium-Density Residential and PDR land use categories.
58. The Medium-Density Residential designation is used to define neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low and moderate density housing may exist within these areas. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone districts are generally

consistent with the medium density designation, although other zones may apply in some locations.

59. The PDR category is used to define areas characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services, food services, printers and publishers, tourism support services, and commercial, municipal, and utility activities which may require substantial buffering from noise, air pollution, and light-sensitive uses such as housing. The PDR designation is not associated with any industrial zone and therefore permits a building height of up to 90 feet and 6.0 FAR.
60. The Commission finds that although the C-3-C Zone District is not specifically listed among the corresponding land use categories for the PUD Site's applicable designations, the C-3-C Zone District designation is not inconsistent with the Future Land Use Map. The Framework Element of the Comprehensive Plan provides that the Land Use Map is not a zoning map. *See* 10A DCMR § 226.1(a); Z.C. Order No. 14-08; Z.C. Order No. 11-13; and Z.C. Order No. 10-28. Whereas zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. 10A DCMR § 226.1(a). By definition, the Map is to be interpreted broadly. *Id.* Furthermore, the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. The granting of density bonuses (for example, through planned unit developments) may result in heights that exceed the typical ranges cited here. *Id.* at § 226.1(c). The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. *Id.* at § 266.1(d). Therefore, the Commission finds that the proposed map amendment is not inconsistent with the Future Land Use Map.
61. The Commission further finds that in evaluating the map amendment, the PUD Site should be viewed as a whole, not as a specific parcel. The Commission notes that when taken in context with the surrounding neighborhood, the PUD Site is in the center of a highly dynamic area that is quickly expanding and growing taller. The proposed C-3-C zoning classification will enable the PUD Site to be developed as a mixed-use development built to a maximum density of approximately 7.57 FAR, which is consistent with the amount of density permitted in medium density commercial zones. For example, the C-2-C Zone District permits 6.0 FAR as a base and up to 7.2 FAR utilizing the IZ bonus.
62. The PUD Site is also located within Neighborhood Transition Area B of the NoMa Vision Plan and Development Strategy ("NoMa Plan"), which encourages a "[m]ix of diverse residential and non-residential uses, with greatest height and density along rail tracks, Florida Avenue and N Street, transitioning to lower-density along streets facing existing rowhouses." *See* NoMa Plan, p. 5.12. Based on this context and other approved developments in the surrounding area, the Commission finds that the proposed C-3-C zoning classification and PUD will enable the PUD Site to be developed as a mixed-use project built to a maximum density of approximately 7.57 FAR and a maximum height of 101 feet, which are consistent with the density and height permitted in medium density

zones and are appropriate given the location of the PUD Site and other recent developments in the surrounding area.

63. The District of Columbia Comprehensive Plan Generalized Policy Map designates the PUD Site in a Land Use Change Area category. The guiding philosophy in the Land Use Change Areas is to encourage and facilitate new development and to promote the adaptive reuse of existing structures. Many of the Land Use Change Areas have the capacity to become mixed-use communities containing housing, retail shops, services, workplaces, parks, and civic facilities. As Land Use Change Areas are redeveloped, the District aspires to create high quality environments that include exemplary site and architectural design and that are compatible with and do not negatively impact nearby neighborhoods.
64. The Commission finds that the proposed rezoning and PUD redevelopment of the PUD Site is consistent with the policies indicated in the Land Use Change Area. The existing C-M-1 Zone District is inconsistent with the Policy Map's designation of the PUD Site since C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." 11 DCMR § 800.1. In contrast, the proposed mix of new residential and retail uses in the Project will help to improve the overall neighborhood fabric and bring new residents and retail uses to the area.
65. The Commission finds that the PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as discussed in the paragraphs below.
66. ***Managing Growth and Change***. In order to manage growth and change in the District, the Comprehensive Plan encourages, among other factors, the growth of both residential and non-residential uses. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors are an important part of reinvigorating and enhancing neighborhoods. The Commission finds that the Project is fully consistent with each of these goals. Redeveloping the PUD Site as a vibrant mixed-use development with residential and retail uses will further the revitalization of the surrounding neighborhood. The proposed retail spaces will create new jobs for District residents, further increase the city's tax base, and help reinvigorate the existing neighborhood fabric.
67. ***Creating Successful Neighborhoods***. One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development; from development of the Comprehensive Plan to implementation of the plan's elements. The Project furthers this goal, since as part of the PUD process the Applicant worked closely with ANC 6C to ensure that the development provides a positive impact on the immediate neighborhood.
68. ***Building Green and Healthy Communities***. One of the guiding principles for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and



reduce harmful effects on the natural environment. 10A DCMR § 221.3. The Project will include a significant number of sustainable design features and is located in a transit-rich environment, reducing the need to use private vehicles to access the PUD Site. Moreover, the Project will achieve LEED Gold equivalent status.

69. The Commission also finds that the PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as set forth in the Applicant's Statement in Support and in the OP reports. (Ex. 6, 15, 28.)

### **Office of Planning Report**

70. On November 13, 2015, OP submitted a report recommending setdown of the application. (Ex. 15.) The OP report stated that the Project is not inconsistent with the Comprehensive Plan's objectives for the area, is consistent with the Future Land Use and Generalized Policy maps, and would contribute to the redevelopment of the neighborhood. The OP report noted that it would work with the Applicant to ensure that the additional information listed on page 1 of the report would be submitted prior to the public hearing.

71. On February 12, 2016, OP submitted a second report recommending approval of the application. (Ex. 28.) This OP report restated that the Project conforms to the Comprehensive Plan's objectives for the area and to the Land Use and Policy Maps, and would contribute to the redevelopment of the neighborhood. The OP hearing report requested that the Applicant clarify two items: (i) the lack of certainty related to the proposal for public space improvements to N Street, NE; and (ii) the benefits and amenities package. The Applicant provided the requested information in its letter submitted to the Commission on February 22, 2016 (Ex. 30A), in which it clarified its position regarding the N Street improvements and further described the proposed benefits and amenities. The Applicant further refined this information in its post-hearing submission dated March 7, 2016 (Ex. 35), in which it submitted a site plan and explanation regarding the specific improvements to N Street, NE. Based on the additional information submitted by the Applicant, as well as the Applicant's testimony at the public hearing, the Commission finds that the Applicant adequately addressed OP's outstanding concerns.

72. The OP hearing report also included a memorandum from the Metropolitan Police Department indicating that the Project would increase pedestrian and vehicular traffic, but otherwise noting no objection to the Project.

### **DDOT Reports**

73. On February 12, 2016, DDOT submitted a report indicating that it had no objection to the application with the following conditions: (i) limit the financial incentive as part of the TDM plan to bikeshare and carshare memberships only and offer annual memberships to all new tenants for a period of five years; and (ii) install a transit information screen in the residential lobby. (Ex. 27.) At the public hearing, the Applicant agreed to both of DDOT's conditions.

74. On March 1, 2016, DDOT submitted a supplemental report (Ex. 34), which provided additional information requested by the Commission at the public hearing regarding the status of DDOT's Florida Avenue Multimodal Safety Study and the NoMa-Gallaudet University Metrorail station east entrance. The supplemental DDOT report indicated that the preferred alternative for Florida Avenue, as set forth in the Florida Avenue Multimodal Safety Study, includes wider sidewalks, bicycle lanes, two vehicle travel lanes in each direction, and a center turn lane in the segment of Florida Avenue adjacent to the PUD Site. DDOT indicated that preliminary engineering and design work for the preferred alternative began in February, 2016, and is expected to take approximately 12 months to complete. DDOT also stated that approximately \$11 million in construction funding is identified for 2021 in DDOT's State Transportation Improvement Program, which is the District's prioritized funding program for transportation projects.
75. As requested by the Commission, the supplemental DDOT report also described findings from WMATA's NoMA Pedestrian Tunnel Feasibility Study, which was conducted to determine the feasibility of the construction of a new pedestrian tunnel under the Metrorail and Amtrak tracks to provide improved access to the Metrorail station from the east. The DDOT report indicated that such construction is feasible.

### **ANC Reports**

76. At its duly noticed, regularly scheduled public meeting, with a quorum of commissioners and the public present, ANC 6C voted unanimously to support the beneficial use of the PUD Site. (*See* Ex. 25.) The ANC support was contingent on the following: (i) greater clarity on the relevance of the Applicant's proffer for N Street and the scope of work likely to be covered by the proffer; (ii) a statement of ANC 6C's strong support for full closure of N Street to motor vehicles; (iii) a more definite statement of specific TDM measures; and (iv) careful examination of the potential for providing more convenient bike storage facilities on the ground floor or on upper residential floors. At the public hearing, Commissioner Goodman testified that the Applicant had provided the requested information to the ANC and had satisfactorily addressed its concerns.

### **Post-Hearing Submission**

77. On March 7, 2016, the Applicant submitted a post-hearing submission (Ex. 35), which included the following materials and information requested by the Commission at the public hearing: (i) a detailed site plan showing specific public space improvements for N Street, NE, including 2-foot offset curb extensions, bulb outs, parklets with seating, expanded green areas, enhanced landscaping, and additional short-term bicycle parking spaces; (ii) information regarding the building projections on Florida Avenue, NE, including a site plan, sections, and perspectives showing the bay windows, as well as a copy of DCRA's approval of the projections; (iii) information regarding the cost to certify the building as LEED Gold; (iv) a revised drawing showing a proposed bike gutter along the stair between the building's ground and cellar levels; and (v) a request for flexibility as to the color of the brick veneer proposed for the building.

## CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD does not meet the minimum area requirements of 11 DCMR § 2401.1. However, the Commission finds that the Project is of exceptional merit and in the best interests of the city or country, and pursuant to 11 DCMR § 2401.2 hereby waives approximately 42% of the minimum area requirement.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mixed uses for the Project are appropriate for the PUD Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.
6. The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the Project's benefits and amenities are reasonable tradeoffs for the requested development flexibility.
8. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive.
10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the ANC 6C's recommendation for approval and concurs in its recommendation. The Commission notes the ANC report contained four conditions, which the Commission finds the Applicant has satisfactorily addressed.
11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2- 1401 et seq. (2007 Repl.)).

## **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the applications for consolidated review and approval of a planned unit development and related Zoning Map amendment from the C-M-1 District to the C-3-C District for property located at 301 Florida Avenue, NE (Lot 803 in Square 772N). The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

### **A. Project Development**

1. The Project shall be developed in accordance with the Architectural Plans and Elevations dated February 22, 2016, (Ex. 26A) as modified by the supplemental architectural drawings submitted on March 7, 2016 (Ex. 35A) (the "Plans"), and as modified by the guidelines, conditions, and standards of this Order.
2. In accordance with the Plans, the PUD shall be a mixed-use project consisting of approximately 66,010 square feet of gross floor area (7.57 FAR), with approximately 61,173 square feet of gross floor area devoted to residential use and approximately 4,837 square feet of gross floor area devoted to retail use. The Project shall have 56 residential units, plus or minus 10%, and shall have a maximum height of 101 feet.
3. The Applicant is granted flexibility from the off-street parking requirements of § 2101.1; the loading requirements of § 2201.1; the PUD minimum land area requirements of § 2401.1(c); and the IZ proportionality requirement of § 2605.2, consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.
4. The Applicant shall also have flexibility with the design of the PUD in the

following areas:

- a. To be able to provide a range in the number of residential units of plus or minus 10%;
- b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure;
- c. To vary the sustainable design features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the LEED Gold equivalent designation;
- d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, including window frames, doorways, railings, and trim; and other changes to comply with applicable District of Columbia laws and regulations that are necessary to obtain a final building permit;
- e. To use either the Light Pumice or Dark Pumice for the building's brick veneer color, as shown on Sheet A-1.5 of Ex. 35A;
- f. To vary the location and design of the ground floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area;
- g. To vary the final selection of exterior signage on the building consistent with the Building Code; and
- h. To vary the features, means and methods of achieving (i) the code-required Green Area Ratio ("GAR") of 0.2, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.

## **B. Public Benefits**

1. **Prior to the issuance of a Certificate of Occupancy for the building, and for the life of the Project**, the Applicant shall dedicate (i) a minimum of 5% of the building's residential gross floor area to households earning up to 80% of the AMI, and (ii) a minimum of 3% of the building's residential gross floor area to

households earning up to 50% of the AMI. The IZ units shall maintain affordability in accordance with all applicable requirements of Chapter 26 of the Zoning Regulations.

2. **Prior to the issuance of a building permit, and for the life of the Project**, the Applicant shall provide proof to the Zoning Administrator that the building has been designed to include no fewer than the minimum number of points necessary to be the equivalent of a LEED-Gold designation under the LEED for Homes Rating System, Multi-family Mid-rise, October, 2010. The Applicant shall put forth its best efforts to design the PUD so that it may satisfy such LEED standards, but the Applicant shall not be required to register or to obtain the certification from the United States Green Building Council.
  
3. **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall demonstrate to the Zoning Administrator that it has expended, or is otherwise in the process of expending, up to \$125,000 (or shall post a deposit with DDOT of \$125,000) for the design, permitting, and construction work to N Street, NE, between 3<sup>rd</sup> and 4<sup>th</sup> Streets, NE, as shown on the N Street Improvements site plan submitted on March 7, 2016, and marked as Exhibit 35A in the record of this case:
  - a. Extend the sidewalk width along the north side of N Street, NE, between 3<sup>rd</sup> and 4<sup>th</sup> Streets, NE, a minimum of two feet, with the final sidewalk width to be subject to DDOT and utility agency approvals;
  - b. Install enhanced landscaping along the north side of N Street, NE, between 3<sup>rd</sup> and 4<sup>th</sup> Streets, NE, which will include oak trees, landscaped beds, drought-tolerant shrubs, ornamental grasses, and perennials, with the final design and location of the enhanced landscaping to be subject to DDOT and utility agency approvals;
  - c. Install short-term bike racks on the north side of N Street, NE, between 3<sup>rd</sup> and 4<sup>th</sup> Streets, NE, with the final design and location of the bike racks to be subject to DDOT and utility agency approvals;
  - d. Install parklets along the north side of N Street, NE, between 3<sup>rd</sup> and 4<sup>th</sup> Streets, NE, that will expand public space along the N Street sidewalk and provide seating areas for pedestrians, with the final design and location of the parklets to be subject to DDOT and utility agency approvals;
  - e. Install bulb-outs on the north side of N Street, NE, between 3<sup>rd</sup> and 4<sup>th</sup> Streets, NE to discourage vehicular traffic on N Street, with the final design and location of the bulb-outs to be subject to DDOT and utility agency approvals; and
  - f. Decrease the cart path width of N Street, NE, between 3<sup>rd</sup> and 4<sup>th</sup> Streets,

NE, with the final design and dimension of the cart path width subject to DDOT and utility agency approvals.

The \$125,000 shall be allocated to the work identified in section 1(a) first, with remaining proceeds allocated to the work identified in sections 1 (b) through 1 (f), respectively.

4. **Prior to the issuance of a certificate of occupancy for the retail component of the building**, the Applicant shall provide evidence to the Zoning Administrator confirming that it has and/or is in the process of marketing the retail space in the building to a variety of potential tenants and has taken the following actions to help attract “maker” uses as tenants:
  - a. Retain a retail broker with experience marketing to and securing a variety of tenant types, including makers;
  - b. Sponsor a workshop that encourages the maker movement and sponsor a job fair that targets the maker movement;
  - c. Market the proposed retail space to retail tenants within Union Market; and
  - d. Market the proposed retail space to retail tenants operating in Union Kitchen.

### C. Transportation Incentives

1. **Prior to issuance of a Certificate of Occupancy for the building and for the life of the Project**, the Applicant shall provide the following TDM strategies:
  - a. Designate a TDM Coordinator responsible for organizing and marketing the TDM plan;
  - b. Restrict future residents from securing RPP permits;
  - c. Develop a marketing program detailing transportation information;
  - d. Provide 56 long-term (secure, interior) and 18 short-term (exterior) bicycle parking spaces;
  - e. Install a bicycle maintenance facility in the bicycle storage room;
  - f. Provide a bicycle gutter along the stair between the ground and cellar levels for ease of bicycle access to the bicycle storage room;
  - g. Provide ridesharing information through Commuter Connections to retail employees; and

- h. Install a transit information screen in the residential lobby;
- 2. **For the first three years of operation of the Project**, offer an in-unit bicycle rack for each residential unit; and
- 3. **For the first five years of operation of the Project**, offer each residential unit the option of either a one-time annual car-sharing membership and application fee or a one-time annual Capital Bikeshare membership.

#### **D. Miscellaneous**

- 1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD 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 the Office of Zoning.
- 2. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-22. Within such time, an application must be filed for a building permit, with construction to commence within three years of the effective date of this Order.
- 3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
- 4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.



On \_\_\_\_\_, 2016, upon a motion by \_\_\_\_\_, as seconded by Commissioner \_\_\_\_\_, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On \_\_\_\_\_, upon the motion of Commissioner \_\_\_\_\_, as seconded by Commissioner \_\_\_\_\_, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 5-0-0 (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *DC Register*; that is on August 21, 2015.

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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

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**SARA BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**