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**Executive Director**

Marcel Acosta

IN REPLY REFER TO:  
NCPC FILE No. ZC 15-32

**SEP 15 2016**

Zoning Commission of the  
District of Columbia  
441 4th Street NW  
2<sup>nd</sup> Floor, Suite 210  
Washington, DC 20001

Members of the Commission:

Pursuant to delegations of authority adopted by the Commission on August 6, 1999, I found that the proposed Consolidated Planned Unit Development and Related Map Amendment at Square 369, 1126 9<sup>th</sup> Street, NW, LLC, is inconsistent with the Comprehensive Plan for the National Capital and other federal interests, due to a minimal violation of the penthouse setback requirements of the Act to Regulate the Height of Buildings in the District of Columbia. A copy of the Delegated Action of the Executive Director is enclosed.

Sincerely,

Marcel C. Acosta  
Executive Director

cc: Eric Shaw, Director, DC Office of Planning  
Anthony Hood, Chairman, Zoning Commission

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## Delegated Action of the Executive Director

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**PROJECT**

**Consolidated Planned Unit Development  
and Related Map Amendment at Square  
369 - 1126 9th Street, NW, LLC**  
9th and M St NW  
Washington, DC

**NCPC FILE NUMBER**

ZC 15-32

**NCPC MAP FILE NUMBER**

31.20(06.00)44397

**REFERRED BY**

Zoning Commission of the District of Columbia

**DETERMINATION**

Approval of report to the Zoning  
Commission of the District of  
Columbia

**REVIEW AUTHORITY**

Advisory  
per 40 U.S.C. § 8724(a) and DC Code § 2-  
1006(a)

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The Zoning Commission of the District of Columbia has referred a Consolidated Planned Unit Development (PUD) and related map amendment at Square 369, Lot 880. The proposal would rezone site from Downtown Development (DD) Overlay/C-2-A to DD/C-2-C, with a portion to remain DD/C-2-A. The proposed development includes a mixed-use residential building with commercial space on the ground floor. The project is located in the Mount Vernon Square/Shaw neighborhood in the northwestern quadrant of Washington, DC, at the southwest corner of 9th and M Streets. The site occupies a 7,610 square-foot, and "T" shaped lot with one leg fronting 9th Street, NW and the other leg fronting M Street, NW. The property is surrounded by two commercial buildings to the east, three-story rowhouses contributing to the Shaw Historic District to the north, an alley, the 110-foot Whitman Condominium building to the west, and commercial buildings to the south. The square is surrounded by mixed-use, and higher density structures. To the east, across 9th Street, is the Washington Convention Center; to the north of the property, across M Street are low-density commercial structures and a multifamily building.

The M Street portion of the lot is vacant. The 9th Street portion of the lot is occupied by a one to two-story brick structure constructed in 1925 as a retail building with an apartment above. This building is contributing element to the Shaw Historic District. The proposal will retain, restore, and adaptively reuse the existing building and incorporate it into the development with office/retail uses as well as the residential lobby entrance. The remainder of the property is a vacant lot. The proposal includes 3,723 gross square feet of commercial space on the ground floor and 33 residential units above, with a total area of approximately 40,290 gross square feet. Overall, the project would have a 5.3 floor area ratio (FAR), and an overall maximum height of 10 stories or 100 feet. The building steps down to the existing two-story building along 9<sup>th</sup> Street.

Per the applicant's submission, the proposed structure will reach a maximum height of 100 feet. The M Street right-of-way is 90 feet wide, which allows for a maximum 110-foot building per the 1910 Height Act. The project also includes a 14-foot stairway and elevator penthouse above the roof. The proposed penthouse meets the required setback along 9<sup>th</sup> Street. However, the north and

south walls of the penthouse are not set back from the exterior walls. The applicant is requesting flexibility from the one to one setback requirements for the proposed penthouse, as the proposed roof structure extends to the edge of the façade in these locations. Allowance of this flexibility will cause a minor violation of the penthouse setback requirements of the Height Act as the rooftop penthouse exceeds the 110-foot allowable maximum height by four feet and is not setback from all exterior walls as required by the Height Act. Any portion of a penthouse located above the limit of height permitted by the Height Act requires a one to one setback. Further, setbacks for rooftop structures must be provided from exterior walls which include: walls facing streets, walls facing alleys, any wall facing a court open to the street, any wall setback and facing a lot line and any lot line wall built higher than the greater of the neighboring building's actual or matter of right height, which for purposes of NCPC's review, pertains to the maximum allowable height permitted under the Height Act. In addition, the drawings do not indicate the point of measurement of the height of the building or the height of building parapets and mechanical units on top of the penthouse.

The impact of this penthouse setback violation may be visually minimal from the public streets immediately surrounding the site. However, limited setbacks for penthouses in general may affect light and air to the building's tenants and adjacent property users. Since the proposed penthouse exceeds the 110-foot height allowed under the Height Act, it must be set back to meet the one-to-one requirement. As such, the proposed PUD is inconsistent with the Comprehensive Plan for the National Capital as it is minimally inconsistent with the requirements of the Height Act. Furthermore, Section 2510.1 of the Zoning Regulations also requires all buildings within the District of Columbia to comply with the Height Act. Relief from the setback requirements within the zoning regulations for the penthouse above the maximum building height allowable under the Height Act would be inconsistent with the requirement of Section 2510.1.

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Pursuant to delegations of authority adopted by the Commission on August 6, 1999 and per 40 U.S.C. § 8724(a) and DC Code § 2-1006(a), I find the proposed Consolidated Planned Unit Development and Related Map Amendment in Square 369 1126 9th Street, NW, LLC is inconsistent with the Comprehensive Plan for the National Capital and other federal interests, due to a minimal violation of the penthouse setback requirements of the Act to Regulate the Height of Buildings in the District of Columbia.



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Marcel Acosta  
Executive Director

9/11/16

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Date