

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**

**ZONING COMMISSION ORDER NO. 16-13**

**Z.C Case No. 16-13**

**JS Congress Holdings, LLC**

**(Consolidated PUD & Related Map Amendment @ Square 748)**

**June 12, 2017**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on November 21, 2016, and January 4, 2017, to consider applications for a consolidated planned unit development (“PUD”) and related Zoning Map amendment filed by JS Congress Holdings, LLC (“Applicant”). The Commission considered the applications pursuant to Chapters 24 and 30 of the 1958 edition 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-Z DCMR §§ 400 *et seq.* (2016). For the reasons stated below, the Commission hereby **APPROVES** the applications.

**FINDINGS OF FACT**

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

1. On June 7, 2016, the Applicant filed applications with the Commission for consolidated review of a PUD and a related Zoning Map amendment from the C-M-1 to the C-2-B Zone District for property located at Lots 78 and 819 in Square 748, premise addresses 220 L Street, N.E., and 1109-1115 Congress Street, N.E., Washington, D.C. (“PUD Site”). The applications were processed in accordance with the 1958 Zoning Regulations.
2. The PUD Site has a land area of approximately 10,040.7 square feet, which includes approximately 507.6 square feet of land area on a portion of the abutting public alley to be closed. A vacant two-story warehouse historically used for industrial purposes and a smaller three-story building constructed in 2011 are located on the PUD Site. The two non-historic buildings on the PUD Site will be demolished in order to construct a mixed-use building composed of housing and production, distribution, and repair (“PDR”) related uses (“Project”).
3. The Project will have approximately 60,244 square feet of gross floor area (“GFA”), of which 56,419 square feet will be devoted to residential uses and 3,825 square feet will be set aside for PDR uses. The penthouse will include an additional 2,035 square feet of GFA devoted to residential uses, 350 square feet of GFA for community space, and 675

square feet of GFA for mechanical purposes. The building will have a density of 6.0 floor area ratio (“FAR”); the penthouse will have a density of 0.34 FAR. The overall height of the building will be 90 feet. The habitable portion of the penthouse will be 12 feet in height and the mechanical penthouse will be 18.5 feet in height.

4. The Applicant will devote approximately 12% of the residential square footage as for-sale Inclusionary Zoning (“IZ”) units, consistent with Chapter 26 of the 1958 Zoning Regulations. Approximately four percent of the Project’s residential GFA (1,815 square feet or three one-bedroom units) will be located on site and set aside for households earning up to 80% of the area median income (“AMI”). Another eight percent of the Project’s residential GFA (approximately 4,500 square feet, equaling a minimum of five units that average two-bedrooms each) will be set aside for households earning up to 50% of AMI. The 1,815 square feet on site and 1,893 square feet off site will satisfy the minimum IZ set aside requirement of eight percent of the PUD building and the habitable penthouse. The remaining affordable housing proffer of approximately 2,607 square feet will be governed by restrictive covenants with D.C. Habitat for Humanity, a not-for-profit affordable housing provider.
5. By report dated July 15, 2016, the District of Columbia Office of Planning (“OP”) recommended that the application be set down for a public hearing, but requested further study of the architectural design and greater detail on building materials, landscaping, and the treatment of public space. OP also recommended eliminating the need for any penthouse setback relief. (Exhibit [“Ex.”] 11.) At its public meeting on July 25, 2016, the Commission voted to schedule a public hearing on the application and adopted as its own the concerns raised by OP.
6. The Applicant submitted a prehearing statement on August 12, 2016, and a public hearing was timely scheduled for the matter. (Ex. 13.) On August 26, 2016, the Office of Zoning mailed the notice of public hearing to all owners of property located within 200 feet of the PUD Site, to Advisory Neighborhood Commission (“ANC”) 6C, which is the ANC in which the PUD site is located, and to Commissioner Tony Goodman, the commissioner for single-member district (“SMD”) 6C06. (Ex. 36.) A description of the proposed development and notice of the public hearing in this matter was published in the *D.C. Register* on September 2, 2016.
7. On October 21, 2016, the application submitted its comprehensive transportation review (“CTR”) report prepared by Gorove/Slade Associates to the Commission and the District of Columbia Department of Transportation (“DDOT”). On November 1, 2016, the Applicant submitted a supplemental prehearing statement in response to comments raised by the Commission and OP at the setdown meeting. (Ex. 23.) The supplemental submission included revised architectural plans and elevations, and a letter committing to make a \$10,000 contribution to the Friends of NoMA Dogs, Inc. for maintenance and supplies for dog parks in the NoMA neighborhood.
8. On November 14, 2016, OP and DDOT each submitted a report on the applications. While OP was supportive of the redevelopment, it was unable to make a recommendation

in its report until additional information and clarification were submitted. (Ex. 25). OP was supportive of the hearing being held on November 21, 2016, as scheduled, to address the issues cited in its report. DDOT reported no objection to the application, with the following conditions: (a) provision of funding for a 19-dock Capital Bikeshare station and one-year operational expenses; and (b) implementation of transportation demand mitigation (“TDM”) measures. (Ex. 26.)

9. At its regularly scheduled public meeting on October 13, 2016, for which notice was properly given and a quorum was present, ANC 6C voted (4-0) to support the application, with conditions. (Ex. 19). The ANC requested: (a) material changes to the design to include the removal of the L Street curb cut and garage/parking entrance; (b) relocation of the new alley entrance to the northern-most portion of the site; (c) elimination of below-grade parking and replacement with six at-grade parking spaces adjacent to the north-south alley; and (d) addition of windows to the blank east wall. The ANC also requested enhancement of the Applicant’s public benefits package to include funding of a bikeshare station at 3<sup>rd</sup> and L Streets, N.E. and donating \$10,000 to the 501(c)(3) overseeing the operation of the public dog park across L Street, N.E.
10. By submission dated November 7, 2016, Mr. Fred Irby on behalf the Third Street Neighbors filed a request for party status in opposition to the application.
11. The Commission convened a public hearing on November 21, 2016, at which time the Third Street Neighbors were granted party status in opposition. Mr. Irby, the representative of the party opponent, clarified that the group was comprised of Mr. Irby at 1114 3<sup>rd</sup> Street, N.E., 1112 3<sup>rd</sup> Street, LLC., Ms. Helen Darden at 1116 3<sup>rd</sup> Street, N.E., Ms. Arita Brown at 1108 3<sup>rd</sup> Street, N.E., and Ms. Roxanne Scott at 1110 3<sup>rd</sup> Street, N.E.
12. The Commission did not take further evidence at the hearing. Instead, it continued the hearing until January 4, 2017, to allow the Applicant time to respond to the issues raised in the OP report regarding the architectural treatment of the building and the public benefits and amenities. The Applicant filed a second supplemental submission on December 16, 2016, and OP filed a second hearing report recommending approval of the application in light of the Applicant’s additional information.
13. The Commission re-convened the hearing on January 4, 2017, which was concluded the same evening. At the hearing, the Applicant presented three witnesses in support of the applications: Mr. Bruce Baschuk of the J Street Companies, on behalf of JS Congress Holdings, LLC; Ms. Jane Nelson of Nelson Architects, who was qualified as an expert in architecture; and Mr. Erwin Andres of Gorove/Slade Associates, who was qualified as an expert in traffic and transportation engineering.
14. Mr. Joel Lawson testified on behalf of OP at the public hearing; Ms. Evelyn Israel testified on behalf of DDOT.
15. The record was closed at the conclusion of the hearing to receive additional submission from the Applicant, responses from the party opponent, and proposed findings of facts and conclusions of law.

16. On January 12, 2017, the Applicant submitted a post-hearing submission, which included the following information as requested by the Commission: (a) an increased affordable housing proffer of 12% on site; (b) further rationale for the proposed 90-foot building height; (c) the effect of the PUD on Mr. Irby's solar panels and the Applicant's efforts to mitigate any adverse impacts; (d) signage details; (e) lighting for the alley; (f) further study of the retaining wall area; and (g) clarification of the public alley closing process for Mr. Irby. At OP's suggestion made during the hearing, the Applicant also provided information on the potential range of PDR-retail uses it envisioned for the site and the typical depth of residential units, which affects rear yard compliance. On January 19, 2017, the Applicant submitted its proposed findings of fact and conclusions of law.
17. The Applicant requested three postponements of the Commission's proposed action on the application in order to re-study the financial viability of its 12% affordable housing proffer. On April 10, 2017, the Applicant submitted a revised proffer whereby at least eight percent of the project's residential square footage (including the habitable penthouse space) would be set aside for households earning no more than 50% of AMI at an off-site location. An additional four percent of the project's residential square footage would be set aside for households earning no more than 80% of AMI, which would be located on site. (Ex. 47). On April 14, 2017, OP submitted a report supporting the revised proffer. (Ex. 49.)
18. At its public meeting on April 24, 2017, the Commission took proposed action to approve the applications. The proposed action was referred to the National Capital Planning Commission ("NCPC") on May 4, 2017, pursuant to § 492 of the Home Rule Act. (Ex. 58). The Executive Director of NCPC, by delegated action dated May 25, 2017, found that the PUD and related map amendment would not be inconsistent with the federal elements of the Comprehensive Plan for the National Capital or any other federal interest. (Ex. 58A.) Before taking proposed action, the Commission inquired whether the Applicant's proposal to link the issuance of a building permit for this project to the Applicant gaining site control to the off-site affordable housing was consistent with the requirements for off-site linkage in other similar projects. The Commission suggested that instead of site control, the triggering event should be a building permit. The Commission also asked whether the Applicant should provide a draft IZ covenant contemplated by 11 DCMR § 2607.5. The resolution of those issues is discussed below in the contested issues section of this Order.
19. On April 20, 2017, the Commission re-opened the record to receive a letter from Mr. Irby regarding his ongoing negotiations with the Applicant. (Ex. 51.) The Applicant responded by letter dated April 24, 2017. (Ex. 52.) On April 26, 2017, Mr. Irby submitted an additional letter stating that the parties had reached an agreement and that he was withdrawing his objections and his status as party opponent. (Ex. 53.)
20. On May 1, 2016, the Applicant submitted is revised proffers and draft conditions pursuant to 11-X DCMR §§ 308.8-308.12. (Ex. 54, 55.) On May 15, 2017, the Applicant final list of proffers and draft conditions. (Ex. 56, 57.)

21. At its public meeting on June 12, 2017, the Commission took final action to approve the applications.

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

22. Known as 220 L Street and 1109-1115 Congress Street, N.E., the PUD Site is in the neighborhood north of Massachusetts Avenue (“NoMA”) in Ward 6, just east of the railroad tracks leading out of Union Station. Lot 78 at the northeast corner of Congress and L Streets, N.E., is rectangular in shape and has 44.71 linear feet on L Street and 68.0 linear feet along Congress Street. Lot 819 fronts on Congress Street and measures 95.19 feet in length along its street frontage and is 68 feet deep. Lots 819 and 78 are separated by a nine-foot-wide public alley running east-west the full depth of Lot 819. The alley then turns north along the eastern boundary of Lot 819, and narrows to 8.71 feet in width. The Applicant intends to close the east-west alley for the full depth of Lot 78 (44.71 feet); an additional 23.29 feet of the east-west alley (adjacent to Lot 819) will also be closed but only for a width of 4.5 feet.
23. The PUD Site slopes upward significantly from L Street to the north, with a grade differential of approximately 10 feet. The sidewalk along Congress Street is unusually narrow at just seven feet, 11 inches, with utility poles and other public space fixtures that further limit the pedestrian pathway. In contrast, the public space along L Street is approximately 18 feet, two inches, from the street curb to building line. It is interrupted by a large curb cut allowing vehicular access to the parking garage for the building at 220 L Street, N.E.
24. The PUD Site is located immediately south of the former Uline Arena, which was recently renovated to accommodate office and retail uses. Accessory parking to the Uline Arena is accessed from the end of Congress Street just north of the PUD Site. Across Congress Street to the west is a variety of automotive and industrial uses across Congress Street to the west, as well as Union Kitchen, a kitchen, distribution center, catering service, and grocery store. Immediately east of the PUD Site across the narrow nine-foot alley are seven single-family rowhouses fronting on Third Street, N.E., approximately 20-23 feet in height.
25. The area immediately surrounding the PUD Site has changed significantly in the last five to seven years with the construction of several new multi-family residential buildings. Immediately across L Street to the south is the Toll Brothers City Living project, a two-phase development that will ultimately comprise over 500 units and more than 13,000 square feet of retail space. It is approximately 14 stories and 130 feet in height. (See Z.C. Order No. 05-36I.) The Pullman Building at 911 2<sup>nd</sup> Street, N.E., is a six-story residential building with 42 units presently under construction. The Aria at 300 L Street, N.E., is a recently completed six-story apartment building with 60 units. NoMA Parks Foundation is located at the southwest corner of 3<sup>rd</sup> and L Streets, N.E. The Commission recently took proposed action to approve a mixed-use hotel and residential building at the former Central Armature site that will be approximately 120 feet in height and have density of 6.99 FAR. (See Z.C. Case No. 16-09.)

## **Existing and Proposed Zoning**

26. The PUD Site is currently zoned C-M-1. The C-M Zone Districts are “intended to provide 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 the nearby, more restrictive districts.” (11 DCMR § 800.1.) The C-M-1 Zone District prohibits residential development except as otherwise specifically provided. (11 DCMR § 800.4.) Property within the C-M-1 Zone District can be developed with a maximum density of 3.0 FAR. (11 DCMR § 841.1.) The maximum permitted height is 40 feet and three stories. (11 DCMR § 840.1.)
27. The Applicant proposes to rezone the PUD Site to the C-2-B Zone District in connection with the PUD application. The C-2-B Zone District is designated to “serve commercial and residential function, is similar to the C-2-A District but with high-density residential and mixed uses.” (11 DCMR § 270.6.) The C-2-B Zone District permits as a matter of right medium-density development, including office, retail, housing, and mixed uses. The maximum permitted height in the C-2-B Zone District is 65 feet; the maximum permitted density is 3.5 FAR, of which no more than 1.5 FAR can be devoted to non-residential uses. The maximum density may be increased by 20% to 4.2 FAR for residential uses under the IZ provisions of Chapter 26. The maximum lot occupancy is 80% for residential uses and 100% for non-residential uses. (11 DCMR §§ 770.1, 771.2, and 772.1.)
28. In addition to the matter-of-right development parameters of the C-2-B Zone District, the PUD is also governed by the PUD guidelines in Chapter 24 of the Zoning Regulations. The maximum permitted density for a PUD in the C-2-B Zone District is 6.0 FAR, all of which may be devoted to residential uses, and only 2.0 of which may be devoted to non-residential uses. The maximum permitted height is 90 feet. Consistent with the PUD guidelines for the C-2-B Zone District, the Applicant will develop the PUD Site with a mix of residential and PDR uses. A tabulation of the PUD’s development data is included in Sheet A1.06 of the Architectural Plans and Elevations dated January 12, 2017 (“Plans”). (Ex. 37A.)

## **Description of the PUD Project**

29. As shown on the Plans, the Applicant is seeking approval of a consolidated PUD and related Zoning Map amendment to redevelop the PUD Site with a mixed-use residential and PDR building. The Project will contain approximately 60,244 square feet of gross floor area, which equates to a 6.0 FAR. The maximum building height is 90 feet. Approximately 56,419 square feet of GFA will be devoted to residential uses and 3,825 square feet of GFA will be devoted to PDR uses. The penthouse will include an additional 2,035 square feet of GFA devoted to residential uses, approximately 350 square feet of GFA for community space, and 675 square feet of GFA for mechanical purposes. The two-story penthouse will be 18.5 feet in height for the mechanical portion; the habitable portion will be 12 feet in height.

30. The PUD is a high-quality contextual design that fits comfortably within the industrial-residential character of the NoMA neighborhood. The existing buildings will be demolished to accommodate the new residential building with PDR uses. The main entrance to the residential portion of the building will be on Congress Street. The east-west alley off of Congress Street, which bisects the site, will be closed and a new public access easement will be created at the north end of the PUD Site. The design of the building features a curved façade at L Street, which visually draws the eye into narrow Congress Street and the main entrance of the building. The ground-floor level of the building is designed as a rectangular block that anchors the residential floors above. The primary materials of the building are brick and metal panels. The significant grade change from L Street to the northern end of Congress Street allows for a gracious double-height lobby. The PDR uses are located on either side of the lobby. The Project is designed to meet a LEED-Gold equivalent standard.
31. As originally designed, the PUD proposed a below-grade parking garage accessed through the existing L Street curb cut. Sixteen parking spaces were located on either side of a central aisle; whereas, 21 parking spaces were required for the number of units provided. This garage layout dictated the location of the structural columns and elevator core, and a design that required additional zoning relief. In addition to parking relief, the Applicant sought relief from the penthouse setback requirements, lot occupancy, and court requirements. The Applicant also sought relief from the loading provisions.
32. At the request of DDOT, the Applicant redesigned the building to eliminate the curb cut at L Street. Because of the 10-foot grade change and shallow depth of the PUD Site, the Applicant could no longer provide a below-grade garage. The number of parking spaces was reduced to six at the rear of the building and loading facilities were shifted to the street. The new building configuration, however, eliminated the need for relief from the penthouse setback and lot occupancy provisions.
33. The Applicant made further changes to the building design at the request of ANC 6C. The east wall at the southern portion of the PUD Site originally abutted the property line, resulting in a blank wall without windows. The ANC requested the Applicant to enhance the articulation of that elevation, given its visibility in the community. In order to accommodate this request, the Applicant negotiated a reciprocal easement with the adjacent property owner whereby each owner agreed to set back its building five feet, creating a total building separation of ten feet. This separation would meet the necessary fire-rated distance between buildings to allow openings along the lot line. The Applicant then redesigned this elevation to incorporate windows to ensure an attractive view from the street and adjacent properties.
34. The Project will exceed the IZ requirements for the C-2-B Zone District. Chapter 26 of the Zoning Regulations provides that any new development in the C-2-B Zone District with 10 or more units must set aside eight percent of the residential GFA for households earning no more than 80% of the AMI for the Washington Metropolitan area. As shown in the revised plans submitted April 10, 2017, the Applicant proposes to set aside at least 12% of the residential GFA as IZ units. Four percent of the residential GFA

(approximately 1,815 square feet or approximately three one-bedroom units) will be set aside for households earning no more than 80% of AMI, which will be located within the PUD. Another eight percent of the residential GFA (approximately 4,500 square feet or approximately five two-bedroom units) will be set aside for households earning no more than 50% of AMI at an off-site location.

35. The Applicant entered into a Memorandum of Understanding ("MOU") with D.C. Habitat for Humanity ("D.C. Habitat") to assist in the construction of five residential units, each with an average size of 900 net square feet and an average of two bedrooms. Both D.C. Habitat and the Applicant intend to build larger, three-bedroom units, if possible, and are investigating sites that can maximize the number of bedrooms and the square footage of the units. The off-site units would be either single-family dwellings or flats. The Applicant will make a contribution of at least \$125,000 for each of those five units, or a total of at least \$625,000. The proposed off-site units will be located within Ward 6 or Ward 5, and will be made available to households earning no more than 50% of AMI. This is a substantial increase over the Applicant's initial submission and the minimum IZ set-aside requirement, which would only produce approximately 3,708 square feet (including habitable penthouse space), devoted to households earning no more than 80% AMI. The off-site units would be located in ANC 6C, 6A, 6E, 5D, or 5E to ensure that affordable units would be interspersed with market-rate housing to avoid an over concentration of IZ units in any one location, consistent with spirit and intent of 11 DCMR § 2605.6. The 1,815 square feet on site and 1,893 square feet off site will satisfy the minimum IZ set aside requirement of eight percent of the PUD building and the habitable penthouse. The remaining affordable housing proffer of approximately 2,607 square feet will be governed by restrictive covenants with D.C. Habitat.
36. Because the Applicant's project is not financially viable if the entire IZ requirement reverts back to the PUD site, the Applicant and D.C. Habitat have agreed to the following benchmarks to ensure that the off-site affordable units will be constructed prior to the issuance of the certificate of occupancy for the PUD: (a) the Applicant will pay \$625,000 to D.C. Habitat no later than October 31, 2017; (b) DC Habitat will have the off-site housing location(s) under its control prior to the issuance of the PUD building permit, which the Applicant anticipates can be issued by the end of March 2018; and (c) the off-site housing units will be completed and available for occupancy prior to the issuance of the PUD certificate of occupancy. In the event this last benchmark is not achievable, the Applicant will return to the Commission for a modification of the PUD Order.
37. The increased amount and deeper affordability levels for the affordable housing proffer were a direct result of the Commission's comments. The following chart summarizes the increase in affordable housing produced as a result of this PUD and at the encouragement of the Commission:



	Min. IZ Requirement	Jan. 12, 2017 Proffer	Current Revised Proffer
Total PUD Residential (incl. PH)	46,344 sf	46,344 sf	46,344 sf
Required IZ @ 8% GFA	3,708 sf	3,708 sf	3,708 sf
Provided @ 80% AMI	3,501 sf	2,813 sf	1,815 sf on-site (1/2 of req. IZ)
Provided @ 50% AMI (PH req.)			
On-Site	207 sf	2,845 sf	--
Off-Site IZ	--	--	1,893 sf (incl. PH)
Off-Site Add'l Proffer	--	--	2,607 sf
Total Affordable sf	3,708 sf	5,658 sf	6,315 sf
Percentage of GFA	8%	12% of GFA	13.6% GFA
Increase in 50% AMI sf	---	13 times	21.7 times
Average Unit Size On-Site		680 sf	605 sf
One bedroom		5	3
One bedroom plus den	N/A	1	0
Two bedrooms		1	0
Average Unit Size Off-Site			900 sf (min)
One bedroom	---	---	0
One bedroom plus den	---	---	0
Two bedrooms	---	---	5

### **Zoning Flexibility**

38. The Applicant requested the following areas of flexibility from the Zoning Regulations:

- a. Land Area Requirement for a PUD. The minimum land area requirement for a PUD in the C-2-B Zone District requires 15,000 square feet. (11 DCMR § 2301.1(c).) At 10,124 square feet of land area, including 612 square feet from the alley to be closed, the PUD site is less than the required amount. However, the Commission may waive up to 50% of the area requirement provided that the Commission finds after public hearing that the development is of exceptional merit and in the best interest of the city or country. (11 DCMR § 2401.2.) Here, the proposed redevelopment of the Property is of exceptional merit and in the best interest of the city because it will result in the transformation of an underutilized and partially vacant site in an emerging section of the District into an exemplary infill development just two blocks from the NoMA-Gallaudet Metrorail Station. In addition, although the proposed PUD is not located within the Central Employment Area, over 90% of the gross floor area of the development will be used exclusively for dwelling units and uses accessory thereto; (11 DCMR § 2401.2(b).)
- b. Off-Street Parking Requirements. Apartment buildings in the C-2-B Zone District require one parking space for every three residential units. With 64 units, the PUD generates a residential parking requirement of 21 spaces. For the PDR uses proposed for the site, which are most closely defined as retail and service uses, one parking space is required for every 750 square feet of space after the first 3,000 square feet. Because the PDR space will have only 3,825 square feet of space, no parking spaces are required for the PDR uses. The Applicant initially proposed to

provide 16 residential parking spaces in a below-grade garage. That number was subsequently reduced to six at-grade spaces, where 21 are required for the residential uses. This further reduction in the number of parking spaces was the result of guidance from DDOT and the ANC, both of which directed the Applicant to eliminate the curb cut on L Street. Because of the 10-foot grade difference and the irregular configuration of the PUD site, the Applicant cannot create a below-grade garage off of Congress Street, while also maintaining the ground-floor PDR uses. Given the close proximity of the NoMA-Gallaudet Metrorail Stations, the flexibility can be granted without generating any adverse effects. The Commission takes note that under the 2016 Zoning Regulations, the parking requirement would be reduced to 13 spaces due to the proximity to Metro;

- c. Off-Street Loading Requirements. The Applicant also seeks relief from the loading requirements for the residential uses in the Project. Buildings with 50 units or more must provide one loading berth at 55 feet deep, and a 20-foot service platform. Here, in coordination with DDOT, the Applicant will provide an on-street loading zone on Congress Street for the residential uses and an on-street loading zone at L Street for the PDR uses. DDOT recommended these off-site locations to eliminate any back-out maneuvers across the sidewalks, creating conflicts with pedestrians and vehicles. Residential turnover after initial occupancy is anticipated to be six units annually, generating a very limited need for Congress Street loading area. Trash receptacles for the building will be wheeled out to the street on collection days to avoid pedestrian conflicts. These factors all support the granting of the relief;
- d. Minimum Width Requirements for an Open Court. Section 776 of the Zoning Regulations provides that when an open court is provided for a building, it must be four inches wide for every foot of height, as measured from the lowest level of the court. Here, the PUD provides one open court at L Street, generating a width requirement of approximately 30 feet. The Applicant requests flexibility to provide a width of five feet. The Applicant previously had presented a design that complied with the court requirement at this location. At the request of the ANC, however, the Applicant set the building five feet back from the property line in order to eliminate the blank wall and articulated the elevation with windows. The benefits of five-foot court width far outweigh the purpose of the minimum dimension requirement, and the relief can be granted without any adverse effects;
- e. Rear Yard Requirement. The Applicant also seeks relief from the minimum rear yard depth. In the C-2-B Zone District, the minimum required rear yard is 15 feet. When a building abuts an alley, the rear yard below a horizontal plane of 20 feet may be measured from the center line of the alley. Here, the property abuts an 8.71-foot-wide alley at the rear, and the building is set back from the rear property line approximately five feet, three inches. Below a 20-foot horizontal plane, the rear yard is only nine feet, seven inches deep; above the 20-foot plane, the rear yard is only five feet, three inches. The Applicant seeks flexibility to provide a rear yard with less than the minimum depth of 15 feet. The flexibility is

necessary given the shallow depth of the site and the need to provide a double-loaded corridor in the building. The only portion of the site that is wide enough for an efficient double-loaded corridor is the north half. Even that portion, however, is not wide enough to provide a reasonable dwelling unit depth on both the east and west sides of the building and provide a compliant rear yard. An ideal dwelling unit depth is between 28 to 32 feet from exterior wall to corridor wall. This depth allows a living room at the exterior window wall at approximately 18 to 21 feet deep. The kitchen with a typical depth of nine to 11 feet would be “inboard” to the living room. Here, the proposed PUD only provides a depth of 23 feet with rear yard relief. If the Applicant were to provide a compliant 15-foot rear yard, the dwelling unit depth would only be 17 feet, 10 inches. While it is possible to have a dwelling unit work in that depth as a unique layout, it would be a burden to have all of the dwelling units that shallow. A unit depth of less than 18 feet would not compete with market-rate units in the area and would not financially support the PUD Project amenities and public benefits. Thus, rear yard relief is necessary; and

f. Off-site IZ Requirements. In order to achieve the superior affordable housing proffer described above, the Applicant seeks flexibility from the off-site IZ requirements without meeting certain pre-requisites of 11 DCMR § 2607, as follows:

- Section 2607.1 – the Applicant will not be required to demonstrate that compliance on-site would impose an economic hardship;
- Section 2607.2(a) – the off-site development will not need to be located in the same census tract;
- Section 2607.2(b) – the off-site units may not consist entirely of new construction as required by § 2607.2(b), but may also include the renovation of an existing structure;
- Section 2607.5 – the Applicant will not be required to submit a draft covenant executed by the off-site development owner as part of the PUD application. The Applicant will however be required to record a covenant in the land records of the District of Columbia between the owner of the off-site development and the Mayor, found legally sufficient by the Office of the Attorney General, and provide evidence to the Zoning Administrator that it has done so prior to the issuance of a certificate of occupancy for this project;
- Section 2607.9 – the Applicant will provide the IZ unit generated by the penthouse square footage in the off-site development instead of on the PUD site. The penthouse generates only 207.2 square feet of IZ space, which is to be devoted to a household earning no more than 50% of AMI. Because this small amount of space is less than what is required for a

housing unit, the Applicant proposes to consolidate this square footage in the off-site development; and

- The off-site units will not be included in the off-site development's calculations for IZ compliance. That is, the five off-site IZ units will be subtracted from the overall unit count of the off-site development. For example, if the proposed off-site development will have 10 units, the development would be considered to have just five units and would not trigger IZ.

### **Other Minor Flexibility**

39. The Applicant also requested flexibility in the following additional areas:

- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and electrical transformers, provided that the variations do not change the exterior configuration of the building;
- b. To vary the number, location and arrangement of parking spaces for the Project, provided that the total parking is not reduced below the minimum level required under the PUD Order; and
- c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code, or that are otherwise necessary to obtain a final building permit.

### **Project Benefits and Amenities**

40. Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a)). The single largest benefit to the area and the city as a whole is the creation of new residential development just blocks from the NoMA-Gallaudet Metrorail Station with a design that reflects the industrial history of the area and its emergence as a community within the Central Employment Area. Nelson Architects has designed a project that skillfully blends a contemporary residential vocabulary with an Art Deco idiom reflective of the Woodward & Lothrop Warehouse just east of the railroad tracks. The Congress Street façade is punctuated with a regular pattern of windows, with the verticality of the building emphasized by vertical brick piers, not unlike the Woodies Warehouse. The curved vertical façade of the L Street elevation pays subtle homage to the barrel-vaulted roof of the landmark Uline Arena immediately to the north. Like the surrounding light industrial buildings in the immediate vicinity, including Uline, the new residential Project is clad in brick but injects modern references through its use of metal panels and glass. The first

floor and partially exposed lower level serve as a podium for the residential floors above, and differentiate the ground-floor PDR uses accessed at street level. The design of the building responds well to its location on this half-block portion of Congress Street. The Applicant proposes to improve the streetscape of this small, narrow roadway to enhance the overall pedestrian experience and public safety, particularly for residents of the new residential building. The proposed Project exceeds what can otherwise be achieved on the site under the matter-of-right zoning. The design employs high-quality finishes and amenities that significantly increase the cost of the building over what would normally be achieved under a matter-of-right project in the C-M-1 or C-2-B Zone Districts. The PUD also successfully blends housing with low-impact PDR uses on the ground floor in order to maintain the sense of the area's industrial heritage, as encouraged by the Comprehensive Plan. The Central Washington Policy governing the area east of the railroad tracks indicates that the striping on the Future Land Use Map in NoMA for mixed PDR/residential uses suggests sequential uses, when market conditions can support the transition from PDR uses to residential or other commercial uses. Here, the Applicant has successfully blended the uses in one location, ensuring the continuation of area's industrial quality.

41. Housing and Affordable Housing (11 DCMR § 2403.9(f)). The PUD will add to the District's market-rate and affordable housing stock as contemplated under the PUD regulations and the Comprehensive Plan. The Project will set aside at least 12% of the residential square footage to for-sale affordable housing, with at least eight percent of that square footage devoted to households earning no more than 50% of AMI. The remaining four percent would be set aside for households earning no more than 80% of AMI. The 50% AMI units would be located off site, would have an average size of 900 square feet each and an average of two bedrooms, and would be constructed as single-family houses or flats. Approximately 1,815 square feet of the on-site units and 1,893 square feet of the off-site housing (3,708 square feet GFA total) will satisfy the minimum IZ set aside requirement of eight percent of the PUD residential space and the habitable penthouse. The remaining affordable housing proffer of approximately 2,607 square feet will be governed by restrictive covenants with D.C. Habitat. This provision of affordable housing significantly exceeds the eight percent requirement in the IZ regulations, and offers deeper affordability than what would otherwise be achievable in a matter-of-right project.
42. Environmental Benefits (11 DCMR § 2403.9(h)). The Project will be designed to a LEED-Gold standard. Among some of the qualifying features are: high performance envelope; glazing and mechanical system designed to reduce energy use; bike storage; a green roof with native and adapted vegetation, with low water using irrigation; stormwater capture and reuse; recycled and/or salvaged construction waste; and recycled building materials.
43. Transportation Benefits (11 DCMR § 2403.9(c)).
  - a. Alley Circulation and Improvements. The proposed PUD will greatly enhance alley circulation within the square through a new access easement at the north end

of the site. Currently, the PUD site is bisected at the south by a substandard alley only nine feet in width. It leads to a narrower north-south alley only 8.71 feet wide, which separates the Project from the seven rowhouses fronting on Third Street, N.W. In order to provide efficient trash storage and loading facilities for the new building, the Applicant proposes to close the east-west alley to the south and dedicate an access easement at the north end of the site to connect with the 8.71-foot-wide alley to the east. As part of the alley dedication process, the Applicant will clean and improve the 8.71-foot-wide alley to the east and proposes to repave it with impervious pavers, if approved by DDOT;

- b. Capital Bikeshare Station. At the request of the ANC, and in coordination with DDOT, the Applicant will fund the installation of and one year of maintenance for a 19-dock Capital Bikeshare Station at the northeast corner of 3<sup>rd</sup> and L Streets, N.E., with the consent of the owner of the adjacent rental apartment building at that corner. Based on discussions between the Applicant and the ANC, this site was determined to be the most advantageous location because it would be more accessible to the area residents than if located at the PUD site, thereby providing the greatest benefit to the community at large; and
- c. Transportation Demand Management (“TDM”) Measures. The PUD will also provide transportation demand management measures to encourage the use of public transit by building occupants. The site is advantageously situated just two blocks south of the NoMA-Gallaudet Metrorail Station and is well-served by Metrobus lines. The Applicant will implement the following transportation demand management measures at the PUD:
  - i. Resident Transportation Coordinator: The Applicant's site management will designate one employee as the Resident Transportation Coordinator ("RTC"). This person's duties would principally be to provide information to residents (particularly those incoming) regarding transit opportunities and schedules, and the location of bike share stations within the area, and bicycle parking provisions within the building. The RTC will encourage non-private auto usage and will have related information prominently displayed in the lobby, community rooms, and other appropriate common space;
  - ii. Digital Multimodal Display: The Applicant will install a digital multimodal display in the lobby of the residential building that provides schedule information of Metrobus and Metrorail, and locations of bike share and carshare stations, among other transportation related information;
  - iii. Bicycle Usage Program: The Applicant will provide 22 bicycle spaces inside the building with a bike repair station. Additionally, the Applicant will install five racks for 10 bicycles in the public space on L Street. Additionally, the Applicant will provide a one-time annual membership

fee for a bikeshare program for each initial tenant of the residential units;  
and

- iv. Transit Subsidies. The Applicant will offer a one-time \$50.00 transit fare card to each initial residential tenant and employee in the building to encourage non-auto mode usage.
44. Uses of Special Value to the Neighborhood and the District (11 DCMR § 2403.9(i)). The Applicant will provide a \$10,000 contribution to the Friends of NoMA Dogs, Inc. (“FOND”) for operating expenses to maintain and improve the dog park at 3<sup>rd</sup> and L Streets, N.E., and potential future proposed dog parks in the NoMA area such as at the future NoMA Green bounded by Harry Thomas Way, N.E., and the Metro Branch Trail. The covered expenses would include, among other things, supplying waste disposal bags, sanitary spray supplies, and other services to improve and maintain the dog park. The contribution would be contingent upon FOND executing and having in place at the time of the donation a Dog Park Partner Cooperative Agreement (or equivalent) with the D.C. Department of Parks and Recreation for every dog park where the funds would be used.
  45. PDR Uses. The Applicant will promote “maker” uses to support the PDR designation on the Future Land Use Map of the Comprehensive Plan. The PDR uses required on the site may include the following:
    - a. Production, distribution or repair of goods including accessory sale of related products;
    - b. Uses encompassed within the Arts, Design, and Creation use category in 11 DCMR § 100.2, but not including a museum, theater, or gallery as a principal use;
    - c. Production and/or distribution of food or beverages and the accessory sale or on-site consumption of the related food and beverage, including Union Kitchen;
    - d. Design-related uses, including media/communications; computer system and software design; fashion design; graphic design; or product and industrial design;
    - e. An urgent care center;
    - f. A neighborhood hardware and/or paint store; or
    - g. A package distribution center.

### **Comprehensive Plan**

46. The Future Land Use Map of the Comprehensive Plan designates the Property for Medium-Density Residential and PDR land uses. The proposed development is consistent with that designation. The Property is designated as a Land Use Change Area on the District of Columbia Comprehensive Plan Generalized Policy Map. The proposed

development furthers numerous policies and objectives of the Comprehensive Plan, as discussed below.

#### Land Use Element

47. **Policy LU-3.1.1: Conservation of Industrial Land.** The proposed PUD promotes this land use policy through a commitment to provide PDR uses in the building. Approximately 3,700 square feet of space will be devoted to PDR uses, which might include an urgent care center, a small neighborhood hardware and/or paint store, a package distribution center (i.e., FedEx), and possible relocation of certain function of Union Kitchen, which is located on the west side of Congress Street, N.E.
48. **Policy LU-3.1.3: Location of PDR Areas.** The proposed PUD uses have been carefully selected to focus on the less intensive PDR uses and their retail components so that they will blend well with residential uses.
49. **Policy LU-3.1.4: Rezoning of Industrial Areas.** The proposed PUD is located in a land use change area on the Generalized Policy Map and is designated for both residential and PDR uses. As such, the Applicant is proposing the least intrusive type of PDR uses on the site in order to ensure compatibility with the residential uses contemplated for the upper floors. The PUD site is a small one located adjacent to a stable residential neighborhood across Third Street to the east, and thus its rezoning from C-M-1 to C-2-B through the PUD process is an appropriate mechanism to protect both PDR uses and nearby stable residential uses, in furtherance of this policy.
50. **Policy LU-3.1.5: Mitigating Industrial Land Use Impacts.** The proposed PUD will fulfill this policy goal by selecting low-impact PDR uses that will blend well with the surrounding neighborhood and meet the needs of residents all while preserving some PDR uses in the area.
51. **Action LU-3.1.A: Industrial Zoning Use Changes.** The proposed PUD will meet this action plan by selecting low-impact PDR uses that will blend well with the proposed residential uses in the building.

#### Transportation Element

52. **Action T-2.3.A: Bicycle Facilities.** Although this PUD is not a large residential Project, it will nevertheless provide five racks for ten bicycles in public space on L Street and fund a 19-dock Capital Bikeshare Station at 3<sup>rd</sup> and L Streets, N.E.
53. **Policy T-2.4.1 and T-2.4.2: Pedestrian Network and Sidewalks.** In fulfillment of this goal and action item, the Applicant will undertake streetscape improvements to Congress Street to make it more inviting to pedestrians. New lighting, paving, and greenery will help create a unique character to this narrow roadway that has historically functioned more as an alley than a street. It is envisioned to have an urbane, industrial and yet residential quality to it.



### Housing Element

54. **Policy H-1.1.1: Private Sector Support.** As a private developer, the Applicant will help meet this housing goal by providing new housing at a location specifically designated for residential and PDR uses.
55. **Policy H-1.1.6: Housing in the Central City.** The PUD site is located in the Central Washington area and will provide new medium-density housing on an underutilized site, in fulfillment of this housing goal. It will mix residential uses with PDR retail/service uses, thereby contributing to the vibrancy of this segment the area.
56. **Policy H-1.2.7: Density Bonuses for Affordable Housing.** Affordable housing is specifically encouraged by providing zoning incentives to developers to build low- and moderate-income housing. The Applicant will provide 12% affordable housing, which exceeds the required eight percent, in return for an increased density of 6.0 FAR and a height of 90 feet.

### Central Washington Element

57. **Policy CW-2.8.1: NoMA Land Use Mix.** The proposed PUD will help achieve this goal by providing a mixed-use building that includes residential and PDR uses. The Project will include affordable housing, ensuring that a range of households is served in this segment of the NoMA neighborhood.
58. **Policy CW-2.8.2: East of the Tracks and Eckington Place Transition Areas.** As described in this policy, the PUD site is shown as “mixed use production distribution repair/residential uses” on the Future Land Use Map. In order to accommodate these seemingly conflicting uses, the Applicant proposes to provide low-impact PDR retail/service uses in the base podium of the building with residential units above. In so doing, the Project accomplishes the balance of industrial and residential uses described in this policy, without resorting to large- scale commercial development on the site.
59. **Policy CW-2.8.5: NoMA Architectural Design.** The design of the building skillfully blends a contemporary residential vocabulary with an Art Deco idiom that is reflective of the unique character of NoMA’s industrial heritage. The Congress Street façade is punctuated with a regular pattern of windows, with the verticality of the building emphasized with vertical brick piers not unlike the Woodies Warehouse just west of the railroad tracks. The curved vertical façade of the L Street elevation pays subtle homage to the barrel-vaulted roof of the landmark Uline Arena immediately to the north. Like the surrounding light industrial buildings in the immediate vicinity, including Uline, the new Project is clad in brick but injects modern references through its use of metal panels and glass.

NoMa Small Area Plan

60. The NoMA Vision Plan and Development Strategy is a Council-adopted small area plan that applies to the PUD site. Small area plans are not part of the Comprehensive Plan but are intended to supplement it by providing detailed direction for certain areas of the city. Because small area plans are adopted by legislation, they become part of the D.C. Municipal regulations. (See 10-A DCMR § 104.8.) The NoMA Plan envisions the creation of a new high-density mixed-use, highly walkable, and environmentally advanced neighborhood. Inclusion of significant levels of new housing and retail, and the creation of pedestrian friendly streets are all components of the NoMA Plan, in addition to encouraging creative industries. The Project fulfills many elements of the NoMA Plan.
61. ***Mixed-Use District with Creative Industries: Uline Arena & Plaza as Neighborhood Anchor.*** The proposed PUD is located in a designated change area that will provide a unique mix of residential and low-impact PDR uses in a new infill building that will provide a graceful transition between the Florida Avenue Market and existing residential areas. Residents of this new Project could help support the vision for a live-work district that takes advantage of proximity to the Metrorail Station. Located adjacent to the railroad tracks, the Project will achieve higher density as envisioned in the NoMA Plan development guidelines, while transitioning down to the smaller-scale rowhouses to the east.
62. ***East of the Tracks:*** The proposed Project is located east of the tracks and will reinforce the residential character of the nearby neighborhood by providing approximately 56,000 square feet of new market-rate and affordable housing in the NoMA community. Only a small portion of the Project – approximately 3,800 square feet – will be devoted to low-impact PDR uses, thereby respecting the residential quality of the NoMA neighborhood east of the tracks.
63. ***A Diverse Mix of Housing:*** The proposed PUD will provide multi-family units to a neighborhood east of the tracks predominated by single-family rowhouses, thereby added to a diverse mix of housing in support of the NoMA Vision Plan. Both market-rate and affordable units will be incorporated into the Project, ensuring that a range of households is served by the new development.
64. ***Increasing Walking, Biking, and Transit Usage.*** The proposed PUD takes advantage of its proximity to Metrorail and promotes walking, biking and transit usage through several mechanisms. First, it provides ample bike storage for residents and visitors. Second, it will provide transit subsidies to first-time residents/tenants of the building to ensure transit over private vehicle usage. The public realm along Congress Street will be enhanced to create a safe, attractive, and inviting pedestrian experience to encourage walking and biking.
65. ***Identity and Building Design; Create Identity & Market Strength through Innovative, Contemporary Architecture.*** The design of the new PUD is an infill development

inspired by the area's industrial heritage through a use of historic brick materials and mixed modern metal and glass panels, to create a contemporary architectural statement. As noted above, the curved wall of the L Street façade evokes the barrel-vaulted roof of the Uline Arena, creating a comfortable sense of place along Congress Street and reinforcing the dominant feature of the nearby landmark.

66. ***Ground-Floor Design Excellence.*** The street elevations of the PUD Project have been attractively designed for low-impact PDR retail/service uses. The 10-foot grade differential on the site allows for ample exposure of these ground-floor uses, creating a pedestrian-friendly retail environment.
67. ***Environment & Sustainability.*** The PUD Project has been designed to achieve a LEED-Gold rating and includes many environmentally sustainable features, including water-efficient landscaping, measures to reduce heat-island effect, stormwater management elements, a green roof to lower energy costs and reduce impervious surface runoff, and other sustainable construction practices.

### **Office of Planning Reports**

68. On July 15, 2016, OP submitted a report recommending setdown of the application. (Ex. 15.) OP 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. OP noted that it would work with the Applicant to ensure that the additional information listed on page one of its report would be submitted prior to the public hearing.
69. OP submitted a hearing report on November 14, 2016, finding that the proposed PUD is not generally inconsistent with the Comprehensive Plan. While OP stated its support of the redevelopment, it indicated that it was unable to make a recommendation pending receipt of additional information, including renderings and clarification of the PDR uses, a First Source Employment Agreement as a proffered benefit, further explanation of the zoning relief requested, and information on parking access, loading, trash removal, and the location of Pepco vaults for the Project.
70. OP submitted a supplemental hearing report recommending approval of the applications. (Ex. 31.) OP stated that the additional submissions by the Applicant adequately addressed many of the Commission's and OP's concerns raised to date. (Ex. 27-29.) OP requested further clarification on the Project's consistency with the Comprehensive Plan, augmentation of the affordable housing proffer, and additional justification of the relief requested. The Applicant satisfied that request through evidence and testimony at the hearing, and through post-hearing submissions. Overall, OP determined that the proposal would also further many goals and objectives of the written elements of the Comprehensive Plan, which further support the proposed building design, massing, and use mix.

71. On April 13, 2017, OP submitted a final supplemental report regarding the Applicant's updated housing proffer. (Ex. 49.) OP supported the Applicant's revised proffer, with the following additional conditions:
- a. The off-site affordable housing units, whether IZ, penthouse-related or proffered additional units, will be single-family residences or flats; and
  - b. The off-site affordable units shall be located in Ward 5 or Ward 6, with a preference given to a location within one mile of the PUD site. If the units are located within ANC 6C, 6A, 6E, 5D, or 5E, there would be no need to return to the Commission for further approval. However, if the units are located in ANCs other than those listed herein, the Applicant must return to the Commission as a consent calendar item for consideration of the location to ensure there is no over-concentration of affordable units in the proposed vicinity.

### **DDOT Report**

72. DDOT submitted a report to the record dated November 14, 2017, stating it had no objection to the requested PUD approval, provided the Applicant implemented several traffic and transportation measures: (a) funding installation of and one-year operation/maintenance costs for a Capital Bikeshare Station; (b) installation of 10 short-term bicycle spaces in the public space; (c) inclusion of a bicycle repair station in the building; (d) providing each unit's incoming residents a one-year membership to Capital Bikeshare or a carshare membership for the first year following the issuance of the Certificate of Occupancy for the building; (e) providing a one-time \$50 SmarTrip card to each initial residential tenant and employee in the building; (f) installation of a digital multimodal display in the residential lobby; (g) identifying a Resident TDM Coordinator for the building; (h) providing TDM materials to new residents in the residential welcome package materials; and (i) implementing a DDOT-approved loading management plan for residential move-ins, move-outs, and trash collection. (Ex. 26.) The Applicant agreed to these conditions.

### **ANC Report**

73. On October 13, 2016, at a duly noticed, regularly scheduled monthly meeting, ANC 6C voted unanimously (4-0) to support the application with conditions. The ANC requested that the Applicant remove the existing L Street curb cut and garage/parking entrance; relocate of the new alley entrance to the northern-most portion of the site; eliminate the below-grade parking and replace it with six at-grade spaces adjacent to the alley; and add windows to the formerly blank east wall. The Applicant adopted these recommended changes. The ANC also requested enhanced amenities to include funding a bike share station at 3<sup>rd</sup> and L Streets, N.E., and donating \$10,000 to the 501(c)(3) overseeing the operation of the public dog park across L Street. The Applicant added these community benefits to its application.

## Contested Issues

74. The Third Street Neighbors (“Neighbors”), represented by Mr. Fred Irby, submitted evidence to the record and testified in opposition to the application at the hearing. The Third Street Neighbors were comprised of five of the seven rowhouse owners directly east of the proposed PUD. In addition to Mr. Irby (who owns 1114 3<sup>rd</sup> Street, N.E. and controls 1112 3<sup>rd</sup> Street, N.E., through the 1112 3<sup>rd</sup> Street, LLC), the Neighbors included three other homeowners: Ms. Arita Brown Johnson at 1108 3<sup>rd</sup> Street, N.E., Ms. Roxanne Scott at 1110 3<sup>rd</sup> Street, N.E. (a property under contract for sale; see 1/4/2017 Transcript [“Tr.”] at 14-15), and Ms. Helen Darden at 1116 3<sup>rd</sup> Street, N.E. Subsequently, two of those four homeowners – Ms. Darden and Ms. Arita Brown Johnson– submitted letters in support of the PUD Project. (Ex. 33, 40). The remaining neighbor raised concerns about the allowable building height, relief on minimum size of the PUD, and the use change and alley relocation. Individually, Mr. Irby also raised concerns about the effect of the PUD on the solar panels installed on his house. At the hearing, Mr. Irby argued that the Project’s proposed height of 90 feet is more than twice the permitted height under the current zoning, and almost four times the height of the adjacent rowhouses. He noted that other buildings on Congress Street to the west all complied with the C-M-1 Zone District height and use categories, and also cited the redevelopment of the adjacent Uline Arena in a manner generally consistent with its C-M-3 zoning. Mr. Irby stated that the overall size and scale of the PUD Project would significantly and adversely affect his home with respect to light and air.
75. The Applicant responded with information addressing support for the 90-foot height under the Comprehensive Plan and the PUD regulations. The Applicant noted that although the proposed C-2-B Zone District is not specifically listed among the corresponding land use categories for the PUD site’s listed designations, the C-2-B Zone District is not inconsistent with the Future Land Use Map (“FLUM”). It stated that, through the PUD process, the C-2-B zoning will allow the same height and density permitted as a matter-of-right under the M Zone District, one of the specifically listed categories for the PDR striping on the Comprehensive Plan. The M Zone District, however, would not allow any housing and would potentially create significant adverse impacts to adjacent residential properties. Here, the Applicant noted that rezoning the property to the C-2-B Zone District through the PUD process will allow compatible residential uses while also allowing greater height and density in exchange for a commendable number or quality of public benefits. (11 DCMR § 2400.2.) The Applicant further cited the Comprehensive Plan, which specifically notes that the granting of density bonuses (for example, through PUDs) may result in heights that exceed the typical ranges under matter-of-right zoning. (10-A DCMR § 226.1(c).) The zoning of any given area should be guided by the FLUM, 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).) Thus, applying this analysis to the Applicant’s Project, the proposed map amendment to the C-2-B Zone District is not inconsistent with the FLUM.

76. The issue of increased height is perhaps the most challenging for the Commission. On one hand, the Comprehensive Plan and PUD regulations encourages the construction of high-quality developments through height and density incentives. On the other hand, the Commission is also charged with protecting existing residential uses. (10A DCMR § 1618.12.) Here, the Commission has carefully considered these competing interests and finds that, based on the particular circumstances of this case, the proposed height of 90 feet is appropriate.
77. First, the PUD regulations specifically state that additional height and density may be appropriate when, on balance, the proposed public benefits and amenities achieved are commendable in nature and commensurate with the flexibility sought. (11 DCMR § 2400.2.) The proposed PUD provides an extensive and commendable number of public benefits and amenities, including: housing and affordable housing; attractive, high-quality architecture; a LEED-Gold design; a reconfigured and enhanced alley system; as well as other benefits of special value to the neighborhood. The increased affordable housing proffer for household earning no more than 50% of AMI is particularly compelling.
78. Second, the Comprehensive Plan also directly encourages the use of zoning incentives for additional height and density to encourage increased affordable housing. (10A DCMR § 504.14.) The Applicant specifically increased the amount and depth of its affordable housing proffer to 12%, with half the space set aside for low-income families, in exchange for the proposed height of 90 feet.
79. Third, the FLUM designates the rowhouses on the west side of 3<sup>rd</sup> Street for the same increased density and use changes as the PUD Site, while the Generalized Policy Map identifies them as part of a land use change area. In contrast, the rowhouses on the east side of 3<sup>rd</sup> Street are designated for moderate-density residential uses and are identified on the Generalized Policy Map as a neighborhood conservation area. Further, because the FLUM is not site-specific zoning, the proposed PUD and related map amendment should be viewed in the context of the surrounding neighborhood, which is part of a rapidly changing area that is expanding and growing taller with new development. To the south and north are new residential buildings 90 to 120 feet in height. Across the railroad tracks to the west are new commercial and residential buildings up to 130 feet in height. The proposed 6.0 FAR and 90-foot height is consistent with the amount of density permitted in medium density commercial zones. For example, the C-2-C Zone District is a medium-density district that permits 6.0 FAR for residential uses, and up to 7.2 FAR with IZ. Significantly, residential uses are not permitted in the CM and M Zone Districts, rendering the houses in the adjacent C-M-1 Zone District lawfully existing, non-conforming uses
80. Fourth, the NoMA Plan directs that the greatest height and density be located near the NoMA metro station, and along the rail tracks, Florida Avenue and N Street, N.E. Here, recent projects in the area have been approved with heights of 110-120 feet along the railroad tracks, this Project would step the height down to 90 feet, a further transition is permitted on the west side of 3<sup>rd</sup> Street, finally leading to moderate-density residential uses on the east side of 3<sup>rd</sup> Street, N.E.

81. With respect to the alley reconfiguration and enhancements, the Applicant provided information on how the improvements would allow vehicular access to the rear of the Third Street rowhouses, which is currently not possible given the narrowness of the alley off of Congress Street. Mr. Irby nevertheless expressed reservations about the ability of the Neighbors to use the public access easement to be dedicated through alley closing legislation. In response, the Applicant provided Mr. Irby a copy of a recorded alley closing covenant for another project, which demonstrated that a public access easement is permanently dedicated for the convenience of owners within the square and the public, in general. (Ex. 38.)
82. The Commission finds that the reconfiguration of and improvements to the alley system will only benefit the Third Street Neighbors. Based on testimony and evidence at the hearing, the neighbors will have for the first time vehicular access to the rear of the properties. As Mr. Irby testified, currently he can only get a small truck to the end of the east-west alley; a telephone pole at the corner of the alley prevents a vehicle from turning north. The new, wider public access easement at the north will now allow vehicles to make that turn. Additionally, the weeds and overgrowth that now obstruct the north-south alley will be removed and new impervious pavers will allow the Third Street Neighbors easy vehicular access to the rear of their properties for the first time.
83. With respect to waiver of the minimum PUD land area for the C-2-B Zone District, the Commission finds that the development is of exceptional merit and in the best interest of the city. (11 DCMR § 2401.2.) The Project exhibits a high quality architectural design, site improvements, and other commendable benefits of the Project described herein that meet the test of exceptional merit. The Commission further finds that because the Project site falls within the Central Employment Area, the provisions of 11 DCMR § 2401.2(b) do not apply.
84. Finally, the Commission addresses the impact to the efficiency of Mr. Irby's solar panels. Mr. Irby provided information to the record summarizing the monthly kilowatt-hour (kWh) usage at his home from October 2014 through September 2016. Mr. Irby's information showed the 12-month period from October 2014 to September 2015 as representing the monthly usage and Pepco bill at his home prior to the installation of the solar panels and net meter. The 12-month period from October 2015 to September 2016 is shown as representing the monthly usage and Pepco bill totals at his home after installation. Based on Mr. Irby's calculations, he receives an annual benefit of \$765 due to the consumption of renewable power.
85. Mr. Irby also stated that he receives an additional financial benefit from the Solar Renewable Energy Credits (SRECs) generated by the solar panels at his house. Mr. Irby explained that SREC value is tied to the District's Solar Alternative Compliance Payment of \$500—the penalty price that electricity suppliers must pay per SREC if they fail to file the required number of SRECs by the end of each compliance period. He further stated that during the system's first year of the operation (October 2015 through September 2016), the panels generated five SRECs, each of which currently trades on the SREC marketplace at \$480. According to Mr. Irby, he receives a \$2400 annual benefit due to

the SREC's generated at his house, with the total annual benefit of \$3,165. The Applicant concurred that the SREC annual benefit is \$2400 if five SRECs are produced.

86. In contrast, the Applicant claimed that the proper metric for evaluating the impacts to Mr. Irby's solar panel efficiency is comparing current solar utility billings (October 2015 through September 2016) against utility billings with solar panels after the proposed PUD is constructed. According to the Applicant, this future utilization is undeterminable at this point, but that shadow studies submitted to the record as Sheet A6.01 in the Plans help assess the potential impact. Those studies generally show that the Mr. Irby's solar panels are not shaded at all between 9:00 a.m. and 1:00 p.m., but they are in full shadow by 4:00 p.m. for part of the year. The Applicant stated that, based on its research, solar energy systems such as those installed at 1114 3<sup>rd</sup> Street, N.E., generally do not begin producing energy until after 10:00 a.m. when the sun's azimuth angle is high enough for the panels to start absorbing energy. In the evening, production drops after 4:00 p.m. for similar reasons. The Applicant also stated that solar panels in this area are installed facing south where solar energy collection is the greatest. Thus, according to the Applicant, any potential impact would occur in the late afternoon in winter and early spring months, but solar panels would be exposed to full sun during most of the maximum energy production period of 10:00 a.m. to 4:00 p.m.
87. The Commission finds that the appropriate comparison of impacts to the efficiency of Mr. Irby's solar energy system is pre- and post-construction of the PUD, not pre- and post-installation of the solar panels. It likewise finds that the solar energy capture time is between 10:00 a.m. and 4:00 p.m. Based on the shadow studies, there will be impacts to Mr. Irby's solar panels sometime beginning after 1:00 p.m., but the degree of that effect can only accurately be determined after the PUD is constructed. Significantly, however, the proposed PUD is located to the west and will not block the prime solar energy collection point. The Commission finds that while there will be impacts to Mr. Irby's solar panels, those impacts would occur during only a small portion of the peak collection time and then only to a limited degree because the panels would still be able to collect solar energy from the prime southern direction. The Commission similarly finds that the annual loss of the SREC value due to construction of the PUD will only be a percentage of that value because the same limited effects to Mr. Irby's solar energy collection. While the Commission is sensitive to the diminution of solar efficiency, when viewed in comparison to the benefits of the PUD to the city, including the production of housing in excess of what is required, the Commission finds this impact to be acceptable. (*See* 11 DCMR § 2403.3.)
88. Finally, when the Commission considered proposed action, it asked whether the Applicant's proposal to link the issuance of a building permit for this project to the Applicant gaining site control to the off-site affordable housing was consistent the requirements for off-site linkage in other similar cases, and suggested that instead of site control, the appropriate benchmark should be issuance of a building permit for the off-site affordable housing. The Commission also asked whether the Applicant should provide a draft IZ covenant contemplated by 11 DCMR § 2607.5.



89. With respect to the issue of whether site control was an appropriate benchmark, the Commission finds that has used issuance of a building permit for the off-site affordable housing as the benchmark in a previous case, not site control. The Commission also believes that it would appropriate to do so in this case as well, and has accordingly modified the conditions of this Order to require the Applicant to provide evidence that it has applied for building permit(s) for the off-site affordable housing in order to receive its Certificate of Occupancy for this Project.
90. With respect to the issue of the IZ covenant contemplated by 11 DCMR § 2607.5, the Applicant clarified at the meeting that it was only seeking relief from the part of that rule that required it to submit a draft covenant with its application for relief from the regulation. However, this begs the question of when the Applicant will provide evidence that it has recorded its covenant requiring it to provide the required off-site IZ and affordable housing. The Commission believes it should be provided prior to the issuance of a Certificate of Occupancy for this Project, and has included a condition in this Order requiring the Applicant to provide evidence to the Zoning Administrator that it has done so prior to the issuance of a Certificate of Occupancy for this Project.

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The objectives of the PUD process are to promote “sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces-and other amenities.” (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, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, and 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. (11 DCMR § 2405.)
3. The development of the PUD Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available 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 33% of the minimum area requirement.

5. The application meets the contiguity requirements of § 2401.3.
6. The proposed height and density of the buildings in the Project will not cause a significant adverse effect on any nearby properties and, the impact to the neighbor's solar panels are acceptable, on balance, in light of the commendable number of public benefits and amenities of the Project. (11 DCMR § 2403.3.) As demonstrated in the transportation analysis submitted by the Applicant and the DDOT report, the Project will not cause adverse transportation impacts.
7. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be properly mitigated. The Commission finds that the conditions of approval proposed by the Applicant are sufficient given the potential impacts of the Project on the surrounding and adjacent properties and the development incentives and flexibility requested in this application.
8. The benefits and amenities provided by the Project are significant, and the Project will offer superior features that will benefit the neighborhood to a greater extent than a matter-of-right development would. Thus, granting the development incentives proposed in this application is appropriate.
9. The application seeks a PUD-related zoning map amendment to the C-2-B Zone District. The application also seeks limited flexibility from the Zoning Regulations regarding the parking, loading, rear yard and open court requirements. The requested rezoning to the C-2-B Zone District is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. Approval of the PUD and change in zoning is not inconsistent with the NoMA Vision Plan or the Comprehensive Plan, including the FLUM. The Commission finds that the PUD-related rezoning of the Property to a commercial zone is not inconsistent with the FLUM or the NoMA Vision Plan when considered in the context of the PUD and the interpretation guidance in the Comprehensive Plan.
10. The FLUM is not to be treated as a zoning map. "Whereas zoning maps are parcel-specific, and establish detailed requirements for setbacks, 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. By definition, the Map is to be interpreted broadly." (10A DCMR § 226.)
11. The granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited on the FLUM. "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.*)
12. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan and the NoMA Vision Plan. The Project is consistent with the

major themes and citywide elements of the Comprehensive Plan, including the Land Use, Housing, and the Central Washington Area Elements.

13. The proposed PUD-related map amendment to the C-2-B Zone District supports a PUD that is not inconsistent with the Comprehensive Plan and NoMA Vision Plan, that is appropriate in height and scale for the surrounding area, and that will offer superior public benefits and amenities. The Project and the rezoning of the property will promote orderly development of the property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia
14. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations and the conditions of this Order, the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not being until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. Here, the proposed PUD-related Map Amendment of the property to the C-2-B Zone District is appropriate given the superior features of the PUD and is subject to the limitations stated herein.
15. 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.
16. 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 § 1-09.10(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 three conditions, which the Commission finds the Applicant has satisfactorily addressed.
17. 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.* (2012 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 Zone District to the C-2-B Zone District for property located at 220

L Street, N.E., and 1109-1115 Congress Street, N.E. (Lots 78 and 819 in Square 748), and a portion of the public alley to be closed. 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 January 12, 2017, at Exhibit 37 (the “Plans”), the updated sheets submitted April 10, 2017, 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 66,244 square feet of gross floor area (6.0 FAR), with approximately 56,419 square feet of gross floor area devoted to residential use and approximately 3,825 square feet of gross floor area devoted to production, distribution, and repair (“PDR”) uses, as further described in Paragraph A.3. The Project shall have 64 residential units, plus or minus 10%, and shall have a maximum height of 90 feet.
3. The PDR or PDR-related uses that shall be provided in the PUD may include:
  - a. Production, distribution, or repair of goods including accessory sale of related products;
  - b. Uses encompassed within the Arts, Design, and Creation use category in 11 DCMR § 100.2, but not including a museum, theater, or gallery as a principal use;
  - c. Production and/or distribution of food or beverages and the accessory sale or on-site consumption of the related food and beverage, including Union Kitchen;
  - d. Design-related uses, including media/communications; computer system and software design; fashion design; graphic design; or product and industrial design;
  - e. An urgent care center;
  - f. A neighborhood hardware and/or paint store; or
  - g. A package distribution center.
4. The Applicant is granted flexibility from the off-street parking requirements of 11 DCMR § 2101.1; the loading requirements of § 2201.1; the PUD minimum land area requirements of § 2401.1(c); the rear yard requirements of §§ 774.1 and 774.7, the court requirements of § 776, and the off-site IZ unit requirements of §

2607, consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.

5. The Applicant shall also have flexibility with the design of the PUD in the following areas:
  - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, electrical transformers, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure;
  - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on 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;
  - c. To vary the number, location and arrangement of parking spaces for the Project, provided the total number of spaces is not reduced below the minimum level required under the PUD Order; and
  - d. To vary the final selection of exterior signage on the building consistent with the Building Code.

## **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: (a) a minimum of four percent of the Project's residential gross floor area to households earning up to 80% of the AMI, and (b) a minimum of eight percent of the Project's residential gross floor area to households earning up to 50% of the AMI at an off-site location consistent with this Order. The on-site 80% AMI affordable units (1,815 sf GFA) and 1,893 square feet the off-site location at 50% AMI (3,708 sf GFA total) shall satisfy the minimum IZ set-aside requirement, and shall be maintained in accordance with all applicable requirements of Chapter 26 of the Zoning Regulations. The remaining off-site affordable units offered at 50% AMI (approximately 2,607 square feet of GFA) shall also be governed by restrictive covenants with D.C. Habitat. The Applicant shall have the flexibility to vary the location and unit layout of the on-site IZ units provided the percentage of square footage devoted to IZ units is consistent with this condition B.1. The off-site IZ units and affordable units shall be a minimum of 900 square feet each, shall be single-family residences or flats; and shall be located within the boundaries of ANC 6C, 6A, 6E, 5D, or 5E. The Applicant may locate the off-site IZ units and affordable units in other areas of Ward 5 or Ward 6 upon approval from the Commission as a consent calendar item.

2. **Prior to the issuance of a building permit**, the Applicant shall provide proof to the Zoning Administrator that it has paid \$625,000 to D.C. Habitat for Humanity no later than October 31, 2017, that D.C. Habitat for Humanity has the off-site housing location under its control, that each of the off-site units will consist of a minimum of 900 square feet and two bedrooms, and that the units will be constructed as single-family residences or flats.
3. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall provide proof to the Zoning Administrator that it has:
  - a. Applied for building permit(s) for all the off-site IZ Units and affordable units; and
  - b. Recorded the covenant for the off-site IZ Units, found legally sufficient by the Office of the Attorney General, required by 11 DCMR § 2607.5.
4. **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-NC 2009 at the Gold level. 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.
5. **Prior to the issuance of a building permit for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has paid \$10,000 to the Friends of NoMa Dog, Inc., to maintain and improve the dog park at 3<sup>rd</sup> and I Streets, N.E., and other potential future dog parks in the NoMa area, such as the future NoMa Green bounded by Harry Thomas Way, N.E., R Street, N.E., and the Metropolitan Branch Trail. The maintenance and improvement funds would cover waste disposal bags, sanitary spray supplies, and other services to improve and maintain the dog park. At the time of the payment of funds, the Friends of NoMa Dogs, Inc., shall have in place a dog park cooperative agreement (or an equivalent agreement) with the D.C. Department of Parks and Recreation for every dog park where the funds will be used. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall provide proof to the Zoning Administrator that the funds have been or are being used for the purposes listed above.
6. **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, funds necessary for completion of the design, permitting, and construction of all of the improvements on the north side of L Street, N.E., and the east side of Congress Street, N.E., consistent with Sheets L6.01, L6.02, and L6.03 of the Plans, subject to DDOT approval.

7. **Prior to the issuance of a certificate of occupancy for the PDR/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 retained a retail broker with experience marketing to and securing a variety of tenant types, including “maker uses.”
8. **Prior to the issuance of a building permit for the Project**, the Applicant will enter into a First Source Employment Agreement with the D.C. Department of Employment Services.

**C. Transportation Incentives and Benefits**

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 transportation incentives and transportation demand management (“TDM”) strategies:
  - a. Designate a resident transportation coordinator (“RTC”) for planning, construction, and operations. The RTC will work with residents and employees in the building to distribute and market various transportation alternatives and options;
  - b. The Applicant will provide TDM materials to new residents in the New Buyer Welcome Package materials;
  - c. The Applicant will install a digital multimodal display in the lobby of the residential building that provides schedule information of Metrobus and Metrorail, and locations of bikeshare stations and carshare vehicles, among other transportation related information;
  - d. The Applicant will provide bicycle parking/storage facilities at the proposed development. This includes secure parking located on-site, short-term bicycle parking around the perimeter of the site;
  - e. The Applicant will provide a bicycle repair station;
  - f. The Applicant will offer the first resident of each residential unit a one-time annual car sharing membership or a one-time annual Capital Bikeshare membership to help alleviate the reliance on personal vehicles. These incentives will be included in a move-in transportation package that includes brochures for transit facilities as well as bicycle and carsharing services for the initial buyer of each residential unit; and
  - g. The Applicant will offer a one-time \$50 SmarTrip card to each initial residential tenant and employee in the building to encourage non-auto mode usage.

2. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall close the east-west alley to the south, dedicate an access easement at the north end of the site to connect with the 8.71-foot-wide alley to the east, shall clean and improve the 8.71-foot-wide alley to the east, and repave it with impervious pavers, if approved by DDOT.
3. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall fund the installation of a Capitol Bikeshare station near the intersection of 3<sup>rd</sup> and L Streets, N.E. and pay for one year of operation and maintenance costs.

**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. 16-13. 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 April 24, 2017, upon a motion by Vice Chairman Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the applications at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).


On June 12, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the applications at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on September 1, 2017.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

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

  
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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
\_\_\_\_\_  
SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING