

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 16-24  
Z.C. Case No. 16-24  
1336 8<sup>th</sup> Street SPE, LLC and the District of Columbia  
(Consolidated PUD and Related Map Amendment  
@ Square 399, Lot 68)  
July 10, 2017**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on May 25, 2017, to consider an application for a consolidated planned unit development (“PUD”) and a related zoning map amendment filed by 1336 8<sup>th</sup> Street SPE, LLC on behalf of the District of Columbia (“District”) (collectively, the “Applicant”). The Commission considered the application pursuant to Subtitle X, Chapter 3 and Subtitle Z 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 Subtitle Z, Chapter 400. For the reasons stated below, the Commission hereby **APPROVES** the application.

**FINDINGS OF FACT**

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

1. On November 7, 2016, the Applicant filed an application with the Commission for consolidated review of a PUD and a related Zoning Map amendment from the MU-4 zone to the MU-6 zone for the parcel located at 1336 8<sup>th</sup> Street, N.W., and more particularly described as Square 399, Lot 68 (“Property”). The Property is presently improved with a surface parking lot that is used by members and employees of the Immaculate Conception Catholic Church (“Church”) located at 8<sup>th</sup> and N Streets, N.W.
2. The Applicant proposes to redevelop the Property with a mixed-use project with residential use, generating approximately 85 residential units, and non-residential uses, comprised of street-level retail uses, and approximately 1,500 square feet of space for use by the Church (“Project”). The Project will have a maximum density of up to 7.2 floor area ratio (“FAR”) and a maximum building height of 98 feet.
3. The Project also includes 23 below-grade parking spaces. Vehicular access to the garage and to the associated loading facilities will be from the public alley immediately west of the Property.

4. The Project has been reviewed and conceptually approved by the Historic Preservation Review Board (“HPRB”).
5. Development of the Property is subject to the Land Disposition and Development Agreement (“LDDA”) between 1336 8<sup>th</sup> Street SPE, LLC, dated February 22, 2016, and the District, dated February 22, 2016, which requires the PUD to set aside 30% of the total residential units as affordable, for the life of the Project. Therefore, the PUD is potentially exempt from Inclusionary Zoning (“IZ”) requirements of 11-C DCMR, Chapter 10 if approved by the Zoning Administrator and subject to other requirements to be discussed later. Half of the affordable units will be reserved for households earning up to 50% of the area median income (“AMI”) and half of the affordable units will be reserved for households earning up to 80% of AMI. In accordance with the LDDA, all of the affordable units will be in the multifamily component of the Project.
6. The Applicant requests flexibility from the following requirements of the Zoning Regulations: (i) to have a rear yard of six feet in lieu of the 15 feet that is required pursuant to 11-G DCMR § 405.2; (ii) to have an open court (open court 4) that is five feet in width, where a minimum open court width of 26.3 feet is required, and to have an open court (open court 1) that is one foot in width, where a minimum open court width of 10 feet is required under 11-G DCMR § 202.1; (iii) to provide a 30-foot loading berth and a 100-square-foot loading platform in lieu of a 30-foot loading berth, 100-square-foot loading platform, and one service delivery space as required under 11-C DCMR § 901.1; (iv) to have a building with a maximum lot occupancy of 100% at the lowest residential level, which is the street level of the Project, where a lot occupancy of 80% is permitted under 11-G DCMR § 404.1; and (v) to have all of the affordable units within the multifamily section of the PUD and none in the ground-level units along 8<sup>th</sup> Street, as provided in the LDDA.
7. By report dated February 3, 2017, (Exhibit [“Ex.”] 13), the District of Columbia Office of Planning (“OP”) recommended that the application be set down for a public hearing. At its public meeting on February 13, 2017, the Commission voted to schedule a public hearing on the application.
8. The Applicant filed its prehearing submission on March 6, 2017, which included a letter of support from the Deputy Mayor for Planning and Economic Development (“DMPED”) and a public hearing was timely scheduled for the matter. (Ex. 15-16I.) On April 5, 2017, the notice of public hearing was sent to all owners of property located within 200 feet of the Property; Advisory Neighborhood Commission (“ANC”) 6E, the ANC in which the Property is located, and ANC 2F, which is located within 200 feet of the Property; Commissioner Frank Wiggins, the Single Member District Representative for ANC 6E-03; and to Councilmember Charles Allen, whose Ward includes the Property. A description of the proposed development and the notice of the public hearing in this matter were published in the *DC Register* on April 14, 2017.

9. On April 25, 2017, the Applicant filed its Transportation Impact Study. (Ex. 24-24A.) On May 5, 2017, the Applicant filed its supplemental prehearing submission. (Ex. 26-26A11.) The supplemental prehearing submission included: (a) revised architectural plans and elevations; (b) responses to outstanding issues from the setdown of the application; (c) responses to interagency review comments; (iii) revised and restated areas of PUD flexibility; (d) a restatement of the public benefits and project amenities; and (e) a statement regarding the Applicant's community outreach.
10. On May 15, 2017, OP submitted a hearing report. (Ex. 27.) The OP hearing report stated that the "proposal is not inconsistent with the Comprehensive Plan" and recommended approval of the application, including the flexibility requested. (Ex. 27, p. 1.)
11. On May 15, 2017, DDOT submitted a hearing report. (Ex. 28.) The DDOT hearing report indicated no objection to the application subject to the conditions set forth in Finding of Fact ("FF") No. 76 of this Order.
12. ANC 6E submitted a resolution in support of the Project, indicating that at its regularly scheduled and duly noticed public meeting of March 7, 2017, at which a quorum of commissioners was present, it voted 5-0-2 to support the application. (Ex. 19.) The resolution stated that ANC 6E supports the application including the Applicant's requests for flexibility from the Zoning Regulations and the PUD benefits and amenities proffered by the Applicant.
13. The parties to the case were the Applicant and ANC 6E.
14. On May 25, 2017, DC for Reasonable Development and OneDC submitted a letter in opposition to the Project. (Ex. 33). Neither DC for Reasonable Development nor OneDC sought party status, and neither organization testified at the public hearing.
15. The Commission convened a public hearing on the application May 25, 2017. At the public hearing, the Applicant presented seven witnesses: Richard Lake and Buwa Binitie, on behalf of the Applicant; Robert Sponseller and Joseph Bailey of Shalom Baranes Associates, architects for the Project; Dan VanPelt, of Gorove/Slade transportation consultant for the Project; Lisa Siri of Siri, LLC, landscape architect for the Project; and Shane Dettman of Holland & Knight LLP. Based upon their professional experience and qualifications, the Commission qualified Mr. Sponseller and Mr. Bailey as experts in architecture; Mr. VanPelt as an expert in transportation planning and engineering; Ms. Siri as an expert in landscape design; and Mr. Dettman as an expert in planning, land use, and zoning.
16. Karen Thomas of OP, Evelyn Israel of DDOT, and Commissioner Alex Padro, ANC 6E's Chair and the Single Member District Representative for the Property, testified in support of the application at the public hearing.

17. At the conclusion of the public hearing, the Commission closed the record and took proposed action to approve the application. The proposed action was referred to NCPC on May 25, 2017, pursuant to § 492 of the Home Rule Act. (Ex. 35.)
18. On June 1, 2017, the Applicant submitted a response to the letter in opposition to the Project pursuant to 11-Z DCMR § 602.3, which provides all parties to a case an opportunity to file written responses to any exhibit, information, or legal briefs within seven days after the close of the public hearing. (Ex. 37.)
19. On June 16, 2017, the Applicant submitted its proposed list of proffers and corresponding conditions pursuant to 11-X DCMR § 308.8, *et seq.* and its proposed findings of fact and conclusions of law. (Ex. 38, 39.)
20. On June 23, 2017, the Applicant requested a postponement of the Commission's consideration of final action to allow it to submit a final proffers and draft conditions chart pursuant to 11-X DCMR § 308.12, and to give the parties a chance to respond pursuant to 11-X DCMR § 308.13. (Ex. 40.)
21. On June 30, 2017, the Applicant submitted its final proffers and draft conditions chart pursuant to 11-X DCMR § 308.12. (Ex. 41.)
22. The Commission took final action to approve the PUD on July 10, 2017.
23. As of that date, no report from the NCPC had been received.

### **The Property and Surrounding Area**

24. The Property is located at the southwest corner of the intersection of 8<sup>th</sup> and O Street, N.W., within the boundaries of ANC/SMD 6E-03. It has a land area of approximately 13,306 square feet and is a rectangular lot with approximately 141 linear feet of frontage on 8<sup>th</sup> Street, N.W., approximately 94.33 linear feet of frontage on O Street, N.W., and approximately 141 linear feet of frontage on a public alley along the west side of Property. The Property is currently improved with a surface parking lot that is used by members and employees of the Church.
25. Surrounding uses include a mix of residential, retail, service, and hotel uses. The O Street Market, which was developed pursuant to Z.C. Order No. 07-26, is located across O Street to the north of the Property.
26. The Property is also located within the Shaw Historic District.
27. The Applicant requested a Zoning Map amendment to rezone the Property from the MU-4 zone to the MU-6 zone. As detailed in FF No. 85, the Commission finds that the requested map amendment is consistent with Future Land Use Map designation of mixed-use Medium-Density Commercial and Medium-Density Residential.

### **Waiver of the Minimum Land Area Requirements of 11-X DCMR § 301.1**

28. Since the Property has a land area of approximately 13,306 square feet where a minimum of 15,000 square feet of land area is required pursuant to 11-X DCMR § 301.1, the Applicant requested a waiver of the minimum land area requirements of 11-X DCMR § 301.1.
29. The Commission may waive not more than 50% of the minimum area requirements provided: (i) the Commission finds after a public hearing that that development is of exceptional merit and in the best interest of the District or country; and (ii) at least 80% of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto. (11-X DCMR § 301.2.)
30. The Commission finds that the Project is of exceptional merit and in the best interest of the city. The Project will significantly improve the existing area by replacing a surface parking lot with a mixed-use project that will activate the surrounding streets and is just three blocks from the Mt. Vernon Square/7<sup>th</sup> Street/Convention Center Metrorail Station. Further, the Project will result in new affordable housing. Under the LDDA, the Applicant is required to set aside 30% of the total residential units as affordable units. Half of the affordable units will be reserved for households earning up to 50% of the AMI and half of the affordable units will be reserved for households earning up to 80% of the AMI.
31. The Commission finds that greater than 80% of the GFA is devoted to residential use as shown on Sheet A-03 of the architectural drawings (“Plans”) dated May 5, 2017. (Ex. 26A1-26A11.)

### **Existing and Proposed Zoning**

32. The Property is presently zoned MU-4. The MU-4 zone is designed to permit moderate-density mixed-use development and provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. (11-G DCMR § 400.3(a)-(b).) The MU-4 zones shall be located in Low- and Medium-Density Residential areas with access to main highways or rapid transit stops, and shall include office employment centers, shopping centers, and medium-bulk mixed-use centers. (11-G DCMR § 400.3(c).) As a matter of right, property in the MU-4 zone can be developed with a maximum density of 2.5 FAR and the maximum FAR for nonresidential use is 1.5 FAR. (11 11-G DCMR § 402.1.) The maximum matter-of-right building height in the MU-4 zone is 50 feet. (11-G DCMR § 403.1.)
33. The Applicant proposes to rezone the Property to the MU-6 zone, which permits the following development standards:
  - Height: 90 Feet. (11-G DCMR § 303.7.);

- Density: 6.0 FAR, and 7.2 FAR with the Inclusionary Zoning Bonus. The maximum FAR for non-residential use is 2.0; (11-G DCMR § 402.1.)
- Lot Occupancy: The maximum lot occupancy for residential use is 80%; (11-G DCMR § 404.1.)
- Rear Yard: The minimum rear yard is 15 feet; (11-G DCMR § 405.2.)
- Side Yard: No side yard is required for a building or structure other than a detached single dwelling unit or semi-detached single dwelling unit; however, if a side yard is provided, it shall be at least two inches wide for each one foot of height of building but no less than five feet; (11-G DCMR § 406.1.)
- Parking:
  - Residential, multiple dwelling unit: one per three dwelling units in excess of four units;
  - Retail use: 1.33 per 1,000 square feet in excess of 3,000 square feet;
  - Office: 0.5 per 1,000 square feet in excess of 3,000 square feet, except a medical or dental office, clinic, or veterinary hospital: one per 1,000 square feet in excess of 3,000 square feet; and (11 DCMR Subtitle C § 701.5.)
  - Within any zone other than an R or RF zone, the minimum vehicle parking requirement identified in the table of Subtitle C § 701.5 shall be reduced by 50% for any Property which is located within 0.5 miles of a Metrorail station that is currently in operation or is one for which a construction contract has been awarded; (11-C DCMR § 702.1(a).)
- Bicycle Parking:
  - Residential Apartment: one space for each three dwelling units (long term); one space for each 20 dwelling units (short term);
  - Retail: one for each 10,000 square feet of gross floor area (long term); one for each 3,500 square feet of gross floor area (short term); and
  - Office: one for each 2,500 square feet of gross floor area (long term); one for each 40,000 square feet of gross floor area (short term);

(11-C DCMR § 802.1.)



- Loading:
  - Residential More than 50 Units: one loading berth and one service/delivery space;
  - Retail with 5,000 to 20,000 square feet of gross floor area: one loading berth;
  - Office with 20,000 to 50,000 square feet of gross floor area: one loading berth and one service delivery space; and

(11-C DCMR § 901.1.)

  - When two or more uses in different use categories share a building or structure, the building or structure is only required to provide enough berths and spaces to meet the requirement for the use category with the *highest requirement*, and *not the combination of requirements* for all use categories provided that all uses that require loading have access to the loading area; and (11-C DCMR § 902.2.)
- Green Area Ratio (“GAR”): The minimum required GAR for the MU-6 Zone is 0.3. (11-G DCMR § 407.1.)

### **Description of the PUD Project**

34. As shown on Sheet A-03 of the Plans, the Applicant proposes to redevelop the Property with a mixed-use Project. The Project will include residential use, generating approximately 85 units, and non-residential uses, comprised of street-level retail uses, and approximately 1,500 square feet of space for use by the Church. The Project will have a density of up to 7.2 FAR and a maximum building height of approximately 98 feet. The Project includes a single penthouse enclosure that will contain both habitable space and mechanical space, and that will have a maximum height of 20 feet. All portions of the penthouse are setback in accordance with the Zoning Regulations.
35. Since the Project is located within 0.5 miles of the Mt. Vernon Square/7<sup>th</sup> Street/Convention Center Metrorail station, the minimum vehicle parking requirement is reduced by 50%. Therefore, instead of 28 parking spaces, the Project is only required to have 14 parking spaces. (See 11-C DCMR §§ 701.5 and 702.1(a).) The Project will have 23 parking spaces in a below-grade parking garage. Vehicular access to the garage and to the associated loading facilities will be from the public alley immediately west of the Property to minimize vehicular-pedestrian conflict. The Project’s ground-level commercial space intended to activate the surrounding streets.
36. The Project includes significant public space improvements, including streetscape improvements such as shade trees and ground-plane planting, decorative planters for

seasonal display, streetlights, bicycle racks, and seating. The proposed public space amenities related to retail uses include sidewalk café space along O Street defined by moveable planters. Townhouse gardens will be fenced and provide visual continuity through a similar pattern of planting and hardscape improvements as is found to the south in front of the existing townhouses.

37. Vehicular access to the parking ramp and loading facilities will occur from the adjacent alley on the west side of the Property, which will result in the elimination of the existing curb cut on 8<sup>th</sup> Street. This will minimize vehicular and pedestrian conflicts, improve the pedestrian character of the street, and provide an opportunity for additional street parking. The Project will include both long-term and short-term bicycle spaces consistent with the requirements of the Zoning Regulations.
38. The Property is well served by several mass transit options, including the Mt. Vernon Square/7<sup>th</sup> Street/Convention Center Metrorail Station and eight Metrobus and Circulator routes, within 0.2 miles of the Property. The Property is also located within three and a half blocks of three existing Capital Bikeshare stations and is presently surrounded by walkable connections to all of the aforementioned forms of transit. As a result of the redevelopment of the Property, all public space surrounding the Project will be improved to promote a pedestrian-friendly environment with an activated streetscape. All adjacent curb ramps and crosswalks will be improved to current DDOT accessibility standards if they do not currently comply.
39. Under the LDDA, the Applicant is required to set aside 30% of the total residential units as affordable units. Half of the affordable units will be reserved for households earning up to 50% of AMI and half of the affordable units will be reserved for households earning up to 80% of AMI. All of the affordable units will be in the multifamily section of the PUD; none of the units at the ground level along 8<sup>th</sup> Street will be set aside as affordable.
40. The Project serves as a bridge from the existing two- and three-story row houses in the neighborhood to the larger Shaw developments, including CityMarket at O. The Project appreciates the existing 8<sup>th</sup> Street townhouse architecture through a purposeful tapering and varying of heights among the mixed-use components of the Project.
41. At its highest elevation, the building will utilize thin light colored brick frames with expansive areas of glass providing residents in the tallest portion of the building with light-filled spaces from which to enjoy expansive views of the city. Some of the residential units will enjoy projected, private balconies and living spaces as well as freely accessible rooftop gardens offering special moments for residents to interact with neighbors.
42. Lower-tiered residential units serve as a link to the materials that typify the neighborhood by the use of elongated and highly variegated, mid-tone bricks to give this portion of the building welcoming warmth and texture by creating a pronounced horizontal grain to the



building. This particular brick is especially vibrant, adding a palpable feeling of presence to the building. Ample, punched openings provide abundant light and air for its residents while also offering them a chance to escape outside onto their private exterior balconies overlooking 8<sup>th</sup> and O Streets.

43. The building's layered approach is punctuated by the creation of three and a half-story townhouses along 8<sup>th</sup> Street that display crisp, faceted window frames that echo the proportion and scale of the adjacent homes while also creating an elegant and contemporary expression. These townhouses help create a rich and varied mix of activities at the street level. They also provide a lively mix of housing options, each with its own access to exterior balconies, rooftop gardens, and courtyard environments to create pockets of space that provide chances for casual interactions and gatherings among friends surrounded by planters, decks and benches. Adjacent to the townhouse there will be new and exciting retail opportunities to compliment the nearby existing galleries, restaurants, cafes, boutiques, all headlined by the Giant at CityMarket at O.
44. At the street level, the paving and landscape features for the Project will marry up to those of CityMarket at O, helping to stitch 8<sup>th</sup> Street seamlessly together to the north, enhancing walkability and providing similar ground cover plantings, trees, bicycle racks, and light fixtures.
45. Ultimately, the elegant design vision is meant to compliment and enliven the community while also providing exciting and amenable living and neighborhood shopping opportunities for mixed-income levels.

### **Zoning Flexibility**

46. The Applicant requested the areas of flexibility discussed below from the Zoning Regulations.
47. Minimum Rear Yard Requirements. The Applicant requested flexibility to have a rear yard of six feet in lieu of the 15 feet that is required pursuant to 11-G DCMR § 405.2. The reduced rear yard will not result in any adverse impacts to the open space on the Property or on nearby properties. There is ample open space, light, and air surrounding the building in all directions.
48. Minimum Open Court Width Requirements. The Applicant requested flexibility to have an open court (open court 4) that is five feet in width, where a minimum open court width of 26.3 feet is required under 11-G DCMR § 202.1. The Applicant also requested flexibility to have an open court (open court 1) that is one foot in width, where a minimum open court width of 10 feet is required under 11-G DCMR § 202.1.
49. Maximum Lot Occupancy Requirements. The Applicant requested flexibility to have a building with a maximum lot occupancy of 100% at the lowest residential level, which is the street level of the Project, where a lot occupancy of 80% is permitted under 11-G

DCMR § 404.1. However, the lot occupancy is reduced at the higher levels of the building. For example, at the second level of the building, the lot occupancy is 86.7% and at the fourth level of the building, the lot occupancy is 69%.

50. Minimum Loading Requirements. The Applicant requested flexibility to provide a 30-foot loading berth and a 100-square-foot loading platform in lieu of a 30-foot loading berth and a 100-square-foot loading platform and one service delivery space as required under 11-C DCMR § 901.1 of the Zoning Regulations. The Applicant's traffic consultant has evaluated the proposed loading and has confirmed that the proposed loading is sufficient to accommodate the expected demand.
51. Proportionality of Affordable Units. The Applicant is required to set aside 30% of the total residential units as affordable units, for the life of the Project. The Applicant requested flexibility to have all of the affordable units within the multifamily section of the PUD and none in the ground-level units along 8<sup>th</sup> Street, as provided in the LDDA.

### **Additional Development Flexibility**

52. The Applicant also requested flexibility in the following additional areas:
  - (a) To be able to provide a range in the number of residential units of plus or minus 10%, so long as 30% of the total number of units are set aside as affordable units in accordance with the LDDA;
  - (b) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - (c) To vary the sustainable design features of the Project, provided the total number of LEED points achievable for the Project is not below the LEED-Gold rating standards under the United States Green Building Council LEED for New Construction v2009;
  - (d) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes in order to comply with all applicable District of Columbia laws and regulations or that are otherwise necessary to obtain a final building permit, provided the variations do not change the exterior configuration or appearance of the building;

- (e) In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area;
- (f) To vary the features, means, and methods of achieving: (i) the code-required GAR of 0.3, and (ii) stormwater retention volume and other requirements under 21 DCMR, Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control;
- (g) To vary the location, attributes and general design of the streetscape incorporated in the PUD to comply with the requirements of and the approval by the DDOT Public Space Division;
- (h) To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved plans; and
- (i) To locate retail entrances in accordance with the needs of the retail tenants and vary the façades as necessary within the general design parameters proposed for the PUD and to vary the types of uses designated as “retail” use on the approved Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)).

### **Project Benefits and Amenities**

53. Urban Design and Architecture; Landscaping and Open Space; Property Planning & Efficient & Economical Land Utilization (§ 305.5(a) – (c)). As a natural extension of CityMarket at O, the Project will be a major catalyst to the continued revitalization of Shaw. Vehicular access to the parking ramp and loading facilities will occur from the adjacent alley along the west side of the Property, which will result in the elimination of the existing curb cut on 8<sup>th</sup> Street that currently serves the Property and also minimize vehicular and pedestrian conflicts, improve the pedestrian character of the street, and provide an opportunity for additional street parking. Architecturally assembled from a collection of forms, each with its own unique expression, the Project serves as a bridge from the existing two and three story row houses in the neighborhood to the larger Shaw developments, including City Market at O.
54. Affordable Housing (§ 305.5(g)). The Applicant is required to set aside 30% of the total units within the Project as affordable units, for the life of the Project. Half of the affordable units will be reserved for households earning up to 50% of AMI and the other

half of the affordable units will be reserved for households earning up to 80% of AMI. The Applicant will set aside the affordable units in accordance with the following chart:

| Residential Unit Type | Floor Area/ % of Total | Units | Income Type   | Affordable Control Period | Affordable Unit Type | Notes                |
|-----------------------|------------------------|-------|---------------|---------------------------|----------------------|----------------------|
| Total                 | 77,276/100%            | 85    |               |                           |                      |                      |
| Market Rate           | 58,881/76%             | 59    |               |                           |                      |                      |
| Affordable Non-IZ     | 9,432/12%              | 13    | Up to 80% AMI | Life of the Project       | To be determined     | 15.3% of total units |
| Affordable Non-IZ     | 8,963/12%              | 13    | Up to 50% AMI | Life of the Project       | To be determined     | 15.3% of total units |

55. The above chart indicates that none of the affordable housing will be subject to the Inclusionary Zoning requirements set forth in Subtitle C, Chapter 10 of Title 11 DCMR. This is because the Applicant will be requesting the Zoning Administrator to grant an exemption from those requirements pursuant to 11-C DCMR § 1001.6. The Commission makes no finding as to whether the exemption should be granted and notes that if the request is denied the requirements of Chapter 10 of Title 11-C DCMR, as well as the Inclusionary Zoning Act as defined at 11- B DCMR § 100.1, will apply.
56. Employment and Training Opportunities (§ 305.5(h)). The Applicant has entered into First Source and Certified Business Enterprise agreements with the District. It is estimated, based on the projected construction spending of the development program presented in the District RFP, the Project will create a total of 185 construction jobs and 17 permanent jobs. This includes 146 full-time and 39 part-time FTE employees. The Applicant’s commitment to the CBE program would lead to 98 of these jobs being held by District-based CBEs. Further, at build out, the Project will generate a total of 17 permanent jobs, including 10 full-time FTE. Based on the Applicant’s commitment to local hiring, it is anticipated that a minimum of nine of these jobs will be filled by District residents.
57. Environment and Sustainable Benefits (§ 305.5(k)). The Project will achieve a minimum of 60 LEED points, which is equivalent to LEED-Gold certification under the United States Green Building Council LEED for New Construction v2009. Additionally, the roof of the elevator overrun, the roof of the penthouse, and a portion of the penthouse level patio space will be planted with an extensive green roof system. Much of this terrace will be planted with ornamental trees, shrubs, and ground plane plantings. The roof of the portion of the building that extends below grade will function as a planted courtyard with small terraces provided for two of the units that the interior courtyard. In addition to cooling the environment, the planted roof areas will be used to manage storm water runoff.
58. Transportation Infrastructure (§ 305.5(o)). As part of the Project, the Applicant will widen a portion of the adjacent alley by five feet (from 10 feet to 15 feet). When considered in conjunction with the additional 10 feet of alley being constructed as part of

the PUD immediately to the west of the Property, the future alley will provide improved functionality for all users. In addition, the Applicant developed a Transportation Demand Management (“TDM”) to promote non-auto modes of transportation.

59. Uses of Special Value to the Neighborhood or the District as a Whole ((§ 305.5(q)) are as follows:
- (a) The Applicant will provide 25 parking spaces at the parking garage at CityMarket at O for the Church;
  - (b) The Project will include approximately 1,500 square feet of space for use by the Church;
  - (c) The Applicant will contribute a total of \$100,000 to fund events and programs over a two-year period that promotes the retail and restaurant venues in the Shaw neighborhood. Confirmation of the monetary contribution and the events/programs that will be funded shall be documented in an agreement between the Applicant and a local organization, which shall be submitted to the Zoning Administrator prior the issuance of a certificate of occupancy for the retail component of the PUD; and
  - (d) The Applicant will contribute \$25,000 to the Department of Parks and Recreation, which is to be utilized to enhance programming for youth activities at the Kennedy Recreation Center.

### **Comprehensive Plan**

60. The Commission finds that the PUD advances the purposes of the Comprehensive Plan; is consistent with the Future Land Use Map and Generalized Policy Map; complies with the guiding principles in the Comprehensive Plan; furthers a number of the major elements of the Comprehensive Plan; and is not inconsistent with the Convention Center Area Strategic Development Plan.
61. Purposes of the Comprehensive Plan. The purposes of the Comprehensive Plan are six-fold: (1) to define the requirements and aspirations of District residents, and accordingly influence social, economic, and physical development; (2) to guide executive and legislative decisions on matters affecting the District and its citizens; (3) to promote economic growth and jobs for District residents; (4) to guide private and public development in order to achieve District and community goals; (5) to maintain and enhance the natural and architectural assets of the District; and (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Code §1-245(b) (¶ 1-301.62).) The Commission finds that the Project advances these purposes by promoting the social, physical and economic development of the District through the provision of a high-quality residential development that will increase the housing supply, improve the District’s natural and architectural assets, promote economic growth and jobs for District residents, and improve the surrounding

community. The Project will achieve community goals by providing significant new affordable housing, and will do so through the construction of aesthetically pleasing new buildings that respect the character of the surrounding neighborhood without generating any adverse impacts.

62. Future Land Use Map. According to the District of Columbia Comprehensive Plan Future Land Use Map, the Property is designated as mixed-use Medium-Density Commercial and Medium-Density Residential. The Medium Density Commercial designation is used to define shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation generally draw from a citywide market area. Buildings are generally larger and/or taller than those in moderate-density commercial areas but generally do not exceed eight stories in height. The corresponding zone districts are generally C-2-B, C-2-C, C-3-A, and C-3-B, although other districts may apply. (10A DCMR § 225.10.) These zone districts correspond to the MU-5, MU-6, MU-7, and MU-8 zones under the Zoning Regulations of 2016. The Medium-Density Residential designation is used to define neighborhoods or areas where mid-rise (four-seven stories) apartment buildings are the predominant use. Pockets of low- and moderate-density housing may exist within these areas. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C zone districts are generally consistent with the Medium-Density designation, although other zones may apply. (10A DCMR § 225.5.) These zone districts correspond to the RA-2 and RA-3 zones under the Zoning Regulations of 2016.
63. The Framework Element of the Comprehensive Plan provides that the Land Use Map is not a zoning map. (*See* 10A DCMR § 226.1(a); *see also* Z.C. Order No. 11-13; Z.C. Order No. 10-28.) Whereas zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. (*Id.*) By definition, the Map is to be interpreted broadly. (*Id.*) Furthermore, the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. The granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here. (*Id.* at § 226.1(c).) The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. (*Id.* at § 266.1(d).)
64. Thus, in evaluating the proposed map amendment, the Property should be viewed in context and not as an isolated parcel. When taken in context with the surrounding neighborhood, the Commission finds that the Applicant's proposal to rezone the Property from the MU-4 zone to the MU-6 zone in order to construct the mixed-use project with significant new housing, affordable housing, and neighborhood-serving retail is consistent with the Comprehensive Plan's designation of the Property, particularly given



the fact that the MU-6 zone (previously, the C-2-B zone district) is specifically identified as a corresponding zone district in the Medium-Density Commercial category.

65. Generalized Policy Map. The Property is located in the Neighborhood Commercial Center category on the District of Columbia Comprehensive Plan Generalized Policy Map. Neighborhood Commercial Centers are intended to meet the day-to-day needs of residents and workers in the adjacent neighborhoods. Their service area is usually less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and child care. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. (10A DCMR § 223.15.)
66. The Commission finds that the proposed rezoning and PUD redevelopment of the Property is consistent with the policies indicated in the Neighborhood Commercial Center category, since the Project will provide community-serving retail that will meet the day-to-day needs of residents and workers in the proposed building.
67. The Convention Center Area Strategic Development Plan. The Commission finds that the Project is consistent with the Convention Center Strategic Development Plan's development guide for the square, which indicates that vacant sites in this locale should be considered for high- and medium-density residential development with improved storefront facades. (Convention Center Area Strategic Development Plan, p. 35.)
68. Guiding Principles and Major Elements of the Comprehensive Plan. The Commission further finds that the PUD is consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as discussed in the paragraphs below.
69. Managing Growth and Change. The Commission finds that the PUD is consistent with the guiding principles of the Managing Growth and Change Element. In order to manage growth and change in the District, the Comprehensive Plan encourages, among other goals, the growth of both residential and non-residential uses. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. The Project is fully consistent with each of these goals. Redeveloping the Property as a vibrant mixed-use building with residential, retail, and office uses will further the revitalization of the surrounding neighborhood. The proposed retail and office spaces will create new jobs for District residents, further increase the city's tax base, and help to reinvigorate the existing neighborhood fabric.
70. Creating Successful Neighborhoods. The Commission finds that the PUD is consistent with the guiding principles of the Creating Successful Neighborhoods Element. The guiding principles for creating successful neighborhoods include improving the

residential character of neighborhoods. (10A DCMR § 218.1.) The production of new affordable housing is essential to the success of neighborhoods. (10A DCMR § 218.3.) Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (10A DCMR § 218.8.) The Commission finds that the Project furthers each of these guiding principles with the construction of significant new housing, including replacement public housing units and workforce affordable units. As part of the PUD process, the Applicant worked closely with ANC 6E and other community stakeholders to ensure that the Project provides a positive impact to the surrounding neighborhood.

71. Connecting the City. The Commission finds that the PUD is consistent with the guiding principles of the Connecting the City Element. One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development; from development of the Comprehensive Plan to implementation of the plan's elements. The Project furthers this goal since the Applicant has been working with ANC 6E to ensure that the Project provides a positive impact on the immediate neighborhood.
72. Building Green and Healthy Communities. The Commission finds that the Project is consistent with the guiding principles of the Building Green and Healthy Communities Element. A major objective for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. The Project will include a substantial number of sustainable design features and will achieve a LEED-Gold certification.
73. The Commission also finds that the PUD furthers the objectives and policies from various elements of the Comprehensive Plan, including the Land Use, Transportation, Housing, Environmental Protection, Urban Design Citywide elements, and the Near Northwest Area Element, as set forth in the Applicant's Statement in Support and the OP Reports. (Ex. 5, 13, 27, 34.)

### **Office of Planning Reports**

74. On February 3, 2017, OP submitted a setdown report recommending that the application be set down for a public hearing. (Ex. 13.) The OP report stated that the Project "is not inconsistent with the Comprehensive Plan or the Convention Center Area Strategic Development Plan." (Ex. 13, p. 3.) The report also recommended that the Applicant provide the following: (i) information regarding the management of the specified funds to the community; (ii) comprehensive transportation review and transportation demand management (TDM) measures; (iii) information on the flexibility requests; (iv) discussion about projections into public space or modification as requested by OP Public Space staff; and (v) information on whether the Project would be LEED-GOLD certified.

75. On May 15, 2017, OP submitted a hearing report reiterating that the application is not inconsistent with the Comprehensive Plan and as such OP recommends that the Commission approve the subject application.” (Ex. 27, p. 1.) More specifically, the OP report noted that the Project would “realize the [Comprehensive Plan’s] land use policies as the project’s massing and variety in scale seek to protect the integrity of the residential structures along 8<sup>th</sup> Street, while respecting its historic character through the proposed rowhouse design...The project is also an efficient use of land in close proximity to the metro, since it removes a parking lot with infill of a variety of housing types at a lower level of affordability than would be anticipated at a metro location and for rent.” (*Id.* at 14.)

### **DDOT Report**

76. On May 15, 2017, DDOT submitted a hearing report. (Ex. 28.) The DDOT hearing report indicated no objection to the application subject to the following conditions:
- (a) Provide a transit information screen (electronic screen) in the residential lobby;
  - (b) Identify TDM Coordinators (for planning, construction, and operations). The TDM Coordinator will work with residents and employees in the building to distribute and market various transportation alternatives and options;
  - (c) Unbundle parking from leases or purchases of all units and charge market rate, defined as the average cost for parking within a quarter-mile of the Property on a weekday; and
  - (d) Enhance the TDM plan to include the following elements:
    - i. For the first three years after the building opens, provide one annual Capital Bikeshare membership to the first residents of each individual unit. This benefit shall be codified in the rental/condominium documents;
    - ii. Provide a bicycle repair station in the bicycle storage room;
    - iii. Provide updated contact information for the TDM Coordinator and report TDM efforts and amenities to goDCgo staff once per years; and
    - iv. Provide six short-term bicycle spaces (three inverted U-racks).
77. At the public hearing, the Applicant agreed to all of DDOT’s conditions.

### **ANC Report and testimony**

78. ANC 6E submitted a resolution in support of the Project, indicating that at its regularly scheduled and duly noticed public meeting of March 7, 2017, at which a quorum of commissioners was present, ANC 6E voted 5-0-2 to support the application. (Ex. 19.) The resolution stated that ANC 6E supports the application. The report listed a number of reasons the ANC supported the Project. The report did not list any issues or concerns.
79. Commissioner Alex Padro, the Chair of ANC 6E and the single member district representative for the Property, testified in support of the application at the public hearing.

### **Interagency Review**

80. OP circulated the application to DDOT, Office of the State Superintendent of Education (“OSSE”), the Department of Housing and Community Development (“DHCD”), the Department of Energy and the Environment (“DOEE”), and DC Water for their review of the Project. On March 9, 2017, an interagency meeting was held to review the Project. At the meeting and subsequent to the meeting, DDOT, OSSE, DHCD, OP, DOEE, and DC Water submitted comments to the Applicant, as stated in the Applicant’s supplemental prehearing statement. (Ex. 26.) The Commission finds that the Applicant sufficiently answered all of the outstanding questions posed by the relevant District agencies in its Supplemental Prehearing Statement.

### **Contested Issues**

81. No witnesses testified in opposition to the Project at the public hearing, but one letter in opposition was submitted to the record on May 25, 2017, by DC for Reasonable Development and OneDC (collectively the “Opposition”). (Ex. 33.) The letter contains statements that express disagreement with the following:
  - The terms and conditions of the LDDA established between the Applicant and the D.C. Council regarding the disposition and redevelopment of the Project site;
  - The amount and make-up of the affordable housing provided as part of the proposed Project;
  - Consistency of the proposed density with the Comprehensive Plan and related policies;
  - Compliance of the proposed Project with the Fair Housing Act and the D.C. Human Rights Act;
  - The potential for the Project to cause displacement and gentrification; and
  - The extent of analysis conducted regarding the potential impacts of the Project.

82. The Commission has carefully reviewed the issues raised by the Opposition and makes the findings discussed below.

83. LDDA approved by the D.C. Council:

- (a) The Comments submitted by the Opposition relating to the terms and conditions of the LDDA between the Applicant and the Council have no bearing on the Commission’s review of the Project under the Zoning Regulations. The terms under which the District will dispose of the Property to the Applicant, and the requirements the Applicant must satisfy as part of the District’s disposal, are matters that were handled by the D.C. Council through the legislative process that involved public hearing(s) and opportunities for public comment. These are terms that were negotiated between the Applicant and DMPED. Thus, if the Opposition wished to express its views regarding the terms of the District’s disposal of the Property it should have expressed those views during the D.C. Council’s legislative process;
- (b) Notwithstanding, as is demonstrated in the case record, the Applicant will meet or exceed all of the conditions required under the LDDA, including the condition pertaining to the percentage of affordable multi-family units. With respect to the amount of affordable housing provided, the Applicant will devote 30% of all multi-family units as affordable units. Specifically, the Project will contain approximately 85 dwelling units (79 multi-family and 6 townhomes), of which 26 dwelling units (approximately 30%) will be devoted to affordable units. Finally, executed copies of the First Source and CBE Agreements for the Project have been entered into the case record. (Ex. 5J, 5K.) The Applicant has satisfied those particular requirements of the LDDA; and
- (c) The Opposition contends that because the LDDA requires 30% of the units to be affordable, this serves as a minimum or a floor, and the Applicant must therefore devote a higher percentage of affordable units than proposed. This contention is without merit. In *D.C. Library Renaissance Project/W. End Library Advisory Grp. V. D.C. Zoning Comm’n*, 73 A.3d 107 (D.C. 2013), this Commission held, and the District of Columbia Court of Appeals affirmed, that just because something is required under a land acquisition agreement with the District does not mean the requirement makes a proffered PUD benefit null or duplicative. (*Id.* at 122 (opining that construction of library required under contract with the District was still considered a benefit of the PUD).)

84. Amount and make-up of affordable housing provided as part of the Project:

- (a) In its Comments, the Opposition states “[s]ince the PUD site is public land, a “substantial” amount of affordable housing, particularly affordable for low-income DC families, is required through zoning development review via the

directives of the Comprehensive Plan.” (Ex. 33, p. 1.) As clearly demonstrated in the case record, and particularly in the OP’s final report, the Project will contain a substantial amount of affordable housing for low-income District residents, including families. Pursuant to the LDDA, the Project will substantially exceed the amount of affordable housing that would be required under IZ, and that would typically be proffered as part of a PUD of similar size; (Ex. 27, p. 22.)

- (b) The Opposition argues that this Project must “...strive for 100% affordability and for 100% family units, especially given it is proposed to be built on public land.” (Ex. 33, p. 3.) The PUD regulations do not even require affordable housing to be offered as a public benefit. When affordable housing is proffered as a public benefit, the only requirement is that the amount provided exceeds the minimum required by IZ in the existing zone district. Furthermore, the Zoning Regulations make clear that this Commission cannot impose public benefits; the Commission, however, must deny a PUD application when the benefits are inadequate. (11-X DCMR 305.11.) Here, the Applicant goes beyond the IZ requirements, both in terms of quantity and deeper affordability;
- (c) Specifically, as shown in OP’s final report, under IZ the Applicant would be required to set aside eight percent of the total residential GFA, to affordable housing for low- and moderate-income households. Per the requirements of the LDDA, the Applicant is devoting 30% of all of the units in the Project as affordable-housing for low- and moderate-income households. The total floor area of the 26 affordable units is substantially more affordable GFA than what would be required under IZ; the GFA of the affordable units is actually three times the amount required under IZ. The Opposition argued that the “...PUD Applicant’s proposed 80% AMI units are not considered affordable in DC...” (Ex. 33, p. 2.) This is simply incorrect; 80% AMI units are explicitly stated under the Inclusionary Zoning Regulations, as well as in the IZ Act adopted by the D.C. Council. The Applicant’s affordable housing proffer is identified in B.1 of the “Decision” section of this Order; and
- (d) Finally, contrary to the Opposition’s claims that, under the LDDA the Applicant and/or the District “can cancel the affordability covenant at any time upon their own discretion and without public review or provision of rationale,” the affordable dwelling units provided in the Project will remain affordable (at the required levels of affordability) for the life of the Project.

85. Consistency of the proposed density with the Comprehensive Plan and related policies:

- (a) According to the Opposition, the density of the Project exceeds what is permitted by the Comprehensive Plan policies, “...especially as these policies relate to protecting the low-rise building environment of the surrounding area” (citations omitted). (Ex. 33, p. 2.) As discussed in the Applicant’s initial statement, and in the Applicant’s Comprehensive Plan analysis, the Project is consistent with the



density considered appropriate for the Property under the mixed-use Medium-Density Commercial/Medium-Density Residential designation on the Comprehensive Plan Future Land Use Map (“FLUM”). (Ex. 5, 34.) Specifically, the application includes a related map amendment to rezone the Property from MU-4 (formerly, C-2-A) to MU-6 (formerly, C-2-C). According to FLUM category definitions contained in the Framework Element of the Comprehensive Plan, the MU-6 (formerly, C-2-C) zone is considered a Medium-Density Commercial zone. (10-A DCMR § 225.10.) Furthermore, the proposed density of the Project does not utilize any of the additional density that is permitted for a PUD in the MU-6 zone. Rather, notwithstanding the substantial public benefits and project amenities being provided by the Applicant as part of the Project, the proposed density remains within the matter-of-right density permitted in the MU-6 zone for developments that are subject to the IZ regulations;

- (b) Contrary to the Opposition’s comments that the Project is inconsistent with Comprehensive Plan policies relating to the protection of the scale of the “low-rise building environment of the surrounding area,” the specific policies cited by the Opposition do not describe the existing building environment of the surrounding area as being “low-rise.” Rather, the policies cited by the Opposition encourage the exact type of development proposed by the Applicant. Specifically, the Opposition refers to the following two policies contained within the Near Northwest Element – Shaw/Convention Center Policy Focus Area, which includes the Property:
- i. Policy NNW-2.1.2: Reinforce Existing Development Patterns - Stabilize and maintain existing moderate-density row house areas within the Shaw/Convention Center Area. Locate multi-unit buildings in areas already zoned for greater density, including areas near the Mount Vernon Square and Shaw/Howard University Metrorail stations, and on publicly owned land with the potential for housing. Ensure that development on infill sites scattered throughout the row house portions of the Shaw/Convention Center area is consistent with the neighborhood’s character; and (10-A DCMR § 2111.6.)
  - ii. Policy NNW-2.1.3: Shaw/Howard University and Mount Vernon Square Metro Stations - Encourage mixed-income residential development with underground parking adjacent to the Shaw/Howard and Mount Vernon Square Metro stations, particularly on existing surface parking lots; and (10-A DCMR § 2111.7.)
- (c) With respect to Policy NNW-2.1.2, the Project consists of a multi-unit building located in in close proximity to the Mount Vernon Square Metrorail station and can accommodate additional density consistent with the Property’s Comprehensive Plan FLUM designation of Mixed-Use Medium-Density Commercial/Medium-Density Residential. Also, as explicitly encouraged by this

policy, the Project will replace what is currently underutilized publically owned land used as surface parking with a new, mixed-use development that consists of additional housing, including a substantial amount of affordable housing that greatly exceeds the amount of affordable housing that would otherwise be required as a matter of right under the IZ requirements. The Project is also consistent with Policy NNW-2.1.3 as it provides mixed-income residential development with underground parking on a site that is in close proximity to the Mount Vernon Square Metrorail station. Based upon the Project's consistency with the FLUM; consistency with the policies of the Near Northwest Element, including those discussed above; and the Project's consistency with numerous other Comprehensive Plan policies contained within the Land Use, Economic Development, Housing, Urban Design, Environmental Protection, and Parks, Recreation, and Open Space Elements, as discussed in the Applicant's Comprehensive Plan analysis and the reports submitted by the Office of Planning. The Commission finds that the Project is not inconsistent with the Comprehensive Plan. (Ex. 5, 13, 27, 34.)

86. Maintenance of Working-Class Families:

The Opposition also argues that the Project "fails the Comprehensive Plans policies seeking to maintain working-class families across a spectrum of bedroom sizes in [the] Shaw neighborhood." (Ex. 33, p. 1.) The letter contains no basis for this assertion. While it remains the applicant's burden to make its case, it need not respond to conclusory statements.

87. Compliance of the proposed Project with the Fair Housing Act and the D.C. Human Rights Act:

The Opposition also argues that the "...proposed PUD [habitable] penthouse ...won't be accessible to low-income residents and [therefore] fails the Fair Housing Act and Human Rights Act." (Ex. 33, p. 1.) This Commission notes that only a court of law can make such a determination. In addition, this Order does not require that the penthouse space be offered at the market rate. The Zoning Regulations that govern habitable penthouse space permit the resulting IZ units to exist anywhere in a residential building, as long as IZ units are not concentrated on a single floor. (11-C DCMR § 1005.4.)

88. Potential for the Project to cause displacement and gentrification:

- (a) The Opposition makes several claims that the Project will cause displacement of existing residents, exacerbate gentrification, adversely impact vulnerable and at-risk existing affordable housing in the surrounding area, and continue to destabilize existing family homes in the surrounding area. Not only does the Opposition fail to provide any information or analysis of its own to verify these claims, several studies show that developments such as that proposed by the

Applicant help mitigate the effects of gentrification, displacement of existing residents, and destabilization of land values;

- (b) While the Opposition suggests that the District is failing to address the issue of affordable housing, it is clear based on consistent statements by the Mayor and the D.C. Council, and the stated missions of several District agencies, that affordable housing is at the forefront of issues being addressed by the District. For example, in her first budget Mayor Muriel Bowser devoted an historic \$100 million to the Housing Production Trust Fund, putting an unprecedented number of affordable housing units into the pipeline, and in 2016 assigned the DC Housing Preservation Strike Force the task of coming up with recommendations for preserving affordable housing within the District. In addition, DHCD identifies the production and preservation of quality affordable housing as its top priority, and offers several programs that are specifically focused on addressing issues of displacement. Finally, DMPED has demonstrated its dedication to addressing the challenges of gentrification and displacement through its New Communities Initiative. Thus, it is clear the District, in partnership with the private sector, is dedicated to addressing the affordable housing crisis in the District through a multi-pronged strategy that includes several programs across multiple departments and agencies;
- (c) With respect to displacement, the Project will not directly displace any existing residents, including residents living in existing affordable housing, since the Property is currently improved with a surface parking lot. Therefore, construction of the Project will only result in an increase in the amount of market-rate and affordable housing in the surrounding area and the District. With respect to the potential for indirect displacement, the Opposition states that “[t]he vast majority of market-rate and luxury penthouse units as proposed in this PUD application can and will continue to destabilize the existing family homes in the surrounding area, specifically in [the] context of the cumulative large projects in the areas.” (Ex. 33, p. 2.) In contrast to this unsubstantiated statement, actual analysis conducted by the District has shown that increases in market rate housing have not impacted lower income residents. According to a report entitled Bridges to Opportunity, A New Housing Strategy for D.C. (March 2013), prepared by the 2013 Comprehensive Housing Strategy Task Force “the recent increase in market rate housing does not appear to have led to significant gentrification, by which we mean the displacement of lower income residents. In fact, over the past two years of the city’s population growth, the number of people filing income taxes has increased across all income levels citywide. Market rate housing starts are essential to improving the city’s continuum of housing as are public-private investments in affordable housing development”; and (Bridges to Opportunity, A New Housing Strategy for D.C (2013), Pages 7 and 41.)
- (d) Consistent with the above statement, many academic studies and articles have found that construction of new housing in all price ranges, and specifically new

affordable housing, is one of the best ways to mitigate increasing prices and rents as it helps address the imbalance between housing demand and housing supply. One such example is research conducted by the Legislative Analyst's Office of the California Legislature which concluded that "[a]s market-rate housing construction tends to slow the growth in prices and rents, it can make it easier for low-income households to afford their existing homes. This can help to lessen the displacement of low-income households."<sup>1</sup> This approach to addressing the issue of affordable housing through increasing the supply of new market-rate and affordable housing is also consistent with the priorities recently adopted by a diverse group of D.C. business groups, tenants' groups, developers, affordable housing advocates, faith groups, and over 250 residents regarding revisions to the Comprehensive Plan.<sup>2</sup> Specifically, the first of these adopted priorities states that the District should meet housing demand by forecasting, planning for, and encouraging the creation and preservation of a supply of housing (market-rate and subsidized affordable) to meet the demand at all income levels. The supply of housing should be sufficient to slow rising costs of rental and for-sale housing. To that end, the Project will not cause or exacerbate gentrification or displacement of existing residents in the surrounding area. Rather, the Project is an example of the type of development that can help mitigate the effects of gentrification and increasing housing costs as it will introduce 85 new housing units into the District's supply of housing, 26 of which will be devoted to affordable housing for the life of the Project, without directly displacing any existing residents or tearing down any existing housing.

89. Extent of analysis conducted regarding the potential impacts of the Project:

- (a) The Opposition claims that the application has been inadequately analyzed with respect to its potential impacts on public services, public transit, infrastructure, environment, noise and air quality, pollution and refuse, light and air, utility capacity, emergency response time, and community facilities (schools, recreation centers, libraries, police stations, fire stations, hospitals, clinics, etc.). (Ex. 33, p. 3.) However, as the case record reflects, the application has in fact undergone a thorough analysis as to its potential impacts by the Applicant, OP, and several other District agencies;
- (b) The Opposition implies that the Commission has an obligation to conduct a "...local demographics analysis of the affected local neighborhood..." and consider the effect the project will have on gentrification. (Ex. 33, pg. 2.) The Opposition further contends that "[t]he Office of Planning must analyze the surrounding area, evaluating land values and individual vulnerable properties through sound survey techniques...." (Ex. 33, p. 2-3). Neither the Commission, nor OP, is obligated to conduct the studies the Opposition urges. Notwithstanding

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<sup>1</sup> Legislative Analyst's Office (2016). Perspectives on Helping Low-Income Californians Afford Housing.

<sup>2</sup> <http://dchousingpriorities.org/>.

the lack of any obligation to do so, the Commission has fully considered the concerns of the Opposition that are related to gentrification and displacement. As detailed in Finding of Fact No. 88, the Applicant has satisfactorily explained why the project will not result in the destabilization asserted;

- (c) The Opposition argues that "...none of the commercial components of this PUD application have been evaluated to understand their true benefits to the area, or vice-versa [as to] any potential effects." (Ex. 33, pg. 3.) The Commission notes that the commercial components of the proposed PUD were not proffered as public benefits, and foresees no adverse impacts in their traditional zoning sense (e.g., traffic, noise, parking, etc.);
- (d) OP referred the application for review and comment to DDOT, including the Public Space Committee, OSSE, DHCD, DOEE, DCFEMS, and DC Water. In addition, on March 9, 2017, OP conducted an interagency meeting on the application. A summary of all comments received from these agencies, as well as the Applicant's response, is provided in the Applicant's supplemental prehearing statement and OP's hearing report. (Ex. 26, 27.) In addition, based upon the thorough transportation analysis prepared by the Applicant, DDOT submitted a detailed report that analyzes the potential impacts on the District's transportation network. (Ex. 28.) Overall, the analysis and comments provided by the District agencies assess the potential impacts of the Project on the specific areas identified by the Opposition including, but not limited to, transportation and public space, environment, utilities and public services, schools, and housing;
- (e) With respect to noise-related impacts, the Land Use and Environmental Protection Elements of the Comprehensive Plan contain specific policies relating to avoiding, minimizing, and mitigating noise impacts through land use compatibility, proper regulation of certain commercial and industrial uses, and reducing exposure to excessive noise through enforcement of the District's noise control regulations which are administered by DCRA. With respect to land use compatibility, the Project consists of a mixed-use building containing residential, retail, and a modest amount of office space for the Church. None of these uses inherently cause adverse noise-related impacts and are commonly found throughout the area surrounding the Property. Furthermore, these uses are constructed and operated all over the city in neighborhoods with similar contexts without causing adverse noise impacts. The Comprehensive Plan also contains policies that address the potential impacts of noise on the environment and on the general health and well-being of District residents. Specifically, the Comprehensive Plan states "[a]void locating new land uses that generate excessive noise adjacent to sensitive uses such as housing, hospitals, and schools..." No such uses are proposed as part of the Project; and
- (f) In addition to the analysis of potential impacts that has already been conducted, it is noteworthy that the Project will be required to undergo several other District

agency reviews prior to and during construction, including additional detailed reviews of potential environmental impacts on a wide range of topic areas, including air and water quality, as required under the DC Environmental Policy Act. In addition, consistent with the policies of the Comprehensive Plan, construction-related noise, and post-construction noise generated by the residents, employees, and visitors to the Property, will be regulated through enforcement of the District's existing regulations that govern day and nighttime levels of commercial, industrial, and residential land uses, motor vehicle operation, solid waste collection and hauling equipment, and the operation of construction equipment and other noise-generating activities, which can only be regulated during and after construction of the Project.

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; and (c) protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan. (11-X DCMR § 300.1.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of 11-X DCMR, Chapter 3 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential and non-residential uses for the Project are appropriate for the Property. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.
5. The Commission waives the minimum area requirements of 11-X DCMR § 301.1 for the reasons discussed in FF Nos. 28 through 31.



6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated, and appropriate conditions have been included in this Order.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the PUD benefits and amenities are reasonable tradeoffs for the requested development flexibility.
8. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP reports in this case and, as explained in this decision, finds its recommendation to grant the application persuasive.
10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. ANC 6E's report expressed no issues or concerns. Because the ANC expressed no issues or concerns, there is nothing for the Zoning Commission to give great weight to. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The Commission carefully considered the ANC 6E's position supporting approval of the application and concurred in its recommendation of approval.
11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 et seq. (2007 Repl.)).

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development and related Zoning Map amendment from the MU-4 zone to the MU-6 zone for Square 399, Lot 68. 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 Plans, dated May 5, 2017. (Ex. 26A1-Ex. 26A11.)
2. In accordance with the Plans, the PUD shall be a mixed-use project containing approximately 85 residential units, and non-residential uses, and street-level retail uses including approximately 1,500 square feet of space for use by the Church.
3. The Project shall have a maximum density of up to 7.2 FAR and shall have a maximum building height of approximately 98 feet. The Project shall include 23 below-grade parking spaces. Vehicular access to the garage and to the associated loading facilities shall be from the public alley along the west side of the Property. The roof level of the building and the penthouse level patio space shall be landscaped substantially in compliance with the Composite Roof Plan on Sheet L-02 of the Plans.
4. The Applicant is granted flexibility from the rear yard, open court width, lot occupancy, loading, and proportionality of affordable units requirements of the Zoning Regulations, consistent with the 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 be able to provide 85 residential units with a range of plus or minus 10%, so long as 30% of the total number of units are set aside as affordable units, and half of the affordable units are reserved for households earning up to 50% of the area median income (“AMI”) and half of the affordable units are reserved for households earning up to 80% of AMI, in accordance with the LDDA;
  - (b) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - (c) To vary the sustainable design features of the Project, provided the total number of LEED points achievable for the Project is not below the LEED-Gold rating standards under the United States Green Building Council LEED for New Construction v2009;
  - (d) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make

minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes in order to comply with all applicable District of Columbia laws and regulations or that are otherwise necessary to obtain a final building permit;

- (e) In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area;
- (f) To vary the features, means and methods of achieving: (i) the required GAR of 0.3, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control;
- (g) To vary the location, attributes and general design of the streetscape incorporated in the PUD to comply with the requirements of and the approval by the DDOT Public Space Division;
- (h) To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the Plans; and
- (i) To locate retail entrances in accordance with the needs of the retail tenants and vary the façades as necessary within the general design parameters proposed for the PUD and to vary the types of uses designated as “retail” use on the approved Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)).

**B. Public Benefits**

1. **For the life of the Project**, the Applicant shall set aside 30% of the total units within the Project as affordable units. Half of the affordable units shall be reserved for households earning up to 50% of AMI and the other half of the affordable units shall be reserved for households earning up to 80% of AMI. The Applicant shall set aside the affordable units in accordance with the chart below:

| Residential Unit Type | Floor Area/<br>% of Total | Units | Income Type   | Affordable Control Period | Affordable Unit Type | Notes                |
|-----------------------|---------------------------|-------|---------------|---------------------------|----------------------|----------------------|
| Total                 | 77,276/100%               | 85    |               |                           |                      |                      |
| Market Rate           | 58,881/76%                | 59    |               |                           |                      |                      |
| Affordable Non-IZ     | 9,432/12%                 | 13    | Up to 80% AMI | Life of the Project       | To be determined     | 15.3% of total units |
| Affordable Non-IZ     | 8,963/12%                 | 13    | Up to 50% AMI | Life of the Project       | To be determined     | 15.3% of total units |

All affordable units shall remain subject to the applicable rental or price controls for so long as the project is in existence. As noted, the Applicant intends to seek an exemption from the Inclusionary Zoning (“IZ”) regulations set forth in Subtitle C, Chapter 10 of the Zoning Regulations, pursuant to 11-C DCMR § 1001.6. If the exemption is not granted, the Applicant shall nevertheless abide by the requirements of this condition, unless the IZ regulations impose more restrictive standards.

2. **Prior to issuance of a Certificate of Occupancy for the Project**, the Applicant shall demonstrate that the Project will achieve a minimum of 60 LEED points, which is equivalent to LEED-Gold certification under the United States Green Building Council LEED for New Construction v2009.
3. **During the operation of the Project**, the Applicant shall provide 23 parking spaces at the parking garage at CityMarket at O for the Church.
4. **During the operation of the Project**, the Applicant shall provide approximately 1,500 square feet of space in the Project for use by the Church.
5. **Prior to the issuance of a Certificate of Occupancy for the retail component of the Project**, the Applicant shall:
  - (a) Contribute \$100,000 to fund events and programs over a two-year period that promote retail and restaurant venues in the Shaw neighborhood; and
  - (b) Provide evidence to the Zoning Administrator that the events/programs that will be funded shall be documented in an agreement between the Applicant and a local organization and that the events and programs have either taken place or are scheduled to take place.
6. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall contribute \$25,000 to the Department of Parks and Recreation,

which is to be utilized to enhance programming for youth activities at the Kennedy Recreation Center.

**C. Transportation Incentives**

1. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall widen a portion of the adjacent alley by five feet (from 10 feet to 15 feet) as shown on the Plans.
2. **For the first three years of operation of the Project**, the Applicant shall provide one annual Capital Bikeshare membership to the first resident(s) of each individual unit. This benefit shall be codified in the rental/condominium documents.
3. **During the operation of the building**, the Applicant shall provide a Transportation Management Program, as set forth in the TDM section of the Comprehensive Transportation Review and as supplemented by the Applicant at the public hearing. (Ex. 24A.) The TDM Plan shall include the following:
  - (a) The Applicant shall identify TDM Leaders (for planning, construction, and operations). The TDM Leaders shall work with residents and employees in the building to distribute and market various transportation alternatives and options;
  - (b) The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials;
  - (c) The Applicant shall unbundle parking costs from the price of lease or purchase of the Project's units;
  - (d) The Applicant shall provide bicycle parking and storage facilities at the Property that meet or exceed Zoning Requirements. This shall include secure parking located on-site and short-term bicycle parking around the perimeter of the Property;
  - (e) The Applicant shall provide six short-term bicycle spaces (three inverted U-racks), in the public space adjacent to the Property;
  - (f) The Applicant shall install a transit information screen (electronic screen) within the residential lobby containing information related to local transportation alternatives;
  - (g) The Applicant shall provide a bicycle repair station in the bicycle storage room; and

- (h) The Applicant shall provide updated contact information for the TDM Coordinator and report TDM efforts and amenities to goDCgo staff once per years.

**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 Property 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 this Order within which time an application shall be filed for a building permit. Construction must begin 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 May 25, 2017, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at the conclusion of its public hearing 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 July 10, 2017, upon the motion of Commissioner May, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its




public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the DC Register; that is on November 10, 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**