

November 20, 2017

VIA ELECTRONIC FILING

Mr. Anthony J. Hood, Chairperson
District of Columbia Zoning Commission
441 4th Street, NW, Suite 200-S
Washington, DC 20001

Re: Zoning Commission Case No. 16-26
Revised Final Proffers and Conditions

Dear Chairperson Hood and Members of the Commission:

In response to comments received from the Office of the Attorney General and the District Department of Transportation, the Applicant hereby submits the following revisions to its list of proffers and corresponding conditions of approval. Changes to the Applicant’s November 6 draft are shown in redline.

<u>Benefits and Amenities</u>	<u>Proposed Condition</u>
<p><u>Superior Urban Design and Architecture.</u> The Project exhibits many characteristics of exemplary urban design. Specific features include the use of a variety of public spaces, well-designed sidewalks with street trees and active storefronts along Wisconsin Avenue, massing that is shaped to flow within the existing density of the surrounding properties, and well-located and carefully designed parking garages and loading zones for the Project.</p> <p><u>Site Planning and Efficient and Economical Land Utilization.</u> The Property is currently underutilized and fails to fully capitalize on its prominent Wisconsin Avenue location. The Property currently contains commercial office buildings and accessory parking in a</p>	<p>A.1 This project shall be developed in accordance with the plans marked as Exhibit 30A and Exhibit 55A of the record in this case, as modified by the guidelines, conditions, and standards herein (collectively, “Plans”).</p> <p>A.2 The Property shall be rezoned from MU-4 to MU-7. Pursuant to 11-X DCMR §311.4, the change in zoning shall be effective upon the recordation of a covenant among the land records of the District of Columbia between the owner of the Property and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owner of the Property and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Commission.</p>

buildings and accessory parking in a design that discourages pedestrian activity. The proposed Project has been designed to provide residents, customers, employees, and visitors with open and inviting public and private spaces for entertainment and relaxation. The proposed Project will transform an underutilized and dated site into an attractive 21st-century mixed-use development.

use the Property in accordance with this Order and any amendment thereof by the Commission.

A.3 The Project shall include a mixed-use building containing approximately 146 residential units; approximately 10,984 square of use devoted to one or more of the following uses: retail; general service; eating and drinking establishments; or entertainment, assembling, and performing arts (“**Ground-Floor Uses**”); and approximately 58 parking spaces, as shown on the Plans, provided:

- a. Any kitchen exhaust venting for the Ground-Floor Uses shall be run to the roof of the Project; and
- b. As agreed to by the Applicant, the following uses shall not be permitted unless approved by ANC 3E through a formal resolution, after a finding by ANC 3E that such use would provide a substantial value to the community: a sexually-oriented business establishment, a check-cashing establishment, a pawnbroker, a bank, a nightclub, a mattress store, a convenience store ~~such as a 7-Eleven~~, a professional office, a drug store ~~such as CVS~~, and any “chain” retail, service, or eating and drinking establishment (a “chain” being defined as a business with either at least 10 stores within the District of Columbia or at least 50 stores nationwide). For the avoidance of doubt, if the approval of one of the foregoing uses otherwise requires a special exception, approval by ANC 3E shall not waive the special exception requirement.

A.4 The Applicant shall be permitted to construct the Project to a maximum height of 88’4” and a maximum density of 5.73 FAR and shall have flexibility from the rear yard, lot occupancy, and penthouse uniform height requirements of the

	<p>Zoning Regulations, as shown on the approved Plans.</p> <p>A.5 The Applicant shall have flexibility with the design of the PUD in the following areas:</p> <ul style="list-style-type: none">a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building;b. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Plans;c. To make minor refinements to exterior details and dimensions, including without limitation to sills, bases, mullions, coping, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems that do not significantly alter the exterior design as shown on the Plans;d. To vary the final number of residential units plus or minus 5%, and accordingly adjust the number and location of affordable units to reflect the final unit mix of the Project, provided that the distribution of affordable units by floor will <u>shall</u> remain consistent with the Plans;e. To vary the final streetscape design and materials in the public right-of-way, in response to direction received from District public space permitting authorities;
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	<ul style="list-style-type: none"> f. To vary the final landscaping materials of the Project based on availability and suitability at the time of construction or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, Department of Energy and Environment, Department of Consumer and Regulatory Affairs, or other applicable regulatory bodies; g. To vary the final design of the ground-floor retail space frontage as shown pages A41 and A47-A48 of the Plans, including the number, size, design, and location of retail windows and entrances, signage, awnings, canopies, and similar features, to accommodate the needs of the specific retail tenants and storefront design within the parameters set forth in the plans marked as Exhibit 30b of the record of this case (“Storefront and Signage Guidelines”); and h. To vary the design of the north façade as shown on page A09 of Exhibit 55A of the record in the event that a structure is built adjacent to the Property that requires windows to be blocked.
<p><u>Environmental and Sustainable Benefits.</u> The Applicant will<u>shall</u> achieve a minimum of Gold certification under the LEED-2009 rating system. The Project will<u>shall</u> also integrate other sustainable design features, including solar panels as a renewable energy source on the roof of the Project. The Project will<u>shall</u> also include 5 electric vehicle charging stations in the parking garage, with conduit to accommodate an additional 5 future charging stations.</p>	<p><u>B.1 Sustainable Design.</u></p> <ul style="list-style-type: none"> a. Prior to the issuance of <u>the first a</u> certificate of occupancy for the Project, the Applicant shall provide the Zoning Administrator with evidence that the Project is on track to secure Gold certification or higher from the U.S. Green Building Council under the LEED-2009 rating system. Within 12 months after the issuance of the <u>first</u> certificate of occupancy for the Project, the Applicant shall submit evidence <u>to the Zoning Administrator</u> that it has secured such Gold certification.

	<p>b. For the life of the Project, the Applicant shall provide solar panels as shown on the Plans.</p> <p>c. For the life of the Project, the Applicant shall provide a minimum of 5 electric car charging stations within the garage as shown on the Plans.</p>
<p><u>Housing.</u> The Project will create approximately 146 new residential units in a zone where no residential use is required. The proposed Project will provide 117,527 square feet of gross floor area of residential use, which is over 50,000 more square feet of housing than would be provided as a matter-of-right at the Property.</p> <p><u>Affordable Housing.</u> The Applicant will provide 10% of the gross residential area in the proposed building for affordable dwelling units at 60% of the MFI. This will result in approximately 11,753 square feet of affordable housing, which is a significant commitment in itself and exceeds the baseline requirement by over 2,000 square feet. Also, at least one affordable unit will be a two-bedroom unit. The commitment is particularly significant because a matter-of-right redevelopment of the property under the existing MU-4 zoning would yield only 2,500 square feet of affordable housing. This is because the bulk of the development would be a conversion of an existing office building, which is exempt from inclusionary zoning.</p>	<p>B.2 <u>Affordable Housing.</u></p> <p>a. For the life of the Project, the Applicant shall set aside a minimum of 10% of the residential gross floor area of the Project (approximately 11,753 square feet of gross floor area) for households earning up to 60% of the Median Family Income.</p> <p><u>a.b. At least one (1) Inclusionary Zoning Unit shall be a two-bedroom unit.</u></p>
<p><u>Uses of Special Value</u></p> <p><u>Chesapeake House.</u> The Applicant will renovate the Chesapeake House, a historic but vacant structure owned by the National</p>	<p>B.3 <u>Chesapeake House.</u></p> <p>a. Prior to the issuance of <u>the first</u> certificate of occupancy of the Project, the Applicant shall demonstrate <u>to the Zoning Administrator</u> that</p>

<p>Park Service (“NPS”) and located across the street from the Property, to a “warm, lit shell” condition. The renovated structure will then be used as a community-serving space and provide a historic, attractive addition to the neighborhood. To facilitate the proposed use, the Applicant has also and will continue to facilitate discussions with ANC 3E, NPS, and other stakeholders regarding the use of Chesapeake House following the completion of renovations.</p>	<p>it has renovated the Chesapeake House to a “warm, lit shell” condition <u>with a minimally finished interior, ceilings, lighting, plumbing, heating and cooling, electrical outlets, rest rooms and an unfinished floor</u> for use as a community-serving space for residents of ANC 3E (“Work”); <u>and:</u></p> <p>b. To confirm that ANC 3E’s proposed community serving use will be permitted, Applicant will <u>Prior to commencing the Work, the Applicant shall facilitate discussions take all reasonable steps, including coordination of discussions to facilitate a collaborative process among ANC 3E, the National Park Service, and other stakeholders, to be led by ANC 3E, regarding the use of the Chesapeake House, with the goal of reaching agreement on a use of the House prior to the commencement of the Work. If a community-serving use acceptable to ANC 3E cannot be agreed upon, then the Applicant shall consult with ANC 3E regarding a substitute amenity, and shall seek modification of the PUD to substitute said amenity, which shall be of equivalent or better value to the community</u></p> <p>c. If the House has not been opened for a community serving space for the residents of ANC 3E before the first certificate of occupancy is issued for the Project, the Applicant shall consult with ANC 3E regarding a substitute amenity, and shall seek modification of the PUD to substitute said amenity, which shall be of equivalent or better value to the community.</p>
<p><u>Uses of Special Value</u></p> <p><u>Restaurant and Other Retail Commitments.</u> In response to community feedback, the Applicant has committed to</p>	<p><u>B.4 Restaurant Use.</u> For the life of the Project, the Applicant shall set aside a minimum of 3,500 square feet on the ground floor of the Project for a restaurant,</p>

<p>reserving a minimum of 3,500 square feet of retail space for a full-service restaurant. Additionally, the Applicant has committed to restricting certain retail and service uses from the Project even though these uses are permitted in the MU-7 Zone, unless ANC 3E specifically approves the proposed use.</p>	<p>as that term is defined at 11-B DCMR § 100.2 in the Zoning Regulations.¹</p>
<p><u>Streetscape Plans.</u> The existing streetscape lacks pedestrian activity and attractive landscaping that would otherwise enliven the sidewalks. The Applicant proposes streetscape improvements that will better integrate the retail spaces with the adjacent public space, therefore enhancing the pedestrian experience. Specific improvements include new street trees and other plantings to create more defined, attractive pedestrian access. As part of the streetscape enhancement, the Applicant will underground the utility lines along Wisconsin Avenue in front of the Property.</p>	<p>B.5 Streetscape Improvements. <u>Prior to the issuance of the first certificate of occupancy for the Project, the Applicant shall demonstrate to the Zoning Administrator that it has:</u></p> <p>— Prior to the issuance of the first certificate of occupancy for the Project, the Applicant shall demonstrate to the Zoning Administrator that:</p> <ol style="list-style-type: none"> a. (i) it has <u>Constructed</u> the streetscape improvements along the perimeter of the Project as shown on pages L1 to L3 of the Plans. The final design of such improvements shall be subject to the approval of the appropriate District public space permitting authorities. b. (ii) Prior to the issuance of the first certificate of occupancy for the Project, the Applicant shall demonstrate to the Zoning Administrator that it has <u>Undergrounded</u> or caused to be undergrounded the existing above-ground utility lines along Wisconsin Avenue in front of the Property. Undergrounding means the construction of underground vaults; installation of the utility lines presently

¹ Restaurant: A place of business that does not meet the definition of a “fast food establishment” or “prepared food shop.” where food, drinks or refreshments are prepared on the premises and sold to customers primarily for consumption on the premises. This term shall include, but not be limited to, an establishment known as a café, lunch counter, cafeteria, or other similar business, but shall not include a fast food restaurant. In a restaurant, any facilities for carry out shall be clearly subordinate to the principal use of providing prepared foods for consumption on the premises. A restaurant may include ancillary carry out sales, provided that there is no designated carry out counter or window, no drive through facility, and the carry out service is not an advertised element of the business.

	<p>located above ground on existing utility poles and other appurtenant equipment in those vaults; reconnection of said lines to the Project; and removal of all utility poles, in cooperation with PEPCO and other utility providers using the poles, such as Comcast or RCN.</p> <p>c. (iii) Prior to the issuance of the first certificate of occupancy for the Project, tThe Applicant shall also demonstrate to the Zoning Administrator that it has made all reasonable efforts to obtain permission from Reached out to the owners of the remaining three lots on the block extending north to Chesapeake Street to permit seek permission for the Applicant to underground the utility lines in front of those lots, and has undergrounded said lines if such permission has been received. The Applicant shall document the form and substance of communication used to reach out to each owner and shall reach out by a second form of communication if the Applicant is unable to connect with the owner by the first form of communication. As part of such efforts, the Applicant shall share with ANC 3E all communications it has had with representatives of the owners of the remaining three lots. If the owner of the property immediately adjacent to the Project permits such undergrounding, the Applicant shall underground such utility lines regardless of whether the owner of the next adjacent property has permitted such undergrounding.</p> <p>d. If the owner of the property immediately adjacent to the Project permits such undergrounding, the Applicant shall underground such utility lines regardless of whether the owner of the next adjacent property has permitted such undergrounding.</p>
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Creation and Preservation of Open Spaces. The Applicant will close a one-way street segment of Brandywine Street between 42nd Street and River Road, located one block from the Project, and construct a new park on this closed section. The Applicant will ensure the maintenance of the new park for the life of the Project.

B.6 Brandywine Street and Park.

- a. Prior to the issuance of the first certificate of occupancy of the Project, the Applicant shall demonstrate to the Zoning Administrator that ~~it has:~~ (i) the District Department of Transportation has agreed to close² Surveyor of the District of Columbia has recorded a plat closing ~~closed~~ the segment of Brandywine Street NW between 42nd Street and River Road to vehicular traffic; and that it ~~the Applicant has~~ (ii) sought approval to turn the new three-way “T” intersection of 42nd Street and Brandywine Street into an all-stop intersection, and constructed and installed signage and striping as required; and (iii) designed and constructed a new park on the closed street segment and adjacent triangular park.
- b. The design and use of the park shall be developed based on input from ANC 3E, but the design and construction of the park and related streetscape improvements shall be subject to review and approval by the appropriate District public space permitting authorities. As a part of the improvements, the Applicant shall design and construct modifications to safely and effectively route pedestrians, bicyclists, and vehicles around and through the new park (such as modifications to crosswalks and curb extensions) as approved ~~directed~~ by the appropriate District public space permitting authorities.
- c. The Applicant shall maintain the park in a condition manner typical of comparable to the maintenance of public parks and spaces in the

² The closed street segment may remain open as a paper street in the records of the Surveyor of the District of Columbia.

	<p><u>surrounding area</u> or fund such maintenance for the life of the Project.</p> <p>d. d.—If the Applicant cannot complete the improvements described above prior to the issuance of <u>at the first</u> certificate of occupancy for the Project, the Applicant shall consult with ANC 3E regarding a substitute amenity, and shall seek modification of the PUD to substitute said amenity, which shall be equivalent or better value to the community.</p>
<p><u>Other Conditions</u></p>	<p><u>C. Mitigation Measures</u></p> <p><u>C.1 RPP Restrictions.</u> For the life of the Project, the Applicant shall prohibit residents of the Project from participating in the District’s Residential Permit Parking (“RPP”) program through a clause in emphasized type in all leases for residents that prohibits residents from applying for obtaining RPPs, or using an RPP guest pass within one mile of the Property, upon pain of mandatory lease termination, to the full extent permitted by law. Furthermore, Applicant shall oppose any effort by residents of the Project or others to add the Property to the list of properties eligible for RPP. Finally, should the Applicant sell any units in the Property, the Applicant will <u>shall</u> incorporate a covenant that runs with the land into the deed for the units that prohibits residents from applying for or obtaining RPP.</p> <p><u>C.2 Transportation Demand Management Measures.</u> For the life of the Project, the Applicant shall provide the following transportation demand management (“TDM”) measures:</p> <p>a. Designate a member of the property management team as the Transportation Management Coordinator, who shall be responsible for ensuring that transportation information is disseminated to the tenants of the Project;</p>

	<ul style="list-style-type: none">b. Include information on transportation programs and services on the property management website;c. Include a real-time electronic transportation information display in a common, shared space in the Project; andd. Provide at least 60⁸² convenient and covered bicycle parking spaces within the Project as shown on the Plans. <p><u>C.3 Loading Management Measures.</u> For the life of the Project, the Applicant shall designate a loading dock manager to:</p> <ul style="list-style-type: none">a. Coordinate with vendors and tenants in order to make sure that deliveries occur from 9:00 AM to 5:00 PM;b. Ensure that all deliveries take place at the loading dock and that the dock's capacity is not exceeded;c. Redirect drivers to return at a later time if the dock is full;d. Monitor inbound and outbound maneuvers;e. Notify truck drivers of any access or egress restrictions;f. Provide DDOT's Freight Management and Commercial Vehicle Operation document to drivers; andg. Direct all truck drivers to utilize the Truck Routing Plan shown on Exhibit 30C of the Record. <p><u>C.4 Limitations on Adjacent Development.</u> For the life of the Project, to the extent that the Applicant or its affiliates acquire the rights to and redevelop any or all of the adjacent properties at 4626, 4632, and 4652-</p>
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	54 Wisconsin Avenue NW, the Applicant shall limit the height of any development to no more than six stories plus a penthouse level. Should the Applicant or its affiliates undertake such redevelopment, Applicant shall underground the utilities along the remainder of the 4600 block of Wisconsin Avenue, to Chesapeake Street, in connection with such redevelopment.
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Please feel free to contact the undersigned with any questions.

Respectfully submitted,



David M. Avitabile

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of the foregoing document to the following addresses on or before November 20, 2017, by first class mail or e-mail:

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Anna Chamberlin
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