

# Holland & Knight

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May 9, 2019

## **VIA IZIS AND E-MAIL**

D.C. Zoning Commission  
441 4<sup>th</sup> Street, N.W., Suite 210  
Washington, DC 20001

**Re: Z.C. Case No. 18-21: Post-Hearing Submission  
3135 and 3201 8<sup>th</sup> Street, N.E. (Square 3832, Lot 15 and Square 3835, Lot 804)**

Dear Members of the Commission:

On behalf of Hanover R.S. Limited Partnership, the Applicant in the above-referenced case, we hereby submit this Post-Hearing Submission responding to those specific questions and issues raised by the Zoning Commission at the April 25, 2019, public hearing.

### **I. Residential Parking Permits**

Based on discussions with the community, the Applicant has agreed to remove the planned unit development (“PUD”) from the District’s Residential Parking Permit (“RPP”) program in order to address concerns raised by the community about potential on-street parking by residents of the project. The Applicant will include a rider in all residential leases that restricts residential tenants from obtaining RPPs.

The Zoning Commission requested that the Applicant provide additional information regarding enforcement of this condition. In an effort to monitor whether residents are abiding by the restriction, the Applicant will require that the PUD’s property manager submit a request pursuant to the Freedom of Information Act, DC Code §§ 2-531 to 2-539 to the District of Columbia Department of Motor Vehicles annually to confirm whether any building tenant has registered a vehicle at the address of the PUD. This strategy has been employed in other cases, with the DMV providing the number of cars, if any, registered from a certain address. If the property manager determines that any car has been registered by a tenant and/or that the tenant has received an RPP, the property manager will notify the tenant that it must surrender the RPP in accordance with the residential lease rider.

## **II. Senior IZ Unit**

As requested by the Zoning Commission, the Applicant has engaged with the Office of Planning, the DC Department of Aging and Community Living (“DACL”)<sup>1</sup>, and the Department of Housing and Community Development (“DHCD”) to determine whether the Applicant can set aside one of the Inclusionary Zoning (“IZ”) units for senior residents. While the Applicant was prepared to make this commitment, DHCD indicated that it is unable at this time to administer IZ units that are set aside for seniors because its rules only provide for certification as to income and household size. DACL also indicated that it does not currently have a program in place to administer affordable units that are set aside for seniors. Based on the discussions among the agencies and given the importance of senior housing in the District, DHCD and DACL indicated that they would work together to determine how to implement such programs going forward. However, at this time, the agencies agreed that without a program in place, the set aside for this project could not be administered.

## **III. PUD Standards and Mitigation of Adverse Impacts**

The PUD satisfies the requirements for approval of a PUD outlined in Subtitle X § 304 *et seq.* In deciding a PUD application, the Commission must “judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” Subtitle X § 304.3. Moreover, the Commission must find that the proposed development:

- a. Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;
- b. Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and
- c. Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.

Subtitle X § 304.4.

The Applicant has provided evidence of compliance with each of these standards. First, the PUD and related Zoning Map amendment are not inconsistent with the Comprehensive Plan. The Applicant provided detailed analysis as to how the PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map, complies with the guiding principles in the Comprehensive Plan, furthers a number of the major elements of the Comprehensive Plan, and furthers the goals of the Brookland-CUA Small Area Plan (“Small Area Plan”) (*see Exhibits 2 and 2H of the record*). In addition, the Office of Planning provided detailed

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<sup>1</sup> In February, 2019, the DC Office of Aging (“DCOA”) became designated as the Department of Aging and Community Living.

analysis as to the PUD's consistency with the Comprehensive Plan (*see Exhibits 11 and 29* of the record). Furthermore, the Applicant's witness who was accepted as an expert in Land Use Planning submitted a detailed outline of testimony summarizing how the PUD is not inconsistent with the Comprehensive Plan and furthers the Small Area Plan.

Second, the application does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities, but instead the impacts are either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project. As stated in the OP Hearing Report (*Exhibit 29* of the record), the application was referred to the Department of Energy & Environment ("DOEE"), DDOT, DHCD, the Department of Parks and Recreation, the Department of Public Works, the DC Public Schools, the Fire and Emergency Medical Services Department, the Metropolitan Police Department, the Washington Metropolitan Area Transit Authority, DC Water, the DC Public Library, the Office of the State Superintendent of Education, DACL/DCOA, and the Department of Employment Services. Other than DDOT, no District agency submitted comments expressing concerns regarding potential impacts of the project.

With respect to transportation issues, the Applicant prepared a Comprehensive Traffic Assessment (CTR) to evaluate potential impacts (*see Exhibit 22A* of the record). The CTR identified potential adverse impacts and proposed mitigation for the same. DDOT evaluated those impacts and the proposed mitigation and requested additional mitigation, to which DDOT and the Applicant came to agreement (*see Exhibit 32A*). As confirmed by DDOT at the public hearing, the identified project impacts were capable of being mitigated through the Applicant's robust Transportation Demand Management Plan and the Loading Management Plan.

With respect to the design of the project, the Applicant designed the building fully within the requirements of the MU-4 zone, which, as further discussed below, is comparable to the permitted FAR and height in the underlying PDR-1 zone. To the extent that the rezoning of the project and the slight increase in height resulted in potential adverse impacts, the Applicant has mitigated such impacts by incorporating design gestures that are supported by the Small Area Plan. For example, each building includes a setback at approximately 50 feet as recommended in the Small Area Plan. Moreover, the buildings include courtyards at the third floor in order to break down the massing of each building. Finally, the building façade along 8<sup>th</sup> Street, N.E. has been designed such that it resembles townhomes with the inclusion of stoops, bays, and individual entrances, which are found throughout the surrounding residential neighborhood.

Furthermore, the public benefits and project amenities are not inconsistent with both the Comprehensive Plan and the Small Area Plan. The public benefits include, among other things, housing and affordable housing, transit oriented development, support for the arts-related uses, and accommodation of the Metropolitan Branch Trail, all of which are supported by the Comprehensive Plan and the Small Area Plan.

Finally, the Applicant's proffered public benefits and project amenities outweigh the relatively minor development incentives and flexibility requested by the Applicant. The Applicant has designed the building to fully comply with the proposed MU-4 zoning. The Applicant has only requested technical flexibility to allow the GAR requirements to be satisfied based on the

entire Site, and not based on each individual building lot, as would otherwise be required by Subtitle C § 302.4.

Subtitle X § 303.12 provides that a PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD. Accordingly, the zoning map amendment from the PDR-1 zone to the MU-4 zone is also flexibility. The rezoning, however, is fully consistent with the Comprehensive Plan, and specifically the Future Land Use Map which designates the site as moderate-density residential and low-density commercial. Because the PDR-1 zone would not permit residential use, the existing zoning is inconsistent with the FLUM designation. In addition, the density and height permitted under the requested MU-4 zone do not substantially differ from the density and height permitted under existing zoning. Specifically, if the Applicant proposed a PUD within the existing PDR-1 zone, the maximum FAR would be 4.2 (for permitted uses) and the maximum building height would be 60 feet. The MU-4 zone permits a maximum overall density of 3.6 FAR, of which 2.01 FAR can be devoted to non-residential use, and a maximum building height of 65 feet. As a result, the maximum permitted density for a PUD in the MU-4 zone is less than that permitted under existing zoning, and the building height permitted for a PUD in the MU-4 zone is only 5 feet greater than what is permitted for a PUD under existing zoning. Given the minimal amount of incentives that results from the rezoning, the public benefits and project amenities outweigh the degree of development incentives requested in this case.

We look forward to the Commission's consideration of this application for final action at its public meeting on June 10, 2019. Should you have any questions or need additional information, please do not hesitate to have Office of Zoning staff call me.

Sincerely,

A handwritten signature in blue ink that reads "Christine M. Shiker".

Christine M. Shiker

## **CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2019, a copy of the Post-Hearing Submission was served on the following:

Advisory Neighborhood Commission 5E  
c/o Commissioner Bradley Thomas, Chair  
[5E@anc.dc.gov](mailto:5E@anc.dc.gov)

Via E-Mail

Commissioner Nick Cheolas, ANC 5E01  
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Christine Shiker