

Applicant's Proposed Findings of Fact and Conclusions of Law

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-06A
Z.C. Case No. 22-06A
801 Maine Avenue NBL Owner LLC
(PUD Modification Without Hearing @ Square 390, Lot 53)
June 26, 2025**

Pursuant to notice, at its June 26, 2025 public meeting, the Zoning Commission for the District of Columbia ("Commission") considered the application ("Application") of 801 Maine Avenue NBL Owner LLC (the "Applicant") for a Modification Without Hearing to the planned unit development ("PUD") approved pursuant to Z.C. Order No. 22-06, for the property known as Lot 53 in Square 390 (the "Property"). The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedure, codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations ("DCMR")), to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission hereby **APPROVES** the Application.

I. BACKGROUND

The Property

1. The Property is a triangular-shaped parcel located in the southwest quadrant of the District, with a total land area of approximately 53,363 square feet (± 1.23 acres). The Property is located at the corner of the intersection of Maine Avenue and 9th Street, S.W. south of G Street, S.W.
2. The Property is currently improved with a four-story office building that was previously leased by the National Institute of Food and Agriculture, an agency of the U.S. Department of Agriculture, and is presently vacant.
3. The Property is generally surrounded by a mix of residential and non-residential uses. Its immediate surroundings include Benjamin Banneker Park to the west, the Thomas Jefferson Middle School Academy and Jefferson Field to the east, The Wharf D.C. to the south, and a moderate-density townhome community to the north, which is known as Capitol Square Place.
4. The Property is well-served by transit, with the L'Enfant Plaza (Blue, Orange, Silver, Green, Yellow lines) and Waterfront (Green line) Metrorail stations each about 0.5 miles, or a 10-minute walk, away. Metrobus routes 52 and 74 also serve the immediate area.
5. The Property is located within the boundaries of Ward 6 and Advisory Neighborhood Commission ("ANC") 6D.

Prior Zoning Commission Approval

6. Pursuant to Z.C. Order No. 22-06, dated February 9, 2023, and effective as of June 9, 2023, the Commission approved a consolidated PUD and a related Zoning Map amendment, rezoning the Property from the MU-12 zone to the MU-9A zone. The Commission's approval authorizes a mixed-use development consisting of approximately 498 residential units and 24,169 square feet of non-residential use, with an overall floor area ratio of 7.99. The Commission's approval also permits a maximum building height of approximately 130 feet along the southern portion of the building fronting Maine Avenue, and a maximum height of 90 feet along the northern portion fronting G Street, S.W. (the "Project").
7. Z.C. Order No. 22-06 was appealed to the District of Columbia Court of Appeals (No. 23-AA-815); however, the petition was ultimately dismissed. The time limitations set forth in Subtitle Z §§ 702.2 and 702.3 run from March 5, 2024, which is the date of the Court's dismissal, rather than the effective date of Z.C. Order No. 22-06 (Subtitle Z § 705.8). Accordingly, the Applicant must apply for a building permit by March 5, 2026, and must commence construction of the PUD by March 5, 2027.

Parties and Notice

8. In addition to the Applicant, the parties to Z.C. Case No. 22-06 included Advisory Neighborhood Commission ("ANC") 6D, the "affected" ANC pursuant to Subtitle Z § 101.8, and the Capitol Square Homeowners Association ("Capitol Square HOA"), which the Commission granted party status in opposition. (Z.C. Order No. 22-06, Finding of Fact ("FF") No. 7.)
9. On May 16, 2025, the Applicant served the Application on ANC 6D, the Single Member District representative for ANC 6D-01, the Chair of ANC 6D, the Capitol Square HOA, the Office of Planning ("OP"), and the District Department of Transportation ("DDOT"), as attested by the Certificate of Service submitted with the Application (Exhibit ["Ex."] 2).

II. THE APPLICATION

10. On May 16, 2025, the Applicant filed the Application requesting a Modification Without Hearing to the approved PUD, pursuant to Subtitle Z § 703.1, seeking approval of the following:
 - a modification to the approved PUD plans, specifically revisions to the floor plans for the parking garage levels, ground floor, and first floor of the Project, as reflected in the architectural plans marked as Exhibit 2D in the case record (the "Modified Plans"), along with a corresponding amendment to Decision No. A.1 of Z.C. Order No. 22-06;
 - additional flexibility to relocate the entrances to the Project's underground parking garage and loading facilities, with a corresponding revision to Decision No. A.3.n of Z.C. Order No. 22-06; and
 - a modification to Decision No. E.3.b of Z.C. Order No. 22-06 to allow the Project's residential units to be offered as either rental or for-sale, which would also establish

Z.C. ORDER NO. 22-06A

Z.C. CASE NO. 22-06A

PAGE 2

the affordability levels for any IZ units at up to 60% of the MFI for rental units and up to 80% MFI for ownership units, consistent with Subtitle C § 1003.7.
(Ex. 1-2D).

Requested Modification and Justification

11. The Application asserted that a southward shift of certain building components resulted in the elimination of the previously approved “interim” level between the ground floor and the first parking garage level (PG1). As reflected in the Modified Plans, this southward shift also necessitated the redistribution of the Project’s loading facilities, residential lobby, and bicycle storage (Ex. 2, 2D.)
12. In response to the anticipated ground-floor retail program, the previously approved WB-67 loading dock would be removed, and the Project’s loading facilities would be reconfigured into two smaller, separate bays that independently serve the Project’s retail and residential components. The Application noted that both facilities would remain accessible from the Project’s private driveway and are now vertically separated due to the Property’s natural slope. (*Id.*)
13. The Modified Plans also reflect a southward shift of the entrance to the Project’s underground parking garage along the private driveway, which would serve as a dividing point between the retail and residential components. In connection with this change, the long-term bicycle storage room would be relocated to the first level of the underground garage, but continue to comply with the location and access requirements set forth in Subtitle C § 805. (*Id.*)
14. The Application also noted that the Modified Plans included additional refinements that fall within the scope of flexibility granted under Z.C. Order No. 22-06, including a reconfiguration of parking spaces within the underground garage, an expansion of the residential lobby, and a relocation of the Project’s retail entrances along Maine Avenue. (*Id.*)
15. The Application explained that the Applicant intends to offer the Project’s residential units as either rental or for-sale. Such optionality would not affect the number, location, or distribution of the IZ units, which will remain compliant with Subtitle C § 1003.7. Additionally, the Application asserted that providing optionality in residential tenure advances Policy LU-1.4.4 (titled, “Affordable Rental and For-Sale Multi-family Housing Near Metrorail Stations”) by expanding housing choices at a site that is well-served by public transit. The Application further noted that the modification supports the District’s housing objectives for the Lower Anacostia Waterfront/Near Southwest Planning Area, and aligns with the Southwest Neighborhood Plan’s recommendations for inclusive, community-focused development. (*Id.*)
16. The Application included an analysis of how the modification would meet the PUD evaluation standards, including how the modification would not change the following conclusions made by the Commission in Z.C. Order No. 22-06:

Z.C. ORDER NO. 22-06A

Z.C. CASE NO. 22-06A

PAGE 3

- The Commission found that the PUD met the balancing test under Subtitle X § 304.3, concluding that the public benefits outweighed the zoning flexibility and any potential adverse impacts, and that the related map amendment from the MU-12 to the MU-9A zone and the technical zoning relief were appropriate to advance the Project’s housing goals (Z.C. Order No. 22-06, Conclusion of Law [“CL”] Nos. 39-45);
 - The Commission concluded that the PUD was “not inconsistent with the [Comprehensive Plan] when evaluated through a racial equity lens,” based on findings that it would provide new housing and affordable housing beyond what could be constructed as a matter-of-right, deliver community-driven retail and services, and offer a public benefits package including transportation, streetscape, and public art improvements (Z.C. Order No. 22-06, CL Nos. 10-25);
 - The Commission found that the Project would have favorable impacts on land use, housing, the environment, economic development, and infrastructure, and that any transportation impacts were either acceptable or capable of being mitigated, given the Project’s proximity to transit and neighborhood amenities (Z.C. Order No. 22-06, CL No. 29); and
 - The Commission concluded that the Project’s public benefits and amenities, including superior design, housing, sustainability features, and neighborhood-serving uses, were “commendable” and supported approval of the PUD (Z.C. Order No. 22-06, CL No. 40).
- (Ex. 2)

III. RESPONSES TO THE APPLICATION

OP

17. On June 10, 2025, OP submitted a report (the “OP Report”) stating that it “recommends the Commission approve the requested Modification Without a Hearing to allow modifications as outlined in the Applicant’s submission,” including revisions to the approved plans, added flexibility for the design and location of the Project’s loading and parking entrances, and the inclusion of a for-sale housing option (Ex. 4, p. 1).
18. The OP Report acknowledged that the reconfigured loading facilities would be “better scaled for a reduced retail footprint” and that other changes reflected in the Modified Plans were “consistent with the flexibility granted under the Order.” (Ex. 4, p. 2).
19. The OP Report asserted that the proposed modification to Decision No. E.3.b of Z.C. Order No. 22-06 “would add homeownership opportunities” and “would not affect the Commission’s decision and intent of the application of IZ to the project in accordance with the Zoning Regulations.” (Ex. 4, p. 3).
20. The OP Report concluded that the requested modifications “would not significantly adversely impact any aspect of the specific public benefits and project amenities and are not inconsistent with the Comprehensive Plan policies or other public policies reviewed under the original PUD.” OP further stated that “the public benefits continue to be commensurate with the flexibility gained through the PUD, outweigh the requested

Z.C. ORDER NO. 22-06A

Z.C. CASE NO. 22-06A

PAGE 4

changes as well as any potential adverse impacts that are not capable of being mitigated, as expressed by the Commission in its conclusions, and therefore justify approval of the modifications without hearing.” (*Id.*).

ANC 6D and Capitol Square HOA

21. The Applicant’s Statement in Support (Ex. 2) indicated that the Applicant engaged with Commissioner Marquell Washington, the Single-Member District representative for ANC 6D01, and notified the Capitol Square HOA of its intent to seek a modification to the approved PUD, further stating that it would continue engaging with both the ANC and Capitol Square HOA throughout the review process.
22. Neither ANC 6D nor the Capitol Square HOA submitted a written report or comments to the case record; however, both received notice of the Application in accordance with Subtitle Z § 703.10, as noted in FF No. [REDACTED] above.

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make, without public hearing, modifications to approved contested case final orders and plans approved by such orders (modifications without hearing).
2. Subtitle Z § 703.6 describes a Modification Without Hearing as a “modification in which impact may be understood without witness testimony, including, but not limited to a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission. Determination that a modification can be approved without witness testimony is within the Commission’s discretion. A request to add or change a zoning map designation to an approved planned unit development shall not be considered without a hearing.”
3. The Commission concludes that the Application qualifies as a Modification Without Hearing pursuant to Subtitle Z § 703.6 because it seeks to revise conditions of the final order that relate to the approved plans, design flexibility, and the delivery of the Project’s affordable housing component. The Commission further finds the proposed modification can be fully evaluated without the need for witness testimony and therefore may be approved without a public hearing.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.10 to serve the Application on all parties to the original proceeding, in this case ANC 6D and the Capitol Square HOA, at the same time that the request was filed with the Office of Zoning.
5. The Commission concludes that the requirement of Subtitle Z § 703.12 to provide a minimum of 30 days for parties to respond to the Application has been met.

Z.C. ORDER NO. 22-06A

Z.C. CASE NO. 22-06A

PAGE 5

6. The Commission concludes that, in accordance with Subtitle Z § 703.13, this request for a Modification Without Hearing was filed with the Office of Zoning at least thirty-five (35) days prior to the public meeting at which the request was considered by the Commission. The Application was filed on May 16, 2025, and considered by the Commission at its June 26, 2025, public meeting.
7. The Commission finds the Application consistent with the intent of the original PUD approval of Z.C. Order No. 22-06 for the reasons set forth in FF No. [REDACTED] above.

“GREAT WEIGHT” TO RECOMMENDATIONS OF OP

8. The Commission must give “great weight” to the recommendations of the OP pursuant to § 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 (2018 Repl.) and Subtitle Z § 405.9 (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
9. The Commission finds OP’s recommendation to approve the Application persuasive and concurs in that judgment.

“GREAT WEIGHT” TO WRITTEN REPORT OF THE ANC

10. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 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) (2012 Repl.) and Subtitle Z § 406.2.) To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).)
11. ANC 6D did not submit a report to the case record to which the Commission can give great weight (FF No. [REDACTED]).

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant’s request for a Modification Without Hearing to the PUD and related Zoning Map amendment approved pursuant to Z.C. Order No. 22-06, to authorize the requested modifications to the approved plans, additional design flexibility for loading and parking entrances, and optionality in housing tenure, subject to the following conditions:

Z.C. ORDER NO. 22-06A

Z.C. CASE NO. 22-06A

PAGE 6

1. Decision No. A.1 and Decision No. A.3 of Z.C. Order No. 22-06 are modified as follows (additions in **bold** and **underlined** text; deletions shown with ~~striketrough~~ text):

A. PROJECT DEVELOPMENT

1. The Project shall be developed and constructed substantially in accordance with the plans titled “899 Maine Avenue”, prepared by Perkins Eastman DC, LLC, submitted by the Applicant on November 28, 2022, and the signage and storefront package ~~as modified by the guidelines, conditions, and standards herein (collectively, the “Approved Plans”).~~ **(Z.C. Case No. 22-06, Ex. 119A1-119A5, 38B.), as modified by the architectural plans marked as Ex. 2D in the record for Z.C. Case No. 22-06A, and as modified by the guidelines, conditions, and standards herein (collectively, the “Approved Plans”).**

...

3. The Applicant shall have PUD design flexibility in the following areas:

...

n. Loading and Parking Entrances. To shift the location and design of the loading and parking garage entrances, provided that the entrances remain accessible from the private driveway and do not substantially alter the exterior of the building.

2. Decision No. E.3.b of Z.C. Order No. 22-06 are modified as follows (additions in **bold** and **underlined** text):

E. REQUIREMENTS FOR THE LIFE OF THE PROJECT

3. The Applicant shall provide the affordable housing for the Project in accordance with the following::

...

- b. For the life of the Project, in substantial conformance with Sheet 32 of the Approved Plans (titled, the “IZ Unit Mix”), the Applicant shall provide the affordable housing for the Project as set forth in the following chart:

Residential Unit Type	Net Residential Square Feet / % of Total	# of Units	Reserved for households earning equal to or less than	Affordable Control Period	Affordable Unit Type
Total	370,774 sf (100%)	498			

Z.C. ORDER NO. 22-06A

Z.C. CASE NO. 22-06A

PAGE 7

Market Rate	378,477 314,776**¹ (85%)	423	Market Rate	Life of the Project	<u>For-Sale or</u> Rental
IZ	11,203 (2.9%)	24	<u>Up to 80% MFI (for-sale)</u> Up to 60% MFI (<u>rental</u>)	Life of the Project	<u>For-Sale or</u> Rental / Studio
IZ	19,885 (5.4%)	27	<u>Up to 80% MFI (for-sale)</u> Up to 60% MFI (<u>rental</u>)	Life of the Project	<u>For-Sale or</u> Rental / 1 Bedroom
IZ	15,874 (4.3%)	16	<u>Up to 80% MFI (for-sale)</u> Up to 60% MFI (<u>rental</u>)	Life of the Project	<u>For-Sale or</u> Rental / 2 Bedroom
IZ	9,036 (2.4%)	8	Up to 50% MFI	Life of the Project	<u>For-Sale or</u> Rental / 3 Bedroom
Total IZ	55,998*	75			

*Calculations based on 15% of the overall residential GFA of the Project (65,171 square feet), plus 15% of the penthouse habitable space devoted to dwelling units.

Final Action

VOTE (June 26, 2025): 4-0-1

(Anthony J. Hood, Joseph Imamura, Gwen Wright, and Robert E. Miller to approve (Tammy Stidham absent.))

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 22-06A shall become final and effective upon publication in the *District of Columbia Register*; that is, on _____, 2025.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

¹ In Z.C. Order No. 22-06, the net residential square footage indicated for the market-rate units reflected a non-substantive math error, which is being corrected as a technical reconciliation in this Z.C. Order No. 22-06A.

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 WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

DRAFT