

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



**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 15-18**

**Z.C. Case No. 15-18**

**Initio, LP**

**(Consolidated PUD and Related Map Amendment @ Square 1194, Lot 811)**

**January 30, 2017**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on July 21, 2016, to consider an application for a consolidated planned unit development ("PUD") and related Zoning Map amendment filed by Initio, LP ("Applicant"). The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR")<sup>1</sup>. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

**FINDINGS OF FACT**

**A. The Applications, Parties, Hearing, and Post-Hearing Filings**

1. On July 31, 2015, the Applicant filed an application with the Commission for consolidated review of a PUD and a related Zoning Map amendment from the C-2-A Zone District/unzoned to the W-2 Zone District for the parcel located at 2715 Pennsylvania Avenue, N.W., and more particularly described as Square 1194, Lot 811 ("Property").
2. On March 9, 2016, the Applicant amended the application to include: (a) flexibility from § 2401.2 of the Zoning Regulations, which authorizes the Commission to waive up to 50% of the minimum area requirement for a PUD in the W-2 Zone District<sup>2</sup>; and (b) an expansion of the PUD benefits and amenities

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<sup>1</sup> Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016, and replaced with a Chapter 3 of Subtitle 11-X. However, because this application was set down for hearing prior to that date, the Commission's approval was based upon the standards set forth in Chapter 24.

<sup>2</sup> As discussed below, the Commission concluded that the request was not appropriately characterized as PUD flexibility, which is limited to flexibility from the area requirement for which a variance was ordinarily required. Instead, the Commission considered the request to seek a waiver from a prerequisite to a property being eligible for PUD consideration and granted the waiver.

package to include a contribution in the amount of \$359,604 to the Housing Production Trust Fund. (Exhibit ["Ex."] 15.)

3. The Applicant proposes to redevelop the Property with a mixed-use building that has a restaurant on the ground floor and a four-story apartment house with seven residential units above. The proposed building will have a height of 60 feet and density of a 3.5 floor area ratio ("FAR").
4. On July 21, 2016, the Applicant requested a waiver from § 3013.1 of the Zoning Regulations in order to amend the application less than 20 days prior to the public hearing and requested additional flexibility from the penthouse setback requirements. (Ex. 40, 38.) The Commission later determined that the penthouse was fully compliant.
5. By report dated April 15, 2016, the District of Columbia Office of Planning ("OP") recommended that the application be set down for a public hearing. (Ex. 16.)
6. On April 11, 2016, the Commission voted to set down the application for a public hearing.
7. On April 25, 2016, the Applicant filed its prehearing statement providing the following information requested by the Commission: (a) confirmation of the National Park Service ("NPS") jurisdiction of the park site immediately west of the Property; (b) the status of Commission of Fine Arts ("CFA")/Old Georgetown Board ("OGB") review of the application; and (c) architectural drawings that provide additional information on the roof structures and dimensions. (Ex. 19-19J.)
8. A description of the proposed development and the notice of the public hearing in this matter were published in the *D.C. Register* on June 3, 2016. (Ex. 22.) The notice of public hearing was mailed to all owners of property located within 200 feet of the Property and to Advisory Neighborhood Commission ("ANC") 2E on June 1, 2016. (Ex. 24.)
9. On July 1, 2016, the Applicant submitted a supplemental prehearing statement that included updated information regarding: (a) the NPS ownership of the park site to the west of the Property; (b) coordination with the District Department of Transportation ("DDOT") on public space improvements; (c) updates on the Applicant's meeting with the District Department of Energy and the Environment ("DOEE"); (d) updated architectural drawings; (e) the status of discussions with ANC 2E; and (f) the status of OGB and CFA review. (Ex. 28-28H2.)
10. On July 11, 2016, OP submitted a report to the Commission recommending approval of the application and the requested areas of zoning flexibility. (Ex. 29.)

11. At its regularly scheduled public meeting on July 5, 2016, for which notice was properly given and a quorum was present, ANC 2E voted unanimously by a vote of 6-0-0 to support the application. (Ex. 30.)
12. On July 11, 2016, DDOT submitted a report finding no objection to the application, subject to certain conditions listed on page two of its report. (Ex. 31.)
13. The Commission held a public hearing on the application on July 21, 2016.
14. The parties to the case were the Applicant and ANC 2E.
15. At the public hearing on the application, the following persons testified in favor of the Applicant: Mary Mottershead of EastBanc, Inc.; Diogo Machado Lima of Souto Moura Arquitectos, the architect for the PUD; Lisa E. Delplace of Oehme, van Sweden Landscape Architecture, landscape architect; and Nicole White of Symmetra Design, traffic consultant. The Commission accepted Ms. Delpace and Ms. White as expert witnesses in the areas of landscape architecture and transportation planning, respectively.
16. OP and DDOT testified in support of the application at the public hearing.
17. No individuals testified in support of, or in opposition to, the application at the public hearing. However, the record includes a letter of support from the Citizens Association of Georgetown and a letter in opposition to the request for parking flexibility from Atticus Sawatzki. (Ex. 33, 32.)
18. Larry Hargrove, of the Committee of 100 on the Federal City (“Committee of 100”), testified at the public hearing, and the Committee of 100 also submitted a letter into the Record. (Ex. 42.) The Committee’s comments related to the adopted, but not yet effective Subtitle X § 301.2, which would have permitted the Commission to fully waive the minimum lot area requirements for PUDs. As will be explained, that provision was revised prior to its effective date and amended after its effective date so as to have a different impact.
19. The record was closed at the conclusion of the public hearing, except for the Applicant to file a response to the Commission’s comments regarding improvements to the park site to the west of the Property; the chimney proposed for the fifth-floor penthouse; and a portion of the penthouse setback.
20. On August 4, 2016, the Applicant submitted its post-hearing submission responding to the Commission’s request for additional information regarding the improvements for the park site to the west of the Property and the building chimney, as well as revised drawings reflecting the modified fifth-floor roof in order for the penthouse to meet the required setback on this portion of the building. (Ex. 44-44A.)

21. On August 11, 2016, the Applicant submitted a cover letter and its proposed findings of fact and conclusions of law. (Ex. 45, 46.)
22. On September 26, 2016, the Committee of 100 submitted comments concerning the Commission's authority to grant a PUD minimum area waiver. (Ex. 47-48.)
23. On October 11, 2016, the Applicant submitted an additional post-hearing submission that attached a lighting plan. (Ex. 49-49A2.)
24. On December 19, 2016, the Commission took proposed action to approve the application. The proposed action was referred to the National Capital Planning Commission ("NCPC") on December 21, 2016, pursuant to § 492 of the Home Rule Act.
25. NCPC did not submit a report in this case.
26. On December 29, 2016, the Applicant submitted its final list of its proffered public benefits and draft conditions<sup>3</sup>. (Ex. 51A.)
27. The Commission took final action to approve the PUD on January 23, 2017.

**B. The PUD Site and Surrounding Area**

28. The Property consists of approximately 7,413 square feet of land area and is currently improved with a gas station with a service bay. The Property is situated at the eastern boundary of Georgetown. It is nestled against Rock Creek Parkway on the east. The Four Seasons Hotel is located to the south, on the opposite side of Pennsylvania Avenue N.W. To the west is a "pocket park" on Federal Reservation 691 (Lot 807) near the intersection of Pennsylvania Avenue, M Street, and 28<sup>th</sup> Street. To the north, on the opposite side of M Street, is a four-story building that includes commercial, office, and residential uses.
29. The Property is designated Low-Density Commercial on the District of Columbia Comprehensive Plan Future Land Use Map. The Property is located in the Regional Center Area on the District of Columbia Comprehensive Plan Generalized Policy Map.

**C. PUD Minimum Area Waiver**

30. When the Commission was considering whether to set down this Application for a public hearing, it considered the Applicant's request to waive 11 DCMR § 2402.2, which allows the Commission, after a hearing, to waive not more than 50% of the minimum land area requirement for a PUD if certain conditions are

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<sup>3</sup> The Commission Chair granted the Applicant's request that the Commission accept the submission more than seven days after the Commission took proposed action.

met. As a result of the PUD-related map amendment, the PUD would be zoned W-2. Pursuant to § 2401.1(c), a W-2 PUD must occupy a land area of 15,000 square feet. A full 50% waiver would still result in a minimum required land area of 7,500 square feet, and with only 7,413 square feet of land area this Property does not meet that requirement.

31. In support of its waiver request, the Applicant noted that the Commission had adopted a replacement version of Title 11 DCMR (“the 2016 Regulations”) that would become effective on September 6, 2016. The 2016 Regulation would continue to require the same minimum land area for this PUD, but at the time of the Application the yet-to-be effective Subtitle X § 301.2 permitted the Commission to waive an unlimited percentage of this requirement. Although the provision did not apply to this application, the Applicant argued that the policy considerations underlying the Commission’s decision to adopt it warranted waiving the 50% limitation of § 2402.2. At its April 11<sup>th</sup> public meeting, the Commission decided to set down this application for a hearing without deciding whether the 50% limitation should be waived, but instead determined that the Applicant must present its case for the waiver at the public hearing, while also demonstrating that the prerequisites of Subtitle X § 301.2 have been met.
32. After the July 21, 2016 hearing, but before the effective date of the 2016 Zoning Regulations, the Commission issued Z.C. Order No. 08-06E, which among other things, amended Subtitle X § 301.2 to reinstated the 50% land waiver limit. The Commission concluded that it would be better to hold a specific public meeting on whether to allow unlimited land area waivers, and therefore agreed to set down for hearing Z.C. Case 08-06F, which proposed a full land area waiver.
33. On September 6, 2016, the 2016 Zoning Regulations became effective, together with changes to the existing zone names. Among those changes was the re-designation of the W-2 zone as MU-13. However, that change did not effect the W-2 map amendment sought for this PUD.
34. This case was first scheduled for proposed action on September 12<sup>th</sup>, but was removed from the agenda. On September 26<sup>th</sup> and again on October 17<sup>th</sup>, the Commission, recognizing the potential significance of Z.C. Case No. 08-06F, deferred taking proposed action until it decided that case.
35. At its public meeting on December 19, 2016, the Commission took final action to approve Z.C. Case No. 08-06F including amendments to Subtitle X § 30. However, the amendments as adopted differed from the amendments originally advertised. The Commission amended Subtitle X § 301.2 to retain the 50% limitation for some zone districts, while for others, including the MU-13 Zone District, it added new subsection, Subtitle X § 301.3 to allow for more than a 50% waiver, but not to less than 5,000 square feet. In both instances, the Commission would have to find after a public hearing that the development is of exceptional merit and is in the best interests of the District of Columbia or the country and if

the development is to be located outside the Central Employment Area, at least 80% of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto.

36. Therefore, had this PUD been filed after September 6, 2016, it would have been eligible for a land waiver to 7,413 square feet.
37. The waiver limit of § 2402.2 may be waived without use of the variance standard because it does not pertain to how property may be used, but instead establishes one prerequisite to a property being eligible to obtain PUD relief from such standards. Nevertheless, the Commission is required to set forth the basis of a decision to waive § 2402.2 with such clarity as to be understandable. (*Blagden Alley Ass'n v. D.C. Zoning Comm'n*, 590 A.2d 139, 146 (D.C. 1991).)
38. The Commission concludes that although new Subtitle X § 301.3 does not technically apply to this PUD, the underlying policy considerations that prompted the Commission to adopt it are equally relevant to the Commission's determination of this request. Since the Commission has determined that an MU-13 property of less than 15,000 square feet is eligible to request a land waiver to not less than 5,000 square feet, the Commission determined that this PUD should be similarly eligible. For that reason, and because for the reasons stated in this Order this PUD meets the existing requirements for waiver under both applicable § 2402.2 and new Subtitle X § 301.3, the Commission waives the 50% limitation of the former and grants a land area waiver to 7,413 square feet.

### **Existing and Proposed Zoning**

39. The Property is primarily in the C-2-A Zone District; the easternmost portion of the Property is unzoned. The C-2-A Zone District includes the following development standards:
  - The maximum permitted height within the C-2-A Zone District is 50 feet; (11 DCMR § 770.1.)
  - The maximum permitted density is 2.5 FAR, of which 1.5 can be non-residential uses; (11 DCMR § 771.2.)
  - The permitted lot occupancy for the C-2-A Zone District is 60%; and (11 DCMR § 772.1.)
  - The minimum depth of a rear yard is 15 feet; and the minimum side yard shall be three inches wide for each foot of height, but not less than eight feet. (11 DCMR §§ 774.1 and 775.4(a).)



40. The Applicant requests a map amendment to rezone the Property to the W-2 Zone District. The W-2 Zone District includes the following development requirements:
- The maximum permitted height within the W-2 Zone District is 60 feet;
  - The maximum permitted density is 4.0 FAR, not more than 2.0 of which may be used for other than residential purposes; (11 DCMR §§ 930.1 and 931.3.)
  - The permitted maximum lot occupancy in the W-2 Zone District is 75%; and (11 DCMR § 932.1.)
  - The minimum depth of a rear yard when a residential use begins above grade is three inches per foot (“in./ft.”) of vertical distance from the horizontal plane upon which the residential use begins to the highest point of the main roof, but not less than 12 feet. (11 DCMR § 933.2.) No side yard is required, but if a side yard is provided, its minimum width shall be at least eight feet. (11 DCMR § 934.2.)

**E. Description of the PUD Development**

41. The Applicant seeks approval of a consolidated PUD and related Zoning Map Amendment in order to redevelop the Property with a mixed-use building that has a restaurant on the ground floor and a four-story apartment house with seven residential units above. The building will be 60 feet in height and consists of approximately 26,034 square feet of floor area, resulting in a density of 3.5 FAR. The PUD has a lot occupancy of 74.8%. No off-street parking will be provided for the PUD, but there will be a through driveway for deliveries, trash collection, and resident guest drop off.
42. Vehicular site circulation is provided on the western boundary of the Property extending one-way from Pennsylvania Avenue to M Street, with a covered porte cochere for residents, potential restaurant patrons, drop off, and loading. Bollards may serve as a barrier between the entry drive and the potential plaza improvements on Federal Reservation 691. There will be café seating for the restaurant on the east side of the Property.
43. The residential units are accessed directly from an elevator that connects to a 500-square-foot ground floor lobby in the southeast corner of the building, facing Pennsylvania Avenue. The residential lobby is also accessible from the covered drive on the east side of the building. The penthouse level of the proposed building includes residential recreation space and amenities, a mechanical equipment area, and a small terrace.

44. The primary entrance to the restaurant will be on the west side of the Property from the plaza, with a secondary exit on the east side of the Property. The restaurant space is approximately 2,600 square feet.
45. Both the restaurant and residential functions are serviced by a shared service lobby that is accessed from the driveway on the east side of the site. A cellar occupies 100% of the site below grade, providing space for required mechanical, electrical, and plumbing equipment. The cellar also contains individual storage units for the residential units, bike storage, a prep kitchen and public restrooms for the restaurant, and the trash rooms for both uses. The trash will be brought to the ground floor for pick up via a conveyor system or the second service elevator at designated times.

**F. Development Incentives and Flexibility**

46. The Applicant requests flexibility from the following requirements of the Zoning Regulations:
  - a. To have zero parking spaces where three are required pursuant to § 2101 of the Zoning Regulations; and
  - b. To have a rear yard of varying widths and a minimum of 0' where 12'-0" is required pursuant to § 933 of the Zoning Regulations, as shown on Sheet S-02 of the Plans;
47. The Applicant also requests design flexibility in the following areas:
  - a. 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;
  - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, pavers, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit, and final approval by the Old Georgetown Board, U.S. Commission of Fine arts and the National Park service;



- c. To vary the final selection of all exterior signage on the building; and
- d. To vary the location and design of the ground-floor components of the building 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.

**G. Project Benefits and Amenities**

- 48. Urban Design, Architecture, and Landscaping (11 DCMR § 2403.9(a)) – The building is designed by world-renowned and 2011 Pritzker Prize-winning architect, Eduardo Souto de Moura. The PUD has a compact volume of four stories where apartments open onto balconies that add outdoor living space to each unit. Supporting this volume is a ground floor that curves with the unique configuration of the site between M Street and Pennsylvania Avenue. A new driveway serves as access to the apartments, the restaurant, and the loading area. The portion of ground-floor volume that falls outside the perimeter of the upper floors is a transparent construction of steel and glass that opens to the park and to an outdoor plaza. Souto Moura Arquitectos opted for brick as a material because it seems to be the most appropriate for this part of the city. The slabs of concrete and ground floor walls in granite give the building a certain tectonic and gravitational image, like the buildings in Old Georgetown. The structural solution uses metal trellises to achieve the cantilever over the driveway and will be lined with brick.
- 49. Site Planning, and Efficient and Economical Land Utilization (11 DCMR § 2403.9(b)) – The PUD proposes the redevelopment of an underutilized site and the replacement of a gas station with a residential building and restaurant. The one-way driveway will allow for efficient ingress and egress of the site.
- 50. Affordable Housing (11 DCMR § 2403.9(f)) – Even though the PUD is not subject to the Inclusionary Zoning requirements of Chapter 26, the Applicant will contribute \$359,604 to the Housing Production Trust Fund. Not less than one half of said contribution will be made prior to the issuance of a building permit for the proposed development, and the balance will be made prior to the issuance of a certificate of occupancy for the PUD.
- 51. Effective and Safe Vehicular and Pedestrian Access (11 DCMR § 2403.9 (c)) – In order to further encourage the use of non-auto modes of transportation, the Applicant will implement a Transportation Demand Management (“TDM”) plan with strategies to limit the need for and use of vehicles at the proposed residential building. The TDM plan includes:

- a. Bylaws, public offering statements, purchase agreements, and deeds with provisions prohibiting unit owners from obtaining Residential Parking Permits;
- b. For the first 10 years that the building is open, the Applicant shall offer the choice of either an annual Capital Bikeshare or an annual car share membership to the initial purchaser or renter of a unit;
- c. Provide, as a one-time incentive, up to seven bicycle helmets for distribution to new residents;
- d. Offer a preloaded \$10 SmarTrip card for each unit at the sale or rental of units in the building for the first 10 years that the building is open;
- e. Provide at least nine long-term bicycle parking spaces within the building;
- f. Post all TDM commitments on-line and provide each initial resident with links to CommuterConnections.com, goDCgo.com, WMATA Metrobus routes, and DC Bicycle maps;
- g. Designate a member of the building's management or operations staff as the site's TDM Leader;
- h. On an as-needed basis, the Applicant will negotiate a lease or other contractual arrangement from an operator(s) of nearby parking garages that provides the Applicant with monthly parking passes for residential tenants who require parking, as set forth below:
  - i. The passes shall be dedicated for the exclusive use of residents of the PUD, to provide access at any time to parking spaces in said garages 24 hours a day, up to seven days a week, 52 weeks a year;
  - ii. The parking spaces for which the passes provide access will be located within one-quarter mile of the PUD; and
  - iii. The passes shall be priced at market rates for similar parking privileges at the same garage or parking facility;
- i. Residents of the PUD will not be eligible to apply for Residential Parking Permits ("RPP"). The Applicant will notify all residential tenants of the fact that they are not eligible to apply for RPP. Furthermore, the Applicant will cause all residential tenants to agree not to apply for or obtain a residential parking permit; and

- j. If the commercial tenant of the PUD is a restaurant, the Applicant will provide, or require the tenant to provide, a valet parking arrangement with the Four Seasons Hotel or other nearby parking facilities at market rates for similar valet parking arrangements.
- 52. Environmental Benefits (11 DCMR § 2403.9(h)) – The PUD will be developed to fulfill or exceed LEED-Gold Certification.
- 53. Other Public Benefits and Development Amenities- Community Recreation Spaces (11 DCMR § 2403.9(j)) – Prior to the issuance of a certificate of occupancy for the PUD, the Applicant shall have finalized an agreement with the National Park Service for the improvement and long-term maintenance of U.S. Reservation 691 (Meigs Park) and the park area east of the Property (Reservation 360). Said agreement shall include the design development plans approved by NPS and DDOT and shall not be substantially inconsistent with the concept plans shown on Sheets L-05 through L-07 of the Plans. The specific materials, furniture and other elements for the improvement of the park area shall be as required and approved by NPS and DDOT, the minimum value of which shall be \$200,000.

#### **H. Comprehensive Plan**

- 54. 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, and furthers a number of the major elements of the Comprehensive Plan.
- 55. The Future Land Use Map of the Comprehensive Plan designates the Property for Low-Density Commercial land uses. The Framework Element describes the Low-Density Commercial category as shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Their common feature is that they are comprised primarily of one- to three-story commercial buildings. The corresponding zone districts are generally C-1 and C-2-A, although other districts may apply. (10A DCMR § 225.8.)
- 56. Although the W-2 District is not listed among corresponding land use categories for the Low-Density Commercial category, land and development immediately south of the Property is also designated Low-Density Commercial and is zoned W-2. Of note, none of the W zones are listed in the Framework Element of the Comprehensive Plan.
- 57. The Generalized Policy Map designates the Property as part of the Regional Center. This is the same designation as the area immediately south of the

Property, which is zoned W-2. Regional Centers have the largest range of commercial functions outside the Central Employment Area and are likely to have major department stores, many special shops, concentrations of restaurants, movies, and other leisure or entertainment facilities. They typically draw patrons from across the city, as well as patrons from nearby suburban areas. A large office component is also associated with regional centers. As with Multi-Neighborhood Centers, infill development at Regional Centers should provide new retail, entertainment, service uses, additional housing, and employment opportunities where feasible. These centers are generally located along major arterials and are served by transit. Heights and densities in regional centers should be appropriate to the scale and function of development in adjoining communities, and should be further guided by policies in the Land Use Element and the area Elements.

58. The PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as set forth in the Applicant's Statement in Support and in the OP reports. (Ex. 3, 16, 29.)

**I. Office of Planning Reports**

59. On April 15, 2016, OP submitted a report recommending set down of the application. (Ex. 16.) The OP report stated that the application is not inconsistent with the maps and written elements of the Comprehensive Plan. The report also recommended that the Applicant provide the following information on the application: (a) a Transportation Demand Management Plan, Loading Demand Management Plan, and Driveway Circulation Plan for the PUD that has been developed in coordination with the District Department of Transportation; (b) coordination with DDOT and the Public Space Committee; (c) agreement with National Park Service to improve the adjacent parkland; and (d) revised plans, if needed, based on OGB's design review and approval. The Applicant provided this requested information to OP and the Commission within subsequent filings.
60. On July 11, 2016, OP submitted a report recommending approval of the application. (Ex. 29.)

**J. DDOT Report**

61. On July 11, 2016, DDOT submitted a report finding no objection to the application, subject to the following conditions:
- a. Providing one long-term bicycle parking space per unit (seven to nine) as proposed, plus a minimum of two additional spaces for employees of the restaurant or long-term guests to the building; and
  - b. Clarifying that the TDM plan is inclusive of membership benefits for the full 10-year period.

(Ex. 31.) The Applicant provided this requested information to DDOT and the Commission within subsequent filings.

**K. ANC Support**

62. By letter dated July 11, 2016, ANC 2E indicated that at its regularly scheduled public meeting on July 5, 2016, for which notice was properly given and a quorum was present, ANC 2E voted unanimously by a vote of 6-0-0 to support the application. (Ex. 30.)

**CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD development "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process 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, FAR, lot occupancy, parking and loading, or for 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 Chapter 24 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 Commission waives the minimum area requirements of § 2401.1 of the PUD Regulations to 7,413 square feet for the reasons discussed in findings of fact number 30 through 38.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential and restaurant use for this development is appropriate for the Property. The impact of the development on the surrounding area is not unacceptable. Accordingly, the PUD should be approved.
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.

7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the development's benefits and amenities are reasonable tradeoffs for the requested development flexibility.
8. Approval of the PUD is appropriate because the proposed development is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the PUD site 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 report and, as explained in this decision, finds its recommendation to grant the applications 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. The Commission carefully considered ANC 2E's recommendation for approval and concurs in its recommendation.
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 of a PUD and a related Zoning Map amendment from the C-2-A Zone District/unzoned to the W-2 Zone District for the parcel located at 2715 Pennsylvania Avenue, N.W., and more particularly described as Square 1194, Lots 811. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

#### **A. Project Development**

1. The PUD shall be developed in accordance with the plans titled "2715 Pennsylvania Avenue" prepared by Souto Moura Arquitectos, dated July 1, 2016 and marked as Exhibits 28H1 and 28H2 of the record, and the supplemental lighting plans, dated October 11, 2016, and marked as Exhibits 49A1 and 49A2 ("Plans").
2. CFA Approval. **Prior to the issuance of a building permit for the PUD**, the Applicant shall have obtained final approval for the design of the project by the U.S. Commission of Fine Arts.



3. Restricted Use of Balconies/Terraces. **For the life of the PUD,** the Applicant shall prominently feature in each residential lease and/or condominium documents the following restrictions:
- a. Balconies shall be subject to standard building quiet hours of 11:00 p.m. to 8:00 a.m. so as to not unreasonably disturb any other resident or neighbor. There shall be no playing of any music, musical instruments, radio, television, or the like on balconies during these hours;
  - b. Bicycles may be stored only in designated bicycle storage areas and not on balconies. Other large modes of transport or recreation, such as strollers, scooters, surfboards, kayaks, paddleboards, and the like may be stored only in designated resident storage areas and not on balconies. Construction, gardening, or other large or unsightly items such as shovels, tools, suitcases, and the like may be stored only in designated resident storage areas and not on balconies;
  - c. No rugs, towels, clothing or other articles shall be hung from balconies. No signs or other advertising materials shall be placed in windows or on balconies.
  - d. Only small electric or gas grills approved by the District of Columbia Code are permitted for use on balconies. No planters or accessory lighting shall be suspended from windows or balcony railings or ledges; and
  - e. Balconies shall not be used as sleeping quarters for residents or guests at any time.
4. The Applicant shall also have flexibility with the design of the PUD in the following areas:
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, pavers, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit, and final approval

by the Old Georgetown Board, U.S. Commission of Fine Arts, and the National Park Service;

- c. To vary the final selection of all exterior signage on the building; and
- d. To vary the location and design of the ground-floor components of the building 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.

**B. Public Benefits**

- 5. Contribution to the Housing Production Trust Fund. The Applicant shall contribute \$359,604 to the Housing Production Trust Fund. Not less than one half of said contribution shall be made **prior to the issuance of a building permit for the proposed development**, and the balance shall be made **prior to the issuance of a certificate of occupancy for the PUD**.
- 6. LEED Certification. **Prior to the issuance of a certificate of occupancy for the building**, the Applicant shall furnish a copy of its LEED certification application to the Green Building Certification Institute. The PUD shall fulfill or exceed LEED-Gold Certification.
- 7. Park Improvements. **Prior to the issuance of a certificate of occupancy for the building**, the Applicant shall have finalized an agreement with the National Park Service (“NPS”) for the improvement and long-term maintenance of U.S. Reservation 691 (Meigs Park) and the park area east of the Property (Reservation 360). Said agreement shall include the design development plans approved by NPS and DDOT and shall not be substantially inconsistent with the concept plans shown on Sheets L-05 through L-07 of the Plans. The specific materials, furniture and other elements for the improvement of the park area shall be as required and approved by NPS and DDOT, the minimum value of which shall be \$200,000.

**C. Traffic/Pedestrian Improvements**

- 8. Transportation Demand Measures. **For the life of the PUD (except as noted)**, the Applicant shall implement the following Transportation Demand Management (TDM) plan:
  - a. Bylaws, public offering statements, purchase or lease agreements, and deeds would include a provision prohibiting unit owners or renters from obtaining Residential Parking Permits;

- b. For the first 10 years that the building is open, the Applicant shall offer the choice of either an annual Capital Bikeshare or an annual car share membership to the purchaser or renter of a unit;
- c. Provide, as a one-time incentive, up to seven bicycle helmets for distribution to new residents;
- d. Offer a preloaded \$10 SmarTrip card for each unit at the sale or rental of units in the building for the first 10 years that the building is open;
- e. Provide at least nine long-term bicycle parking spaces;
- f. Post all TDM commitments on-line and provide each initial resident with links to CommuterConnections.com, goDCgo.com, WMATA Metrobus routes, and DC Bicycle maps;
- g. Designate a member of the building's management or operations staff as the site's TDM liaison;
- h. On an as-needed basis, the Applicant will negotiate a lease or other contractual arrangement from an operator(s) of nearby parking garages that provides the Applicant with monthly parking passes for residential tenants who require parking, as set forth below:
  - i. The passes shall be dedicated for the exclusive use of residents of the PUD, to provide access at any time to parking spaces in said garages 24 hours a day, up to seven days a week, 52 weeks a year;
  - ii. The parking spaces for which the passes provide access will be located within ¼ mile of the PUD; and
  - iii. The passes shall be priced at market rates for similar parking privileges at the same garage or parking facility;
- i. Residents of the PUD will not be eligible to apply for Residential Parking Permits ("RPP"). The Applicant will notify all residential tenants of the fact that they are not eligible to apply for RPP. Furthermore, the Applicant will cause all residential tenants to agree not to apply for or obtain a residential parking permit; and
- j. If the commercial tenant of the PUD is a restaurant, the Applicant shall provide, or require the tenant to provide, a valet parking arrangement with the Four Season Hotel or other nearby parking facilities at market rates for similar valet parking arrangements.

**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 Zoning Commission Order No. 15-18. Within such time, an application must be filed for a building permit for the construction of the development as specified in 11 DCMR § 2409.1. Construction of the development must commence within three years of the effective date of this Order.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

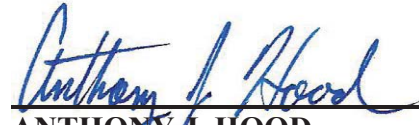
On December 19, 2016, upon the motion of Commissioner May as seconded by Chairman Hood, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application by a vote of **3-1-1** (Anthony J. Hood, Robert E. Miller, and Peter G. May to approve; Michael G. Turnbull to oppose; Peter Shapiro, not present, not voting).

On January 30, 2017, upon the motion of Vice Chairman Miller, as seconded by Chairman Hood, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **3-1-1** (Anthony J. Hood, Robert E. Miller, and Peter G. May to approve; Michael G. Turnbull to oppose; Peter Shapiro, not having participated, not voting).

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 March 10, 2017.

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

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

A handwritten signature in blue ink, reading "Anthony J. Hood", written over a horizontal line.

**ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION**

A handwritten signature in blue ink, reading "Sara A. Bardin", written over a horizontal line.

**SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING**