

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 15-24C  
Z.C. Case No. 15-24C  
Gallaudet University and JBG/6<sup>th</sup> Street Associates, LLC  
(Second-Stage PUD Approval @ Parcel 129/112)  
March 9, 2023

Pursuant to notice, at its March 9, 2023 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of Gallaudet University and JBG/6<sup>th</sup> Street Associates, LLC (collectively, the “Applicant”) requesting review and approval of a Second-Stage Planned Unit Development (“PUD”) for the property located at 1331 5<sup>th</sup> Street, N.E. (Parcel 129/112, the “Property” or “Parcel 4”) under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified). The Commission considered the Application pursuant to the Commission’s Rules of Practice and Procedure codified in Subtitle Z of the Zoning Regulations. For the reasons stated below, the Commission **APPROVES** the Application.

**SUMMARY ORDER**

**Background and Prior Approvals**

1. Pursuant to Z.C. Order No. 15-24/15-24A, the Commission approved a First-Stage PUD for the Property under the 1958 Zoning Regulations then in effect, as part of an overall four-parcel PUD (“First-Stage PUD”), of which the Property constitutes Parcel 4. The First-Stage PUD established the height, massing, and uses for the overall PUD, including the Property, as well as flexibility for these considerations, and set forth the approved benefits and amenities of the PUD.
2. As part of the First-Stage PUD, the Commission approved a related Zoning Map Amendment for all four parcels from the C-M-1 zone to the C-3-A zone for Parcels 1 and 2 and the C-3-C zone for Parcel 3 and the Property.
3. Parcel 4 is the third phase of the overall PUD to move forward, following Parcels 2 and 3, with Parcel 1 being the final phase of development. The First-Stage PUD approved a mixed-use development with ground-floor retail uses and multifamily residential use on

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the upper stories and with an FAR of approximately 7.86 and maximum height of 120 feet (the “Project”).<sup>1</sup>

4. Pursuant to Z.C. Order No. 15-24B, the Commission approved a Modification of Significance to the First-Stage PUD for Parcels 1, 2, and 3 and also granted Second-Stage PUD approval for Parcels 2 and 3. Order No. 15-24B did not modify the approval for the Property, which was not included in that application.

### **Parties**

5. Gallaudet University is the landowner of the Property, and JBG/6<sup>th</sup> Street Associates LLC, an affiliate of JBG Smith, is the ground lessee.
6. Advisory Neighborhood Commissions (“ANC”) 5D and 6C are automatically parties to the proceedings as an “affected ANC” pursuant to Subtitle Z §§ 101.8 and 403.5(b). ANC 5D is the ANC in which the Property is located; ANC 6C is located across Florida Avenue to the south of Parcel 1.
7. No other requests for party status were received.

### **Notice**

8. Pursuant to Subtitle Z § 300.7, the Applicant mailed a Notice of Intent to File the Application on May 31, 2022, to ANC 5D, ANC 6C, and the owners of all other property within 200 feet of the Property. (Exhibit [“Ex.”] 3B.) On July 20, 2022, the Applicant served the Application on the D.C. Office of Planning (“OP”), the District Department of Transportation (“DDOT”), ANCs 5D and 6C as attested to by the certificate of service included in the Application. (Ex. 2.)
9. On December 20, 2022, pursuant to Subtitle Z § 402, the Office of Zoning (“OZ”) sent notice of the February 13, 2023 public hearing, and published notice of the public hearing in the December 30, 2022, *District of Columbia Register* (69 DCR 015515 et seq.) as well as on the calendar on OZ’s website. (Ex. 14, 15, 16.)
10. Pursuant to Subtitle Z §§ 402.8-402.10, the Applicant submitted affidavits of posting and maintenance dated January 4, 2023, and February 8, 2023, respectively, confirming all posting and maintenance requirements were met. (Ex. 18 and 22.)

### **Property and Current Zoning**

11. The Property consists of approximately 78,936 square feet of land area located in the Florida Avenue Market (“Market”) neighborhood in Northeast, D.C. in Ward 5. The Property is bounded by Penn Street, N.E. to the north, 6<sup>th</sup> Street, N.E. to the east, private property to the south, and 5<sup>th</sup> Street, N.E. to the west. (Ex. 3.)

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<sup>1</sup> The First-Stage PUD also granted flexibility to devote a portion of the residential space instead to office use, which the Applicant is not pursuing.

12. The Property is currently used for private surface parking and construction staging for neighboring development and includes two dated pavilion structures. (Ex. 3.)
13. Pursuant to the First-Stage PUD, the Property is located in the C-3-C zone. (Ex. 3.)

#### **Comprehensive Plan (Title 10-A DCMR)**

14. The Property is designated as mixed-use High Density Commercial, Medium Density Residential, and Production Distribution and Repair on the Future Land Use Map (“FLUM”) of the Comprehensive Plan for the National Capitol, Title 10-A DCMR (DC Law 24-20, effective August 21, 2021) (“Comprehensive Plan” or “Plan”). The Property is designated as Institutional on the Comprehensive Plan’s Generalized Policy Map (“GPM”).
15. As part of the First-Stage PUD, the Commission made extensive findings in concluding that the Project is not inconsistent with the Comprehensive Plan’s FLUM, GPM, City-Wide and Area Elements, and Florida Avenue Market Study Small Area Plan (“Small Area Plan”). (Ex. 3; Z.C. Order No. 15-24/15-24A at Findings of Fact (“FF”) Nos. 71, 73, 74(a)-(f), 75(a)-(g), 96, 116; Conclusions of Law (“COL”) No. 14.)

#### **Summary of the Application**

16. The Project consists of a mixed-use building with approximately 647 multifamily residential units, approximately 43,105 square feet of ground-floor commercial use, and approximately 349 below-grade parking spaces. The Project will be constructed to a maximum height of 120 feet, a maximum FAR of approximately 7.86, and lot occupancy of approximately 90.1%. (Ex. 27A.)
17. The First-Stage PUD granted flexibility to include office use in the mix of uses on the Property and flexibility from the loading and side yard requirements. The Applicant is foregoing the flexibility for office use and no longer requires the approved loading and side yard flexibility. (Ex. 3.)
18. In addition to the initial Application and testimony at the public hearing, the Applicant made the following submissions into the record, which updated and supplemented the Application:
  - A December 2, 2022 pre-hearing submission, with information and materials responding to the comments and questions raised by the Commission at the November 10, 2022 public meeting, and by OP in its setdown report dated October 31, 2022, including making refinements to the Project design and agreeing to OP’s suggested condition that the Project be designed to be LEED Gold v.4, and that 5000 square feet of the plaza space be reserved for the general public. (Ex. 12-12C.);
  - A December 30, 2022 Comprehensive Transportation Review (“CTR”) (Ex. 17A.);
  - A January 24, 2023 supplemental pre-hearing submission, containing updated plans and other supporting information. (Ex. 19-19C.) The pre-hearing submission included a supplement to the Racial Equity Analysis provided with the Application (Ex. 3I.) evaluating the Application’s consistency with the Comprehensive Plan

when viewed through a racial equity lens. This was not a requirement at the time when the First-Stage PUD was approved by the Commission but is now part of the Commission's consideration of whether an Application is not inconsistent with the Comprehensive Plan. The Applicant's Racial Equity Analysis<sup>2</sup> (Ex. 19C.) stated that the Application will advance Comprehensive Plan racial equity goals by redeveloping an underutilized site with a Project including approximately 647 new housing units, with affordable units, and sustainable design features; providing ground-floor retail and a 5000 square foot publicly accessible plaza to support a dynamic pedestrian experience along with proposed streetscape improvements; providing potential employment opportunities through the businesses that will occupy newly created retail space; and not resulting in direct displacement of any existing residents; (*Id.*)

- A February 11, 2023 hearing submission, including the Applicant's presentation and updated Transportation Demand Management Plan ("TDM Plan") (Ex. 24-24D.); and
- A February 27, 2023 post-hearing submission, including final updated plans for the Project and information in response to the questions raised by the Commission at the February 13, 2023 public hearing, on the Application. (Ex. 27-27A11.) Specifically, the Applicant provided additional information regarding the market basis for the Project's proposed unit mix, which includes 193 one-bedrooms and 84 two or more bedrooms. The Applicant stated that its regression analysis of supply and demand data across multiple sources shows that larger units within the Property's submarket have lower demand and struggle to be leased because two-person households are the average in the Planning Area (Upper Northeast Area Element) and the area currently benefits from a greater supply of larger housing types compared to other parts of the District. For these reasons, the Applicant is confident that the proposed unit mix is appropriate for the Project and will most effectively meet the housing demand in light of its location and overall program. (Ex. 27.)

19. On March 24, 2023, the Applicant filed draft findings of fact and conclusions of law. (Ex. 28.)

#### **Zoning Commission Consideration of the Application**

20. At a November 10, 2022, virtual public meeting, the Commission considered the Application and voted to set the Application down for a public hearing.

21. The Commission held a public hearing on the Application pursuant to notice via videoconference at 4:00 p.m. on February 13, 2023.

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<sup>2</sup> The Applicant's Racial Equity Analysis (provided at Ex. 3I and 19C) is responsive to the Commission's initial Racial Equity Analysis Tool, which was released in April of 2022. The Commission released a revised Racial Equity Analysis Tool on February 3, 2023; however, the revised tool was not utilized in the Commission's evaluation of this Application.

22. At a March 9, 2023, virtual public meeting, the Commission took final action to approve the Application by a vote of 4-0-1.

### **PUD Evaluation Standards**

#### **Balancing Standard (Subtitle X § 304.3)**

23. For the reasons set forth in the record and summarized in this Order and in Z.C. Order No. 15-24/15-24A, the Applicant asserted that the development incentives requested, and the adverse impacts of the PUD are appropriate and fully justified given the public benefits, project amenities, and positive impacts of the PUD. The Application noted that the First-Stage PUD granted flexibility to include office use in the mix of uses on the Property, which the Applicant is now foregoing; and flexibility from the loading and side yard requirements, which is no longer required. Further, the Applicant is not requesting any additional zoning flexibility in this Application. (Ex. 3.)

#### **Not Inconsistent with the Comprehensive Plan (Subtitle X § 304.4(a))**

24. In Z.C. Order No. 15-24/15-24A, the Commission concluded that the First-Stage PUD, including its proposed height, density, and mix of uses, were not inconsistent with the Comprehensive Plan. Since that time, the Comprehensive Plan has been amended, with a particular focus on advancing racial equity. In this Application, the Applicant stated that the PUD remains not inconsistent with the Comprehensive Plan, as amended. (Ex. 3, 3I, 19C.)

25. The Project's height, density and mix of uses are fully consistent with the First-Stage PUD and remain consistent with the Property's High Density Commercial, Medium Density Residential, and Production Distribution and Repair designations on the FLUM and Institutional designation on the GPM, as the Commission previously concluded. (Ex. 3.)

26. The Project is not inconsistent with the Comprehensive Plan when considered through a racial equity lens. The Project advances racial equity through multiple outcomes, per 10-A DCMR § 213.6, by:

- Transforming a currently underutilized site into a vibrant mixed-use community without resulting in any direct displacement of residents given that the Property is not currently improved with housing;
- Providing approximately 647 new residential units where no housing currently exists and setting aside a minimum of 10% of the residential gross floor area as below-market (Inclusionary Zoning) housing, with the majority of such set-aside reserved for households earning 50% of MFI;
- Providing a significantly improved pedestrian experience surrounding the Property, including a 5,000-square foot publicly accessible plaza on 5<sup>th</sup> Street, N.E. which is in addition to the 65,000 square feet of open space provided by the overall PUD;
- Incorporating sustainable features to achieve LEED v.4 Gold design standards, resulting in a better environmental condition for the site and surrounding community as compared to the types of uses permitted under the Property's prior industrial zoning; and

- Creating employment through the businesses that will occupy the newly created commercial space, in addition to the many short-term employment opportunities that will be created for the Project’s construction. The overall PUD’s employment benefits also will include 10,000 square feet of space reserved for Maker Space use, 5,000 square feet of retail space reserved for deaf and hard-of-hearing entrepreneurs, executing a First Source employment agreement, and a commitment to hiring a minimum of two Gallaudet students per year as interns or employees throughout active construction of the PUD across all four parcels.  
(Ex. 3I, and 19C.)

27. The Project also advances racial equity as a process, consistent with the Comprehensive Plan, 10-A DCMR § 213.6, through the Applicant’s successful community engagement efforts, as evidenced by ANC 5D’s support for the Project.<sup>3</sup> (Ex. 3I, 19C, 26.)

28. The PUD remains consistent with many other policies and goals of the Comprehensive Plan’s Citywide and Area Elements and the Small Area Plan. (Ex. 3, 3I.)

**No Unacceptable Project Impacts (Subtitle X § 304.4(b))**

29. In Z.C. Order No. 15-24/15-24A, the Commission concluded that the PUD was consistent with the scale and character of the surrounding area, the impacts of the PUD on city services were not unacceptable, and the transportation impacts were acceptable given the quality of the public benefits of the PUD. The Project is consistent with the First-Stage PUD, and the Applicant asserted that the impacts of the PUD remain acceptable for the reasons set forth in Z.C. Order No. 15-24/15-24A and for the following reasons:

- **Zoning and Land Use Impacts.** The Application is consistent with the zone categories, uses, and height and density parameters already approved by the Commission in the First-Stage PUD. The zoning, uses, height, and density all remain compatible with the surrounding area; (Ex. 3.)
- **Housing Impacts.** The Project contributes 647 new units of multifamily housing in a transit-oriented location where no housing exists currently (and where the underlying non-PUD zoning did not allow residential use). The Project adds affordable housing at a lower MFI level than what is otherwise required and includes a mix of unit types that will accommodate a variety of household sizes; (Ex. 3.)
- **Economic Impacts.** The Project generates multiple sources of direct revenue for the District, including property tax revenue, sales tax revenue from its commercial establishments, and income tax from its new residents. The Project also generates secondary benefits, such as sales tax revenue associated with its new residents. The Project has positive economic impacts on nearby neighborhood-serving businesses because the Project adds many new residents who will support such businesses; (Ex. 3.)

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<sup>3</sup> ANC 6C did not participate in this Application, nor in the First-Stage PUD or in the PUD Modification and Second-Stage PUD for Parcels 2 and 3, and instead deferred review to ANC 5D, in which the Property is located. The Applicant nonetheless continued to keep ANC 6C apprised of the case as it proceeded.

- Open Space, Urban Design, and Massing Impacts. The Project has favorable impacts on the public realm through the inclusion of open spaces and an improved streetscape. The entry plaza on 5<sup>th</sup> Street will be accessible to the public and will provide opportunities for passive leisure in a thoughtfully landscaped area. The Project includes other landscaped spaces that will be available to residents and will also improve the streetscape in compliance with DDOT's standards for the Market, which will improve the pedestrian experience and enhance safety. The Project's urban design and massing are compatible with surrounding development and consistent with the guidance of the Small Area Plan. The Project is the product of high-quality design and architecture and utilizes superior materials; (Ex. 3.)
- Transportation and Mobility Impacts. The Applicant's CTR affirmed that the Project will not have a detrimental impact on the surrounding transportation network based on the site design elements, mitigation measures, and TDM Plan included in the PUD, as evidenced by DDOT's report in support; (Ex. 17A, 21, 24B3.)
- Environmental and District Utility Impacts. The Project is designed to meet LEED v.4 Gold standards, will comply with all GAR requirements, and will include sustainability features such as low impact development (LID) and green infrastructure (GI) for rainwater management, efficient plumbing fixtures to reduce indoor water usage, native plantings and efficient irrigation to reduce outdoor water demand, and a high efficiency HVAC system; (Ex. 3.)
- Public Facilities. The Project has no unacceptable impacts on public facilities such as schools, libraries, or parks, and the Project's impacts are generally favorable or capable of being mitigated; (Ex. 3.)
- Public Health and Safety Impacts. The Project protects and advances public health by being designed in a high-quality manner and in compliance with all applicable construction codes. The Project includes bicycle facilities and other transportation demand management measures that together discourage automobile use and protect and affirmatively advance public health. The Project prioritizes outdoor spaces to support the mental health of its residents. The Project complies with or exceeds applicable environmental performance standards; and (Ex. 3.)
- Construction Period Impacts. The Project's construction-period impacts are all capable of being mitigated. The Applicant will coordinate with its neighbor to the south regarding construction-period impacts. The Applicant has significant experience managing construction impacts and will comply with all applicable laws and with the strategies further noted on Page C-102 of Exhibit 27A11. (Ex. 3.)

#### Public Benefits and Project Amenities (Subtitle X § 304.4(c))

30. Consistent with the First-Stage PUD, the PUD includes the following public benefits and project amenities, which the Applicant maintained are not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to the Property:

- Superior Urban Design and Architecture (X § 305.5(a)). The massing, articulation, materiality, balconies, terraces, and other design features of the Project;

- Superior Landscaping (X § 305.5(b)). The landscaping features in the Project's entry plaza, interior courtyards and terraces and rooftop spaces, in addition to streetscape improvements in the public realm surrounding the Property;
- Site Planning and Efficient Land Utilization (X § 305.5(c)). The redevelopment of underutilized site with a vibrant mixed-use development, infilling a gap in the Market and providing pedestrian and visual connection with the northern part of the Market neighborhood;
- Housing and Affordable Housing (X §§ 305.5(f) and (g)). The provision of substantial amount of multi-family housing not permitted on the Property but for the PUD-related rezoning, including affordable housing that exceeds what is otherwise required under Inclusionary Zoning, a majority of which is reserved at a deeper level of affordability than otherwise required under Inclusionary Zoning;
- Employment and Training Opportunities (X § 305.5(h)). Execution of a First Source Employment Agreement with the District's Department of Employment Services, as well as hiring Gallaudet students as interns or employees to work with the Applicant on the Project's development;
- Environmental and Sustainable Benefits (X § 305.5(k)). The commitment to LEED Gold design under the v4 rating system — a significant increase over the LEED Silver commitment from the First-Stage PUD — including the management of rainwater through low impact development (LID) and green infrastructure (GI), efficient plumbing fixtures to reduce indoor water usage, native plantings, and efficient irrigation to reduce outdoor water demand, and a high efficiency HVAC system;
- Uses of Special Value (X § 305.5(q)). The reservation of approximately 5,000 square feet of space for Maker uses, if not otherwise provided in Parcels 2 or 3, which will be available to qualified tenants at a rate that is 10% below then market-rate rents; and
- Other public benefits and project amenities associated with the overall PUD as set forth in the prior approvals for the PUD and in the Conditions of this Order below.

(Ex. 3.)

Consistency with the First-Stage PUD (Subtitle X §§ 308.3, 309.2)

31. The Applicant submitted evidence that the Project is consistent with the First-Stage PUD, as modified by the Application. (Ex. 3, 3H, and 12.)

**Responses to the Application**

32. OP submitted a setdown report dated October 31, 2022, recommending that the Commission set the Application down for a public hearing. OP concluded that the Application is not inconsistent with the First-Stage PUD, the goals and intent of the Comprehensive Plan and the policies viewed through the racial equity lens, or the requirements of the Zoning Regulations. (Ex. 11.) OP's setdown report encouraged the Applicant to increase its affordable housing proffer above the First-Stage PUD approval and to reconsider the unit mix of the Project to provide more two-bedroom family-sized units. (*Id.*)

33. OP submitted a hearing report dated February 3, 2023, recommending approval of the Application. (Ex. 20.) OP's hearing report stated that its recommendation is contingent on revising the design flexibility to clarify that the square footage of the affordable housing set-aside is not reduced and to clarify lighting restrictions above the second floor in the final Order. Again, OP affirmed that the proposal remained not inconsistent with the First-Stage PUD and the Comprehensive Plan and meets the requirements of the Zoning Regulations because the PUD will not result in unacceptable impacts and its public benefits will balance the requested development flexibility, as previously affirmed in the First-Stage PUD. In addition, OP acknowledged the benefits proffered in the First-Stage PUD and the additional benefits being offered with this Application but reiterated that it continues to encourage the Applicant to further increase its affordable housing proffer. Finally, OP's hearing report included comments regarding the Application from both the Department of Energy and Environment ("DOEE") and the Department of Housing and Community ("DHCD"); DOEE suggested further enhancements to the Project's sustainable measures and DHCD suggested increasing the Project's affordable housing proffer. (*Id.*)
34. DDOT submitted a report dated February 3, 2023, stating that it has no objection to the Application provided that the Applicant implement its TDM Plan and supplement it with additional strategies proposed by DDOT. (Ex. 21.) At the hearing, the Applicant submitted an updated TDM Plan incorporating recommendations from DDOT however the Applicant did not agree to DDOT's proposed condition regarding the long-term bike storage room plan. DDOT testified that the updated TDM Plan was acceptable. (Ex. 24B3; Transcript ["Tr."] of February 13, 2023 at 65.)
35. By letter dated February 24, 2023, ANC 5D stated that at its January 10, 2023, regularly scheduled and duly noticed public meeting, with a quorum present, it voted to support the Application.<sup>4</sup> (Ex. 26.) The letter states that the ANC believes that the project design for Parcel 4 proposed in the current application is consistent with the First-Stage approval and cites no issues and concerns. (*Id.*)

## **CONCLUSIONS**

### **Authority**

1. Pursuant to the authority granted by the Zoning Act (June 20, 1938, 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), the Commission may approve a PUD consistent with the requirements of Subtitle X, Chapter 3.
2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
  - (a) *Results in a project superior to what would result from the matter-of-right standards;*
  - (b) *Offers a commendable number or quality of meaningful public benefits; and*

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<sup>4</sup> ANC 5D submitted an initial report stating its support on February 10, 2023, which included a discrepancy in the vote count. (Ex. 23.) At the February 13, 2023, public hearing, the Commission requested that a corrected report be submitted. ANC 5D submitted a corrected report at Ex. 26.

(c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*

3. Pursuant to Subtitle X § 304.3, in evaluating a proposed PUD, the Commission shall:  
*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.*

4. Pursuant to Subtitle X § 304.4, to approve a proposed PUD, the Commission must determine 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.*

5. A PUD's proposed public benefits must comply with Subtitle X § 305.12:  
*A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.*

6. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the Plan's purposes as:

- (1) *to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
- (2) *to guide executive and legislative decisions on matters affecting the District and its citizens;*
- (3) *to promote economic growth and jobs for District residents;*
- (4) *to guide private and public development in order to achieve District and community goals;*
- (5) *to maintain and enhance the natural and architectural assets of the District; and*
- (6) *to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*

7. In determining whether a PUD is not inconsistent with the Comprehensive Plan, the Commission shall balance the various elements of the Plan. The District of Columbia Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)):

“The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm'n*, 33 A.3d 382, 394 (D.C. 2011) (internal

quotation marks omitted). ‘[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.’ (*Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013).) The Comprehensive Plan reflects numerous ‘occasionally competing policies and goals,’ and, ‘[e]xcept where specifically provided, the Plan is not binding.’ (*Id.* at 1167, 1168 (internal quotation marks omitted).) Thus ‘the Commission may balance competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ (*D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm'n*, 73 A.3d 107, 126 (D.C. 2013).) ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.’”

(*Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016) (internal quotation marks and references omitted).)

8. The Comprehensive Plan also requires the Commission to evaluate all zoning actions through a racial equity lens. (10-A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the Plan, and part of the Commission’s consideration of whether the PUD in this case is “not inconsistent” with the Plan, rather than a separate determination about a zoning action’s equitable impact.
9. The Comprehensive Plan’s Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (10-A DCMR § 213.6.) Further, “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities.” (10-A DCMR § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. 10-A DCMR § 213.9.
10. The Comprehensive Plan’s Implementation Element provides guidance for the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states that “[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District- wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of different areas in the District.” (10-A DCMR § 2501.6.)

#### **Consistency with the Comprehensive Plan (Subtitle X § 304.3(a))**

11. As discussed above, the Commission previously concluded in Z.C. Order No. 15-24/15-24A that the First-Stage PUD was not inconsistent with the Comprehensive Plan and to approve the PUD and related map amendment for the Property, the proposed

massing, height, mix of uses, and proposed public benefits and project amenities. Here, the proposed Project is consistent with the First-Stage approval, and the Applicant did not request to modify the original approval for the Property. Accordingly, there was no need or basis to fully reconsider the Project's consistency with the Comprehensive Plan in deciding this Second-Stage Application. However, in accordance with new requirements since the First-Stage approval, the Commission did evaluate the Project's consistency with the Comprehensive Plan when viewed through a racial equity lens. The Commission notes that the Project remains not inconsistent with the Comprehensive Plan and is not inconsistent with the Comprehensive Plan when viewed through a racial equity lens for the reasons summarized in FF Nos. 18, 24-28.

**Potential Adverse Impacts – How Mitigated or Outweighed (Subtitle X § 304.4(b))**

12. The Commission concludes that any adverse impacts created by the Project are acceptable and sufficiently mitigated for the reasons summarized in FF 29 and detailed in the record.

**PUD Flexibility Balanced Against Public Benefits and Potential Adverse Effects (Subtitle X §§ 304.4(c) and 304.3)**

13. As discussed above, the Commission previously concluded in Z.C. Order No. 15-24/15-24A that the development incentives requested and the adverse impacts are appropriate and justify approval given the sufficiency of the proposed public benefits and project amenities, and this Second-Stage Application does not provide a basis for reconsideration of that conclusion. (FF 23.) Nonetheless, the Commission reaffirms that conclusion based on the benefits and amenities summarized in FF 30, as further detailed in the record and the Conditions of this Order, below.

**Second-Stage PUD Approval**

14. Pursuant to Subtitle X § 302.2(b), “the Second-Stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the First-Stage approval, and this title.”
15. If the Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the First-Stage approval, the Commission shall grant approval to the Second-Stage application, including any guidelines, conditions, and standards that are necessary to carry out the Commission’s decision. (Subtitle X § 309.2.)
16. The Commission concludes the Application is in accordance with the purposes of the Zoning Regulations, the PUD process, and the First-Stage Order. Accordingly, the Commission concludes that it must approve the Second-Stage PUD for the Property, subject to the Conditions of this Order.

**Great Weight to Recommendations of OP**

17. The Commission is required to give “great weight” to the recommendation of 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 § 405.8.

(*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

18. The Commission found OP's analysis of the Application, its conclusion that the Application satisfied the PUD requirements, and its recommendation to approve the Application persuasively, and the Commission concurs with this judgment. The Commission notes that OP encouraged the Applicant to increase the Project's affordable housing proffer and reconsider the unit mix to include more two-bedroom units; and similarly, DOEE and DHCD suggested enhancements to the Project's proffered public benefits and amenities. The Commission found the proffered public benefits and amenities sufficient to justify approval of the First-Stage PUD, and this Second-Stage Application does not seek any modifications to the First-Stage PUD. In fact, the Applicant is foregoing flexibility previously granted to include office use on the Property and no longer needs zoning flexibility from loading and side yard requirements. Thus, there is no basis for the Commission to reconsider the sufficiency of the proffered public benefits and amenities in evaluating this Application. With respect to the Project's unit mix, the Commission notes the Applicant's post-hearing submission including Planning Area data and analyses to support its decision not to provide more larger sized units in the Project. (See COL 13; see also FF 18, 30.)

#### **Great Weight to Written Reports of the Affected ANC**

19. The Commission must give "great weight" to the issues and concerns raised in the written report of the affected ANC 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 acknowledge the ANC's issues and/or concerns, then articulate with particularity and precision the reasons why the affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo.*, 141 A.3d at 1087.) If there are no issues or concerns expressed, then there is nothing to which to give "great weight." (*Id.*)
20. The Commission finds persuasive ANC 5D's support for the Application, which was provided in a written report as noted in FF 35, above, and the Commission concurs with ANC 5D's support.

#### **Summary Order**

21. Since no persons or parties appeared in opposition to the Application, a decision by the Commission to grant the Application would not be adverse to any party. Indeed, ANC 5D, party to the First-Stage PUD, supported the Application. Therefore, pursuant to Subtitle Z § 604.7, the Commission has authorized a Summary Order in this case and determined it may waive the requirement that exhaustive findings of fact and conclusions of law accompany the Order because such waiver will not prejudice the rights of any party.

## **DECISION**

In consideration of the record and the Conclusions herein, the Commission concludes the Applicant has satisfied its burden of proof and therefore APPROVES the Application subject to the following conditions (whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

### **A. Project Development**

1. The Project shall be built in accordance with the plans and elevations dated February 27, 2023 (“Final Plans”), as modified by the guidelines, conditions, and standards herein. (Ex. 27A1-27A11.)
2. The Property shall be developed with a mixed-use building with approximately 647 multifamily residential units and approximately 43,105 square feet of ground-floor commercial use and having a height of 120 feet and FAR of 7.86.
3. The Project shall have design flexibility as follows:
  - a. **Parking Number and Layout.** To modify the total number of parking spaces by ±10% and to modify the garage layout to increase efficiency and/or to accommodate its expansion to include adjacent properties;
  - b. **Streetscape Design.** To vary the location, attributes, and general design of the public streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
  - c. **Interior Components.** To vary the interior partitions and configurations upon final construction drawings so long as the exterior configuration or appearance of the building is not changed. Residential unit number, types and sizes may vary within the range proposed;
  - d. **Exterior Materials.** To vary the final selection of the exterior materials within the color ranges and material types (maintaining the same general level of quality) proposed based on availability at the time of construction provided such colors and materials are within the color ranges and material types shown on the plans approved by the order;
  - e. **Exterior Details.** To make minor refinements to exterior details, dimensions, and locations 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 or its systems;
  - f. **Signage.** To vary the final design of the signage for the Project, subject to full compliance with applicable signage restrictions under the D.C. Building

Code and consistent with the indicated dimensions, which may be increased by no more than 10%. No signage shall be permitted above the second floor above grade along each respective street frontage;

- g. Retail Spaces. Retail storefronts, signage, and associated features and fixtures in public space are subject to change upon individual retailer modifications, subject to approval by the Public Space Committee, as necessary;
- h. Residential Units. To modify the number of residential units in the Project by  $\pm 10\%$  and to shift the distribution and location of the Inclusionary Zoning units as the floor plans are refined so long as their square footage is not less than the amount specified as the set-aside requirements in the Affordable Housing chart included in Condition B.1.b and their location and distribution continues to meet the requirements of Subtitle C of the Zoning Regulations;
- i. Sustainability. To vary the features, means and methods of achieving the required GAR and LEED standards, including modification to location/orientation and type of green roof, solar panels, and paver areas as required to meet stormwater requirements and sustainability goals. The Applicant also seeks flexibility to incorporate solar panels as necessary to meet Building Code requirements or policy objectives so long as their inclusion in the penthouse plan is consistent with penthouse requirements;
- j. Landscape. To modify species in the plant palette during subsequent design phases and availability upon final completion;
- k. Gateway Feature. To finalize the location and design of the Market Gateway feature adjacent to the Property through the public space review process;
- l. Balconies. To make refinements to the location, number, and dimensions of exterior balconies, so long as the final design remains consistent with the design intent of the Commission's approval, as depicted in the Final Plans, and the final number of balconies varies by no more than  $\pm 10\%$  from the number of balconies shown in the Final Plans;
- m. Lighting. The final lighting plan may vary from the Final Plans but it shall be consistent with the intent of the plans. The Project shall not include any large, ornamental neon or similar exposed lighting elements above the second floor;
- n. Courtyards and Rooftop. To vary the configuration and layout of the exterior courtyards, penthouses, and rooftops, so long as they continue to function in the manner proposed and the overall design intent, general

locations, and quality of materials are maintained, and that no additional relief is required;

- o. Mechanical penthouse. To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Final Plans and remain compliant with all applicable penthouse setback requirements;
- p. Ground-floor Design. To vary the final design of the ground floor frontage, including the number, size, design, and location of windows and entrances, signage, awnings, canopies, marquees, and similar storefront design features, to accommodate the needs of the specific tenants and users within the parameters set forth in the Final Plans; and
- q. Interim Uses. To provide interim uses on the Property that are consistent with the underlying zoning of C-M-1 and shall be permitted for the life of the First-Stage approval.

B. **Public Benefits and Amenities**<sup>5</sup>

1. **Affordable Housing. Prior to issuance of a Certificate of Occupancy for the residential portion of the Project**, the Applicant shall demonstrate to the Zoning Administrator:
  - a. **For the life of the Project**, the Applicant shall set aside no less than 10% of the residential GFA and 8% of the penthouse habitable space devoted to residential units as affordable housing. More specifically, the Applicant shall:
    - i. Devote 10% (approximately 57,717 square feet) of the base residential GFA to affordable housing, as follows:
      - A. Set aside no less than 7% of the base residential set-aside (approximately 40,402 square feet) as IZ units for households earning no more than 50% MFI; and
      - B. Set aside no less than 3% of the base residential set-aside (approximately 17,315 square feet) as IZ units for households earning no more than 80% MFI;
    - ii. Devote the equivalent of 8% (approximately 1,343 square feet) of the habitable penthouse space dedicated to residential units as IZ units for households earning no more than 50% MFI; and

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<sup>5</sup> To the extent the Conditions of this Order restate public benefit Conditions stated in Z.C. Order No. 15-24B, such Conditions are included for reference and are not intended to duplicate or increase any approved public benefits established in the First-Stage PUD and set forth in Z.C. Order No. 15-24/15-24A.

b. The set-aside requirements are set forth in the following chart: and

Residential Unit Type	Residential GFA/% of Total	Income Type	Affordable Control Period	Affordable Unit Type	Notes
<b>Total</b>	577,169 sf		Life of Project	Rental	NA
<b>Market Rate</b>	519,452 sf	Market	Life of Project	Rental	NA
<b>IZ</b>	17,315 sf/3%	80% MFI	Life of Project	Rental	NA
<b>IZ</b>	40,402 sf/7%	50% MFI	Life of Project	Rental	NA
<b>Penthouse IZ</b>	1,343 sf/8%	50% MFI	Life of Project	Rental	NA

2. **Sustainability.** **Prior to the issuance of a Certificate of Occupancy for the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has registered the development with the USGBC to commence the LEED certification process under the USGBC's LEED v.4 rating system. The Applicant shall also furnish a copy of the LEED certification application submitted to the USGBC to the Zoning Administrator. The application shall indicate that the Project has been designed to include at least the minimum number of points necessary to achieve LEED v.4 Gold standards.

3. **Public Open Space.** The Applicant shall provide a minimum of 5,000 square feet of open space on the Property consisting of a plaza on 5<sup>th</sup> Street, N.E. for use by the general public and not to be reserved for retail tenant space. The plaza shall be constructed in a manner consistent with the landscape plans provided. (Ex. 27A at Sheets L301-L305.) The Applicant reserves the right to close the space between the hours of 10:00 p.m. and 6:00 a.m. for security and operational purposes as needed and periodically for short-term for events, subject to a limit of no more than 10 events per year, with total cumulative closures not to exceed 10 days per year and no single closure to exceed three consecutive days.

4. **Public Space Improvements.** The Applicant shall be responsible for constructing public space improvements depicted in, adjacent to and abutting the Property, as shown on the plans. (Ex. 27A8 at Sheets L101-L206.) The Applicant shall provide evidence to the Zoning Administrator of such improvements prior to issuance of a Certificate of Occupancy for the Project.

5. **Florida Avenue Market:** The Applicant shall:

a. **Prior to the issuance of a building permit for the first building on Parcel 1,** the Applicant shall contribute \$50,000 to the NOMA BID for the design and implementation of an additional entrance for the Noma/Gallaudet metro station and shall provide evidence to the Zoning Administrator that the contribution has been initiated, deemed no longer necessary, or that implementation of an additional entrance for the NoMa /Gallaudet U. Metro Station has been or is being provided;

- b. Fund and host at least one training session per year, for five years, for the benefit of market vendors and members of the community regarding how to interact effectively with the deaf and hard-of-hearing community. These training sessions shall be free of charge for attendees and shall be made available on a first-come, first-served basis. Evidence of having provided the required training sessions must be provided to the Zoning Administrator **prior to issuance of a certificate of occupancy for the building on Parcel 1 or Parcel 4, whichever is later**; and
  - c. Sponsor two community events per year for at least five years after the issuance of this Order, up to a total cost of \$20,000. The events shall be open to the public and free of charge on a first-come, first-served basis. Evidence of having fulfilled this commitment must be provided to the Zoning Administrator **prior to the issuance of a certificate of occupancy for the building on Parcel 1 or Parcel 4, whichever is later**.
6. **Special Use Space**. The Applicant shall reserve 5,000 square feet of space for maker uses in the Project. If more than 5,000 square feet of maker space is already provided on Parcels 2 and 3 together, the balance provided on Parcel 4 shall be reduced accordingly such that the total requirement remains 10,000 square feet across the entire PUD. The location of the maker use may shift from the location depicted on the plans depending on the needs of the tenant. (Ex. 27A7 at Sheet P4-701.) Maker uses are defined as:
  - Production, distribution, or repair of goods, including accessory sale of related product;
  - Uses encompassed within the Arts, Design and Creation Use Category as defined in 11-B DCMR Section 200.2, including an Art Incubator as defined in 11-B DCMR Section 100.2, but not including a museum, theatre or gallery as a principal use;
  - Production and/or distribution of food or beverages and the accessory sale or on-site consumption of the related food and beverage; and
  - Design-related uses, including media/communications, computer system and software design; fashion design; graphic design; or product and industrial design.
- The Applicant shall make the space reserved for Maker Uses available to qualified retail tenants at a rate that is 10% below the market-rate rents, for the life of the Project.
7. **Employment**: The Applicant shall hire at least two Gallaudet students per year as interns or employees upon issuance of the first building permit on Parcels 2 or 3 throughout active construction of the project until completion of all four parcels. Evidence confirming fulfillment of this commitment shall be provided to the

Zoning **Administrator prior to issuance of a certificate of occupancy for Parcel 1 or Parcel 4, whichever is the last phase to be constructed.**

C. **Transportation Demand Management. For the life of the Project unless indicated otherwise,** the Applicant shall adhere to the following TDM plan measures.

1. **Site-Wide TDM Measures.**

- a. The Project's public realm features shall be constructed to be consistent with the Union Market Streetscape Guidelines and have continuity with streetscape under construction to the south of the Property, subject to DDOT approval;
- b. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall provide the Zoning Administrator with evidence that the Applicant has made improvements at the intersection of 6<sup>th</sup> Street, Penn Street, and Brentwood Parkway, subject to DDOT approval during the public space permitting, as follows: of Ex. 27A7 at Sheet P4-1001);
  - The southwest corner of Penn Street and 6th Street (Both Penn Street and 6<sup>th</sup> Street, wrapping the corner) extending the curb in its permanent condition;
  - The northwest corner of Penn Street and Brentwood Parkway (Both Penn Street and Brentwood Parkway, wrapping the corner) limited to pavement markings, concrete barriers, and/or flexipost bollards; and
  - The eastern curb of 6<sup>th</sup> Street and Brentwood Parkway, limited to pavement markings, concrete barriers, and/or flexipost bollards;
- c. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall provide the Zoning Administrator with evidence that the Applicant has improved the southeast corner Penn Street and 5<sup>th</sup> Street with a curb extension; (See Ex. 27A8 at Sheet. L101)

2. **Residential TDM Plan.**

- a. Identify a Transportation Coordinator for the planning, construction, and operations phases of development;
- b. The Transportation Coordinator will:
  - i. Act as the point of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
  - ii. Conduct an annual commuter survey of building employees and residents on-site and report TDM activities and data collection efforts to goDCgo once per year;
  - iii. Develop, distribute, and market various transportation alternatives and options to residents, including promoting transportation events

(e.g., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications; and

- iv. Subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
- c. Provide welcome packets to all new residents that will, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map; brochures can be ordered from DDOT's goDCgo program by emailing [info@godcgo.com](mailto:info@godcgo.com);
- d. Provide residents who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or another comparable service if MWCOG does not offer this in the future;
- e. Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to every new resident;
- f. Offer either a one-year membership to Capital Bikeshare or a one-year membership to a carsharing service to each unit for the initial lease up of each unit;
- g. Hold a transportation event for residents, employees, and members of the community once per year for a total of three years; example events include resident social, walking tour of local transportation options, goDCgo lobby event, transportation fair, WABA Everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, etc.;
- h. Provide a business center on-site with access to a copier and internet services and available for free to residents 24 hours per day, seven days per week to encourage teleworking;
- i. Direct the Transportation Coordinator to submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the case record of the case following the issuance of a Certificate of Occupancy for the Project;
- j. Five years after the issuance of the final certificate of occupancy for the Project, if the Transportation Coordinator has not established a relationship

with DDOT or goDCgo, direct the Transportation Coordinator to submit a letter to the Zoning Administrator, DDOT, and goDCgo summarizing continued substantial compliance with the transportation and following TDM conditions in the Order, unless no longer applicable as confirmed by DDOT:

If such a letter is not submitted on a timely basis, the building shall have 60 days from the date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such a letter;

- k. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile;
- l. Prohibit the leasing of unused parking spaces to anyone aside from tenants of the building unless the other building(s) have no on-site parking (e.g., will not lease to other nearby office employees, single-family home residents, or sporting events);
- m. Install a minimum of seven electric vehicle (EV) charging stations across all vehicle parking spaces, per DDOT recommendations of a minimum of one out of every 50 vehicle parking spaces being served by an EV charging station;
- n. Provide at least 32 short- and 216 long-term bicycle parking spaces, meeting or exceeding ZR16 minimum requirements for at least 32 short- and 133 long-term bicycle parking spaces for the residential use;<sup>6</sup>

The 216 residential long-term bicycle parking spaces additionally meet the requirements of DCMR 18- 1214 to provide at least one space per three residential units.

- o. Accommodate non-traditional sized bikes including cargo, tandem, and kids bikes in the residential long-term bicycle storage room, with a minimum 11 spaces that will be designed for longer cargo/tandem bikes (10 feet by 3 feet), a minimum of 22 spaces that will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum 108 spaces that will be placed horizontally on the floor;

There will be no fee to building residents or employees for the usage of the bicycle storage room, and strollers will be permitted to be stored in the bicycle storage room.

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<sup>6</sup> The Commission notes that the language above complies with the draft language endorsed by DDOT in its report. (FF 34.) However, the Commission further notes that the Applicant's revised zoning tabulation included with the Final Plans indicate that the minimum required bicycle spaces is 220 long term and 44 short term spaces.

- p. Provide at least one bicycle repair station within a bicycle parking storage room or at another convenient and accessible location;
- q. Provide one collapsible shopping cart (utility cart) for every 50 residential units, for a total of 13 to encourage residents to walk to the grocery store and run errands;
- r. Fund and install the expansion of a Capital Bikeshare station within a half mile of the site by eight docks, in a location to be determined in coordination with DDOT, prior to issuance of a Certificate of Occupancy and subject to DDOT approval;
- s. Provide a copy of the Loading Management Plan (LMP) to the Transportation Coordinator, so they are aware of this commitment;
- t. Collect parking demand and trip generation data at least six months but no later than 18 months after building opening, during Spring, and report this information to DDOT's Planning and Sustainability Division (PSD); and
- u. Install traffic management cameras to provide real-time traffic signal updates in coordination with other signals in the District at the following intersections, prior to issuance of a Certificate of Occupancy and subject to DDOT approval:
  - i. Penn Street N.E. and 6<sup>th</sup> Street, N.E.;
  - ii. Florida Avenue N.E. and 6<sup>th</sup> Street, N.E.; and
  - iii. Mt. Olivet Road, N.E. and New York Avenue, N.E. Ramp.

If DDOT determines that traffic management cameras are no longer necessary, a cash-in-lieu contribution equal to the cost of three cameras shall be made to the DDOT Transportation Mitigation Fund.

3. Retail TDM Plan.

- a. Identify a Transportation Coordinator for the planning, construction, and operations phases of development, including one for each tenant and the entire site;
- b. The Transportation Coordinator(s) will:
  - i. Act as the point(s) of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
  - ii. Conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;
  - iii. Develop, distribute, and market various transportation alternatives and options to employees and patrons, including promoting

transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications;

- iv. Receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
- v. Post “getting here” information in a visible and prominent location on the website with a focus on non-automotive travel modes including links to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for patrons discouraging parking on-street in Residential Permit Parking (RPP) zones; and
- vi. Demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law to participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future such as the Parking Cash-Out Law;

- c. Provide employees who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable services if MWCOG does not offer this in the future;
- d. Coordinate with ANCs 5D and 6C, WMATA, and/or the local BID on a wayfinding plan along walking routes to the property from the NoMa-Gallaudet U Metrorail station;
- e. Hold a transportation event for customers, employees, and members of the community once per year for a total of three years;  

Example events include employee social, walking tour of local transportation options, goDCgo lobby event, transportation fair, WABA Everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, etc.
- f. Direct the Transportation Coordinator to submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case following the issuance of a Certificate of Occupancy for the Project;
- g. Five years after the issuance of the final certificate of occupancy for the Project, if the Transportation Coordinator has not established a relationship

with DDOT or goDCgo, direct the Transportation Coordinator to submit a letter to the Zoning Administrator, DDOT, and goDCgo summarizing continued substantial compliance with the transportation and following TDM conditions in the Order, unless no longer applicable as confirmed by DDOT;

If such letter is not submitted on a timely basis, the building shall have 60 days from the date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such a letter.

- h. Provide at least 12 short- and four long-term bicycle parking spaces, meeting ZR16 minimum requirements for at least three 12 short- and four long-term bicycle parking spaces for the retail use;
- i. Provide at least two showers and four lockers for use by employees, meeting or exceeding ZR16 minimum requirements for at least two showers and two lockers for the retail use;
- j. Provide at least one bicycle repair station within a bicycle parking storage room or at another convenient and accessible location;
- k. Provide a copy of the Loading Management Plan (LMP) to the Transportation Coordinator(s), so they are aware of this commitment; and
- l. Collect parking demand and trip generation data at least six months but no later than 18 months after building opening, during Spring, and report this information to DDOT's Planning and Sustainability Division (PSD);

4. Loading Management Plan

- a. A loading manager will be designated by building management who will be on duty during delivery hours. The loading manager will be responsible for coordinating with vendors and tenants to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise;
- b. Lease provisions will require all tenants to use only the loading area for all deliveries and move-in and move-out activities;
- c. All tenants will be required to schedule deliveries that utilize the loading area (any loading operation conducted using a truck 20 feet in length or larger);
- d. The loading manager will schedule deliveries such that the loading area's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the loading area or relevant loading berth is full, that driver

will be directed to return at a later time when the berth will be available so as to not compromise safety or impede 6<sup>th</sup> Street, N.E. functionality;

- e. The loading manager will schedule residential activities so as not to conflict with retail deliveries, and all residential loading will need to be scheduled with the loading manager;
- f. The loading manager will monitor inbound and outbound truck maneuvers so that trucks accessing the loading area do not block vehicular, bicycle, or pedestrian traffic along 6th Street N.E. except during those times when a truck is actively entering or exiting a loading berth;
- g. Service vehicle and truck traffic interfacing with 6<sup>th</sup> Street, N.E. traffic will be monitored during peak periods, and management measures will be taken if necessary to reduce conflicts between truck and vehicular movements;
- h. The loading manager will monitor the timing of deliveries to see if any adjustments need to be made so any conflicts with the retail and residential loading activities are minimized;
- i. Trucks using the loading area will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map ([godcgo.com/freight](http://godcgo.com/freight)). The loading manager will also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure and others from DDOT and goDCgo, to drivers as needed to encourage compliance with idling laws. The loading manager will also post these materials and other relevant notices in a prominent location within the loading area; and
- j. The loading manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading area as well as notifying all drivers of any access or egress restrictions.

**D. Miscellaneous**

1. The Applicant shall file the final Second-Stage application for the final phase(s) of development prior to March 28, 2027.
2. No building permit shall be issued for the Project until the Applicant has recorded a covenant binding the Property in the land records of the District of Columbia by the Applicant for the benefit of the District of Columbia that is satisfactory to the Office of Zoning Legal Division and to the Zoning Administrator (the “PUD Covenant”). The PUD Covenant shall bind the Applicant and all successors in the

title to construct and use the Property in accordance with this Order, as may be amended by the Commission. The Applicant shall file a certified copy of the PUD Covenant with the Office of Zoning.

3. The map amendment to the C-3-C zone shall be effective upon recordation of the PUD Covenant.
4. The Applicant shall file an application for building permit for the Project within two years of the effective date of this Order, and construction must begin within three years from the effective date of this Order.

**Final Action**

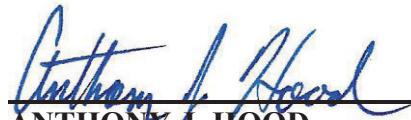
**Vote March 9, 2023): 4-0-1**

(Anthony J. Hood, Peter G. May, Robert E. Miller, and Joseph S. Imamura to approve; 3<sup>rd</sup> Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order shall be final and effective upon publication in the *D.C. Register*; that is, on December 15, 2023.

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

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



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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION



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SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING

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.

