

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 22-16
Z.C. Case No. 22-16
Thor 3000 M Street, LLC
(Consolidated Planned Unit Development & Related Zoning Map Amendment
@ Square 1197, Lot 70)
January 12, 2023

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on December 12, 2022, to consider an application (the “Application”) from Thor 3000 M Street, LLC (the “Applicant”) for review and approval of a consolidated planned unit development (“PUD”) and a related amendment to the Zoning Map (“Map Amendment”) from the MU-4 and MU-12 zones to the MU-13 zone to construct a mixed-use hotel/retail building with approximately 97 hotel rooms and approximately 10,000 square feet of commercial space fronting M Street (the “Project”) on Lot 70 (also known as Lots 862, 863, 7000-7008) in Square 1197, with an address of 3000 M Street, N.W. (the “Property”), pursuant to Subtitle X, Chapter 3, and Subtitle Z, Chapter 3 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (Zoning Regulations of 2016, the “Zoning Regulations,” or “ZR16,” and to which all citations to regulations herein are made unless otherwise specified). The Applicant also requested the following relief:

- Flexibility pursuant to Subtitle X § 303.1 from the vehicular parking requirements of Subtitle C § 701.5;
- Flexibility pursuant to Subtitle X § 303.1 from the loading requirements of Subtitle C § 901.1; and
- A special exception to permit an eating and drinking establishment at the penthouse level pursuant to Subtitle X § 303.13 and Subtitle C § 1501.1(d).

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedure in Subtitle Z. Pursuant to Subtitle Z § 604.7, the Commission authorized a summary order in this case and determined it may waive the requirement that findings of fact and conclusions of law accompany the Order because the Commission’s decision in this case is not adverse to any party. For the reasons stated below, the Commission hereby **APPROVES** the Application.

SUMMARY ORDER

I. BACKGROUND

Parties

1. The following were automatically parties to this proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant; and

- Advisory Neighborhood Commission (“ANC”) 2E, in which the Property is located and so an “affected ANC” pursuant to Subtitle Z § 101.8.
2. The Commission received no requests for party status.

Notice

3. Pursuant to Subtitle Z § 300.7, the Applicant mailed a Notice of Intent to file the Application to ANC 2E and the owners of all property within 200 feet of the Property on September 29, 2021. (Exhibit [“Ex.”] 3B.)
4. On August 16, 2022, the Office of Zoning (“OZ”) sent notice of the public hearing to the Applicant; ANC 2E; the ANC Single Member District 2E05; the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Department of Consumer and Regulatory Affairs¹ (“DCRA”); the Department of Energy & Environment (“DOEE”); the Office of Zoning Legal Division Lead Attorney; the Ward 2 Councilmember, in whose district the Property is located; the At-Large Councilmembers and the Chair of the Council; the Office of the ANCs; and property owners owning property within 200 feet of the Property. (Ex. 12, 13.)
5. OZ also published notice of the December 12, 2022 public hearing, in the *D.C. Register* on August 26, 2022 (69 DCR 010728), as well as through the calendar on OZ’s website. (Ex. 11, 12.)
6. Pursuant to Subtitle Z §§ 402.3, 402.9, the Applicant posted notice of the hearing on the Property on November 1, 2022, and maintained such notice in accordance with Subtitle Z § 402.10. (Ex. 19, 25.)

Property

7. The Property is located in the Northwest quadrant of the District within Ward 2 in the Georgetown neighborhood. The Property is located at the southwest corner of the intersection of 30th and M Streets, N.W. and is located within the Georgetown Historic District, and accordingly the design of the Project is subject to review by the Old Georgetown Board (“OGB”) and the U.S. Commission of Fine Arts (“CFA”).² The Property consists of approximately 19,798 square feet of land area and is generally bounded by National Park Service-owned land fronting the Chesapeake and Ohio Canal to the south; a two-story retail building and seven-story hotel to the west; M Street, N.W. to the north; and 30th Street N.W. to the east. The Property is split-zoned MU-4 and MU-12, with the bulk of the Property (approximately 17,058 square feet) in the MU-4 zone fronting

¹ Following notice, DCRA became the Department of Buildings and the Department of Licensing and Consumer Protection.

² On April 7, 2022, the Applicant filed a letter addressed to the Applicant from the CFA, dated April 1, 2022, requesting that the Applicant clarify the case record to state that no official approval action of the Project has occurred by OGB or CFA. (Ex. 4.) Prior to the December 12, 2022 public hearing, the Applicant filed a letter to the case record stating that the OGB had reviewed the Project and granted a conditional recommendation of conceptual design approval, which was reviewed and adopted by the CFA with minor comments on April 21, 2022. (Ex. 5.)

M Street, N.W., and the southernmost portion of the Property (approximately 2,740 square feet) in the MU-12 zone. The Property was formerly the location of the Latham Hotel with a restaurant occupying the Property's frontage along M Street, N.W. (Ex. 3.)

II. THE APPLICATION

Project

8. On March 31, 2022, the Applicant filed the Application for review and approval of a consolidated PUD and related zoning map amendment. The Applicant stated that the Project will include a mixed-use hotel/retail building with approximately 97 hotel rooms, hotel amenity and food and beverage use, and ground floor retail uses along the building's M Street, N.W. frontage. (Ex. 3.)
9. The Project includes up to approximately 79,000 square feet of gross floor area ("GFA") for an overall floor area ratio ("FAR") of approximately 3.99. The Project will have a maximum measured building height of 64 feet. The Project will achieve LEED Gold certification. The Project seeks flexibility from the parking and loading requirements³ and special exception approval for an eating and drinking establishment (a restaurant/lounge) in the habitable penthouse space and the rooftop deck. (Ex. 3, 7, 21.)
10. The Project will include the following Public Benefits:
 - The Applicant will make a financial contribution of \$400,000.00 to the National Park Service ("NPS") to be used for improvements to the Chesapeake & Ohio (C&O) Canal National Historic Towpath located between 31st Street, N.W. and 34th Street, N.W. The financial contribution will be used for: pre-design investigations (including investigation of existing utilities, researching the structural integrity of adjacent walls, and a survey of the towpath area); the production of design phase plans; and/or construction of the towpath improvements;
 - The Applicant will make a financial contribution of \$600,000.00 to the District of Columbia's Housing Production Trust Fund ("HPTF") to help the District of Columbia Government increase the amount of affordable housing available in the District of Columbia; and
 - The Project will provide employment opportunities. The Applicant stated that hotel operations are expected to create 150-200 on-going permanent jobs. The Applicant has agreed to enter into a First Source Memorandum of Agreement with the Department of Employment Services with regard to the hotel-related jobs that will be generated by the Project. The Applicant submitted a draft of the First Source Memorandum of Agreement at Exhibit 21B of the case record and agreed it will execute the agreement as a condition of the issuance of a Certificate of Occupancy for the hotel.(Ex. 21.)

³ The Project will not include any on-site vehicular parking spaces. However, the Applicant stated it will provide valet parking services for guests and visitors to the hotel and that it will enter into an agreement with nearby parking garage operators to have spaces available to meet the expected vehicular parking demand from the Project. The Project provides one 12' 6" by 30' loading berth with back-in/head-out maneuvers, rather than the two loading berths and one service delivery space that are required by the Zoning Regulations. (Ex. 3.)

Applicant's Justification for PUD Relief

11. The Applicant provided evidence that the Project satisfies the PUD requirements of Subtitle X, Chapter 3, and concluded that the Project is not inconsistent with the Comprehensive Plan when reviewed as a whole.
12. The Property is designated as a Regional Center on the Generalized Policy Map ("GPM") and located within a Resilience Focus Area; the Property is designated as Low Density Commercial on the Future Land Use Map ("FLUM"). The Applicant provided a list of nearby properties fronting M Street and to its south that are zoned the proposed MU-13 zone and designated Low Density Commercial on the FLUM. (Ex. 3H.)
13. The Applicant provided an analysis of the Project's consistency with the applicable Comprehensive Plan objectives, policies, and maps related to the Property, including the GPM, the FLUM, Citywide Elements, and the Near Northwest Area Element. The Applicant acknowledged that the Project's proposed FAR of approximately 3.99 is greater than the 2.5 FAR described as appropriate in the Low Density Commercial category, the Property's designation on the FLUM. However, the Applicant asserted that the Project's proposed FAR is not inconsistent with the FLUM because the FLUM is intended to be interpreted broadly and the Low Density Commercial category specifically states that greater density than 2.5 FAR may be permitted when approved through a PUD. The Applicant noted that the proposed 64-foot height of the Project is below that which is permitted through a PUD under the site's existing MU-4 zoning and that the Project is only 4 feet taller and 0.57 FAR greater in density than the Latham Hotel which previously occupied the site. (Ex. 3, 3E, 7, 21.)
14. As required by the Comprehensive Plan, the Applicant provided an analysis of the Project through a racial equity lens. The analysis noted that the proposed hotel and retail uses will not result in any displacement or loss of residential units on the Property; the Project will help foster employment and business/economic opportunities; the Applicant has agreed to enter into a First Source Memorandum of Agreement with the Department of Employment Services for the operation of the hotel which will help District residents obtain new jobs; and the Applicant will be making a financial contribution of \$600,000.00 to the HPTF that will be used to increase the amount of affordable housing available in the District of Columbia. (Ex. 7.)
15. The Applicant studied the Project's potential impacts and provided evidence that the Project has no unacceptable adverse impacts on the surrounding area or on the operation of District services or facilities that cannot be mitigated or that are not acceptable in light of the Project's Public Benefits. (Ex. 3.) The Applicant prepared and submitted a Transportation Statement, dated October 28, 2022 (the "Transportation Statement"). The Transportation Statement concluded that the Project is not expected to have a detrimental impact on the surrounding transportation network for the following reasons: the Property is surrounded by an existing network of transit, bicycle, and pedestrian facilities that promote safe and effective non-vehicular transportation; the Project will provide sufficient short and long term bicycle parking; while no on-site vehicular parking is proposed, the parking demand will be managed by utilizing curbside valet parking operations (with hotel

guest cars parked at a nearby garage); and the Applicant will utilize Transportation Demand Management (“TDM”) strategies and a Loading Management Plan (“LMP”), which will be conditions of approval of the Application. (Ex. 20.)

16. The Applicant stated that the Project will provide specific public benefits and amenities that exceed what could result from a matter-of-right development, are tangible, measurable, and able to be arranged prior to issuance of the certificate of occupancy, and benefit either the immediate neighborhood or address District-wide priorities. As described above, the Application’s public benefits and amenities package includes a \$400,000.00 contribution to NPS to be used for improvements to the C&O Canal National Historic Towpath; a \$600,000.00 contribution to the HPTF; and a commitment to enter into a First Source Memorandum of Agreement with the Department of Employment Services. The Applicant also stated that the Project’s public benefits include superior urban design, architecture, and landscaping; efficient and economical site planning and land utilization; and sustainable design elements that contribute to the Project’s achievement of a LEED Gold certification. (Ex. 3, 7, 21.)

Applicant’s Justification for Special Exception Relief for the Rooftop Restaurant/Lounge Space

17. The Applicant provided evidence that approval of the proposed eating and drinking establishment in the habitable penthouse space and adjacent rooftop deck satisfied the requirements of Subtitle C § 1501.1(d) and that granting the special exception approval was in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of adjacent property. The Applicant stated that the small bar/lounge is likely be frequented by guests of the hotel and is not likely to result in large crowds gathering on the roof. (Ex. 3.)

III. RESPONSES TO THE APPLICATION

OP

18. In its reports to the Commission, dated July 8, 2022 and December 2, 2022, respectively (“OP Setdown Report” and “OP Hearing Report”), OP recommended setdown of the Application for public hearing and approval of the Application. (Ex. 6, 23.) The OP Hearing Report noted that on balance the Application is not inconsistent with the Comprehensive Plan maps and written elements; that the Project’s proposed frontage mimics the height of the MU-4 low density commercial properties along M Street and shows minimal deviation in height and density from the former Latham Hotel while achieving a greater overall density; and that the flexibility provided through the PUD process furthers racial equity and is balanced by the benefits and proffers provided by the Project. OP noted its support for the flexibility from the on-site vehicular parking requirements as it would allow for an efficient development that reduces incentive and reliance on vehicular transportation. OP also supported the special exception to permit the eating and drinking establishment use in the penthouse space as it is not anticipated to have an adverse impact on the neighborhood. (Ex. 23.)

DDOT

19. On December 2, 2022, DDOT filed a report regarding the Project. (Ex. 22.) DDOT's report noted that the vehicle and person trips generated by the Project are expected to have minimal impact on the transportation network and a traffic analysis was not required. DDOT stated its support for the requested vehicular parking and loading relief and noted that it had no objection to the Application provided the order approving the Application includes conditions that the Applicant is required to implement the TDM plan and LMP proposed in the Applicant's Transportation Statement at Exhibit 20, for the life of the Project. DDOT also requested the Applicant update its plans to show the location and preliminary design of the long-term bicycle parking storage room and shower/locker facilities, which the Applicant provided. (Ex. 27A2.)

ANC

20. On December 6, 2022, ANC 2E filed a resolution in support of the Project. (Ex. 26.) The ANC resolution stated that at a duly noticed public meeting on November 29, 2022, with a quorum present, ANC 2E voted 5-0-0 to support the PUD and Zoning Map Amendment application provided that the PUD is deemed sufficient. ANC 2E noted its support for the contribution to the Housing Production Trust Fund. ANC 2E also noted that it was "pleased to see support for the renovation of the C&O Canal between 31st and 34th Street, N.W. as part of the applicant's contribution but would prefer that a D.C. Government agency or nonprofit stewards the funds for the proposed renovation noted in the application." The resolution further explained the ANC's understanding that "it is unusual for a PUD contribution to be distributed to a federal agency, in part because there is no oversight of federal agencies for issues like failing to comply with conditions set forth in PUD applications."

NCPC

21. On December 12, 2022, the Commission referred the Application to the National Capital Planning Commission ("NCPC") for review and comment pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Section 1-201 *et seq.* (Ex. 29.)
22. NCPC submitted a January 6, 2023, letter from its Executive Director stating that pursuant to delegations of authority adopted by NCPC, NCPC had determined that the proposed Consolidated PUD and Related Map Amendment is not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact any other identified federal interest. (Ex. 32.)

Other Agencies / Organizations

23. NPS submitted a letter, dated December 1, 2022, in support of the Application. The letter noted that the Applicant has been coordinating the design of the Project with NPS since June 2020. The letter also noted that NPS has mechanisms and standard agreements in place that are utilized across the park service to accept contributions like the contribution proposed by the Applicant for the improvements to the C&O Canal towpath. (Ex. 24.)

CONCLUSIONS OF LAW

Authority

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a Consolidated PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 300 and a PUD-related map amendment pursuant to Subtitle X § 303.12.

Standard of Review

2. A PUD application must adhere to the procedural requirements and the evaluation standards of Subtitle Z and Subtitle X, Chapter 3, respectively.
3. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. Subtitle X § 301. The Application satisfies these minimum area and contiguity requirements.

Evidentiary Standards

4. The Applicant has the burden of proof to justify the granting of the Application according to the PUD evaluation standards. Subtitle X § 304.2. The Commission's findings in relation to a PUD must be supported by substantial evidence. (*See Howell v. District of Columbia Zoning Comm'n.*, 97 A.3d 579 (D.C. 2014).) The Applicant's filings, testimony, and expert witness presentations are credible and thorough and adequate to support the Commission's analysis and conclusions contained herein. Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards and has carried its burden of proof sufficiently to allow the Commission to approve the Application.
5. The Commission is required to give "great weight" to the issues and concerns of the affected ANC. D.C. Code § 1-309.10(d)(3)(A). The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).) The Commission has considered the written testimony from ANC 2E. The Commission concludes that the Applicant appropriately engaged in dialogue with ANC 2E, and ANC 2E supports the Project. The Commission recognizes the ANC's preference that a D.C. Agency or non-profit steward the funds for the towpath renovation. However, the Commission believes that it is appropriate in this case for NPS to receive these funds directly. The Commission notes the letter in the record from the Superintendent of the C&O National Historic Park which states that NPS has the mechanisms and standard agreements to accept such contributions. The Commission also notes that the Applicant has been coordinating the design of the Project with NPS since June 2020. Therefore, the Commission has afforded the requisite great weight to the ANC's written submission, but concludes that the Applicant's contribution to NPS rather than a D.C. Agency or non-profit is appropriate and justified.
6. The Commission is also required to give great weight to the written reports of OP. (D.C. Code § 6-623.04; Subtitle Z § 405.8.) The Commission gives great weight to OP's support

of the Application and concurs with OP's conclusions and findings with respect to the Project's consistency with the Comprehensive Plan, the granting of flexibility from the vehicular parking and loading requirements, and approval of the special exception relief for the eating and drinking establishment use in the habitable penthouse space and adjacent roof deck.

Consistency with the PUD Process

7. 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 (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan." The Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Commission concludes that the Project is superior to what could be constructed on the Property as a matter-of-right via the underlying zoning. The Commission finds that the Project Public Benefits are meaningful and are commendable both in number and quality. Finally, the Commission has found that the Project does not injure but instead advances the public health, safety, welfare or convenience, and is not inconsistent with the Comprehensive Plan. The Commission recognizes the tension between the Project's proposed FAR of 3.99 and the 2.5 FAR contemplated by the Property's Low Density Commercial designation on the FLUM. However, the Commission believes that any potential inconsistency with the FLUM is outweighed by the Application's overall consistency with the Property's Regional Center designation on the GPM as well as the policies and goals of the Citywide and Near Northwest Area Elements which encourage strengthening the commercial vitality of the Georgetown regional commercial center (Policy LU-2.4.3: Regional Centers); promote a robust tourism industry (Policy ED-2.3.1: Growing the Hospitality Industry); identify M Street as an established commercial area that should be sustained and enhanced (Policy NNW-1.1.2: Enhancing Established Commercial Areas); and support efforts to restore and revitalize the C&O Canal National Historic Park (Policy NNW-2.4.3: Chesapeake & Ohio (C&O) Canal). The Commission is persuaded by OP's findings that the proposed Project's frontage mimics the height of the low density commercial properties along M Street and that the Application's benefits and the GPM designation outweigh any tension with the FLUM designation.
8. As part of a PUD application, the Commission may, in its discretion, grant relief from any building development standard or other standard (except use regulations). (Subtitle X §§ 303.1, 303.11.) The PUD process is intended to "provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan." (Subtitle X § 300.2.) The Commission agrees with the conclusions in the Transportation Statement and determines that it is appropriate to grant relief from the vehicular parking requirements and the loading requirements for the Project. The Commission notes that the TDM plan included in the Transportation Statement was found to be sufficiently robust by DDOT and, further, that DDOT had no objections to the Application, subject to several

conditions which the Applicant has agreed to in this Order or satisfied prior to the hearing. In addition, the Commission agrees with the Applicant that granting special exception relief for the eating and drinking establishment in the penthouse habitable space and adjacent roof deck is consistent with the general special exception relief requirements. The Commission concludes that granting this relief is consistent with the intent and purposes of the Zoning Regulations.

Evaluation Standards

9. Subtitle X § 305.2 defines public benefits as “superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title.” Such public benefits must satisfy the public benefit criteria: (a) benefits must be tangible and quantifiable items; (b) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) benefits must primarily benefit a particular neighborhood or area of the city or service a critical city-wide need; and (d) monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. (*Id.* §§ 305.3, 305.4.) Based on this Commission’s findings regarding the public benefits as well as the Conditions of this Order, the Commission concludes that the Project’s Public Benefits benefit the surrounding neighborhood or the District as a whole to a significantly greater extent than would a matter-of-right development and otherwise satisfy the public benefit criteria.
10. The PUD provisions require the Commission to evaluate whether the Application: “(a) is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.” (Subtitle X § 304.4.) The Commission concludes the Project is not inconsistent with the Comprehensive Plan as a whole, concurring with the Applicant’s analysis and giving great weight to OP’s analysis on this point. The Commission has reviewed the Application through a racial equity lens and agrees with the analysis of the Applicant and OP on this issue. The Commission is persuaded by the Applicant’s and OP’s impact analyses contained in the record regarding potential impacts of the Project and concludes that the Project does not have any unacceptable impacts. The Commission further concludes that the Project includes public benefits which satisfy the public benefits criteria and none of which are inconsistent with the Comprehensive Plan.
11. This Commission must undertake a “comprehensive public review” of the PUD application “in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits.” (Subtitle X § 300.5.) In deciding on the Application, this Commission

must “judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” (*Id.* § 304.3.) The Commission has appropriately considered the substantial evidence presented by the Applicant. The Commission grants appropriate weight to the reports and testimony of the various reviewing District agencies and the ANC. The Commission concludes the Application’s PUD related Map amendment from the MU-4 and MU-12 zones to the MU-13 zone is appropriate because properties in the vicinity fronting M Street and to its south are included in both the FLUM’s Low Density Commercial category and the MU-13 zone. The Commission finds the PUD related Map Amendment satisfies PUD requirements given the public benefits of the Project, notably the contribution to the HPTF and the potential to create 150-200 permanent employment opportunities; and the proposed height of the Project’s frontage mimics the low density commercial properties along M Street and the former Latham Hotel. The Commission further concludes that the Project’s development incentives, including flexibility from vehicular parking and loading requirements and special exception relief to permit an eating and drinking establishment at the penthouse level, are warranted in light of the Project’s public benefits and the Project’s overall consistency with the Comprehensive Plan. Accordingly, the Application satisfies the PUD requirements.

Summary Order

12. Since ANC 2E, the only party other than the Applicant, did not oppose the Application, the Commission determined that its decision in this case is not adverse to any party and therefore it could grant the Applicant’s request for a summary order pursuant to Subtitle Z § 604.7.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and, therefore, **APPROVES** the Application for a consolidated PUD and a related Map Amendment from the MU-4 and MU-12 zones to the MU-13 zone and the following relief, subject to the guidelines, conditions, and standards noted below:

- Flexibility pursuant to Subtitle X § 303.1 from the vehicular parking requirements of Subtitle C § 701.5;
- Flexibility pursuant to Subtitle X § 303.1 from the loading requirements of Subtitle C § 901.1; and
- A special exception to permit an eating and drinking establishment at the penthouse level pursuant to Subtitle X § 303.13 and Subtitle C § 1501.1(d).

A. PROJECT DEVELOPMENT

1. The Project shall be constructed in accordance with the plans prepared by Winstanley Architects and Planners, dated November 22, 2022, and included in the

record as Exhibits 21A1-21A3 and the location and design of the long-term bicycle parking storage room and shower/locker facilities shall be constructed consistent with the plans shown at Exhibit 27A2, also prepared by Winstanley Architects and Planners (the "Final Plans"). The Applicant shall have flexibility from the Final Plans in the following areas:

- a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the Project as shown on the Final Plans;
- b. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction, without reducing the quality of the materials, provided such colors are within the color ranges shown on the Final Plans; and to make minor refinements to exterior details, dimensions and locations, including curtainwall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, 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 or to address the structural, mechanical, design, or operational needs of the building uses or systems;
- c. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the Project as shown on the Final Plans; examples of exterior details include, without limitation, doorways, canopies, railings, and skylights;
- d. To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Final Plans do not change;
- e. To vary the design of the public space surrounding the Property and/or the selection of plantings in the landscape plan depending on seasonal availability within the range and quality as proposed in the Final Plans or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, Department of Buildings, or other applicable regulatory bodies and/or service to the Property from utilities;
- f. To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the minimum required for the LEED standard specified by the order; and
- g. 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 dimensional requirements of the Zoning Regulations.

2. The Property shall be subject to the requirements of the MU-13 zone except as set forth or modified herein and as shown on the Final Plans. The Project shall be constructed to a maximum height of 64 feet and a maximum FAR of 3.99 and:
 - a. The Project shall have flexibility from the vehicular parking and loading requirements; and
 - b. The Project may include an eating and drinking establishment use in the habitable penthouse space and the rooftop deck areas shown on the Final Plans.

B. PUBLIC BENEFITS

1. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with evidence that the Project has or will achieve the requisite number of prerequisites and points necessary to secure LEED Gold certification from the U.S. Green Building Council.
2. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall provide written evidence to the Zoning Administrator and the Office of Zoning that it has entered into a Memorandum of Agreement with the Department of Employment Services that is consistent with the draft Memorandum of Agreement in the record. (Ex. 21B.)
3. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall provide written evidence to the Zoning Administrator that it has made the following financial contributions, and the Applicant and/or National Park Service (as applicable) shall provide written evidence that the items or services listed have been or are being provided:
 - a. \$600,000.00 to the District of Columbia Housing Production Trust Fund; and
 - b. \$400,000.00 to the National Park Service – to be utilized for pre-design investigations, the production of design phase plans, and/or the construction of the towpath improvements to the C&O Canal located between 31st Street, N.W. and 34th Street, N.W.

C. MITIGATION

1. **For the life of the Project**, the Applicant shall implement the following with respect to the Project's Transportation Demand Management ("TDM"):
 - Valet parking will be provided at a charge to tenants and hotel guests;
 - Identify Transportation Coordinators for the planning, construction, and operations phases of development. There will be a Transportation Coordinator for each tenant and the entire site. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo;
 - Transportation Coordinator will conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;
 - Transportation Coordinator will 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 property website and in any internal building newsletters or communications;
 - Transportation Coordinator will subscribe to goDCgo's hospitality newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan;
 - Provide a copy of the Loading Management Plan to the Transportation Coordinator so they are aware of this commitment;
 - Provide at least 16 short- and 12 long-term bicycle parking spaces, meeting or exceeding the Zoning requirements of five short- and 12 long-term bicycle parking spaces;
 - Provide at least four showers and seven lockers for use by employees, meeting the Zoning requirements of four showers and seven lockers.
 - Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes, with a minimum five percent of spaces (minimum two, equaling two for this project) be designed for longer cargo/tandem bikes (10 feet by 3 feet), a minimum of 10% of spaces (equaling one space for this project) will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum of 50% of spaces (equaling 6 spaces for this project) will be located horizontally on the floor. There will be no fee to the employees for usage of the bicycle storage room;
 - Post "getting here" information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for hotel guests, retail customers, and employees discouraging use of on-street parking in Residential Permit Parking (RPP) zones;

- Transportation Coordinator will demonstrate to goDCgo that the hotel and any 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;
- Provide employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future;
- Fund and install the expansion of a Capital Bikeshare (CaBi) station located at M Street NW and Pennsylvania Avenue NW, or other location (to be reviewed and approved by DDOT), with up to eight additional docks (up to two expansion plates); and
- Improve the curb ramps adjacent to the site within the south-west corner of the M Street NW/30th Street NW intersection to meet current ADA standards, subject to DDOT approval. These curb ramps currently lack detectable warning strips.

Specifically for the hotel portion of the Project, the Applicant proposes the following:

- Front office and customer-facing staff will be provided training by goDCgo (either in-person or webinar) to learn of the non-automotive options for traveling to the property;
- Provide guests with goDCgo's Get Around Guide by making it available on the property website and in printed format for front office or customer-facing staff;
- Hotel will participate in the Capital Bikeshare Corporate Membership program and offer discounted annual memberships to employees;
- Provide comprehensive transportation information and directions on hotel website, including promoting the use of non-automotive modes of transportation and links to website for goDCgo, Capital Bikeshare, DC Circulator, and the Washington Metropolitan Area Transit Authority (WMATA);
- Provide brochures with information on non-automotive options for traveling to the property available at all times in a visible location in the lobby; and
- Post locations of nearby parking garages to hotel's website.

Specifically for the retail portion of the Project, the Applicant proposes the following:

- Offer a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to each new employee;

2. **Following the issuance of a Certificate of Occupancy for the Project,** The Applicant (or Transportation Coordinator) shall submit to the Office of Zoning for inclusion in the record for this proceeding, documentation summarizing compliance with the transportation and TDM commitments of this Order (including, any written confirmation from the Office of the Zoning Administrator), as applicable and shall, every five years thereafter, submit to the Zoning Administrator, DDOT, and goDCgo, a letter summarizing continued substantial compliance with the transportation and TDM Conditions of this Order, unless no longer applicable as confirmed by DDOT. If such letter is not submitted on a timely basis, the building owner shall have sixty (60) days from the date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter.
3. **For the life of the Project,** the Applicant shall implement the following with respect to the Project's Loading Management Plan (LMP):
- A loading dock manager will be designated by the building management who will be on duty during delivery hours. The dock 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;
 - 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);
 - The dock manager will schedule deliveries using the berths such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available, so as to not compromise safety or impede the functionality of 30th Street NW. If the vehicle is less than 20-feet in length, the driver could alternatively be directed to use one of the nearby curbside commercial loading areas if one is available;
 - The dock manager will schedule hotel loading activities so as not to conflict with each other or with retail deliveries;
 - The dock manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along 30th Street, N.W. except during those times when a truck is actively entering or exiting a loading berth;
 - Service vehicle/truck traffic interfacing with 30th Street, N.W. traffic will be monitored during peak periods and management measures will be taken if necessary to reduce conflicts between truck and vehicular movements;
 - The dock manager will monitor the timing of the hotel and retail deliveries to see if any adjustments need to be made to ensure any conflicts with the various building uses' loading activities are minimized;
 - Trucks using the loading dock 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, § 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). The dock 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 dock manager will also post these materials and other relevant notices in a prominent location within the loading area; and

- The dock 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 dock as well as notifying all drivers of any access or egress restrictions.

D. MISCELLANEOUS

1. No building permit shall be issued for the Project 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 Zoning Legal Division and the Zoning Division, Department of Buildings (the "PUD Covenant"). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Site 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 OZ.
2. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.

PROPOSED ACTION

Vote (December 12, 2022): 4-0-1

(Robert E. Miller, Joseph S. Imamura, Anthony J. Hood, and Peter G. May to **APPROVE**; third Mayoral appointee seat vacant, not voting)

FINAL ACTION


Vote (January 12, 2023): 4-0-1

(Joseph S. Imamura, Peter G. May, Anthony J. Hood, and Robert E. Miller to **APPROVE**; third Mayoral appointee seat vacant, not voting)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 22-16 shall become final and effective upon publication in the *D.C. Register*; that is, on March 3, 2023.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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.

