

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-27G
Z.C. Case No. 15-27G
350 MORSE CPK OWNER C2, LLC
(Modification of Significance to 1st and 2nd Stage PUD @ Square 3587, Lot 834)
November 13, 2023

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on November 13, 2023, to consider an application (“Application”) from 350 MORSE CPK OWNER C2, LLC (“Applicant”) for a modification of significance to an approved first- and second-stage planned unit development (“PUD”), previously approved in Z.C. Order No. 15-27, as modified in Z.C. Order No. 15-27B(2), for property located at Square 3587, Lot 834 (the “Property”) to convert the approved use of Building C2 from an office building with ground floor retail to a residential building with ground floor retail (the “Project”).

The Commission considered the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR” or “Zoning Regulations” and to which all subsequent section references refer unless otherwise specified). For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

The Overall PUD Site and the Property

1. Pursuant to Z.C. Order No. 15-27, effective July 21, 2017 (“Original Order”), the Commission approved a consolidated PUD, a first-stage PUD, and a related Zoning Map amendment from the C-M-1 zone to the C-3-C zone (now MU-9) for Lots 805, 814, and 817 (part of Record Lot 6) in Square 3587 (the “Overall PUD Site”).¹

¹ Z.C. Order No. 15-27 was approved pursuant to the 1958 Zoning Regulations. Under the 2016 Zoning Regulations, which repealed and replaced the 1958 Zoning Regulations on September 6, 2016, the C-M-1 zone was re-designated to the PDR-1 zone and the C-3-C zone was re-designated to the MU-9 zone. Following approval of Z.C. Order No. 15-27, new Assessment & Taxation (“A&T”) lots were established for the Overall PUD Site to correspond with the individual development parcels. Accordingly, the Overall PUD Site is now known as Lots 819, 833-835, and 838-840. Lots 833-835 and 838-840 represent the individual development sites, and Lot 819 represents District-owned property that operates as the private streets and alleys surrounding the development sites. Lot 819 is not included in the Overall PUD Site’s land area.

2. The Overall PUD Site has a total land area of approximately 208,671 square feet and is bounded by York Avenue, N.E. to the north, 4th Street, N.E. to the northeast, Morse Street, N.E. to the southeast, Florida Avenue to the southwest, and the Amtrak and Metrorail rail lines to the west. At the time that the Original Order was approved, the Overall PUD Site was improved with one-story industrial warehouse buildings previously used for wholesale distribution. As of the date of this Order, all of the industrial buildings on the Overall PUD Site have been razed, and all of the buildings on the individual development sites within the Overall PUD Site have been constructed, other than “Building C2,” which will be located on the Property. (Exhibit [“Ex.”] 3.)
3. The Property is located on the east side of the Overall PUD Site and has approximately 21,290 square feet of land area. The Property is bounded by Neal Place to the north, a private alley to the east, and Union Street to the west. To the south of the Property is Lot 833, which is improved with “Building C1,” which together with Building C2 will be considered a single building for zoning purposes. (Ex. 3.)

Prior Approvals for the Overall PUD Site and the Property

4. Prior Approvals for the Overall PUD Site. Pursuant to the Original Order, the Commission approved development of the Overall PUD Site with four buildings (“Building A,” “Building B,” “Building C,” and “Building D”) containing residential, retail, office, and optional hotel uses (the “Overall Project”). The Overall Project was approved to be constructed in two phases. Phase I was the consolidated PUD and included the southern portion of Building A (“Building A1”), Building B, and the southern portion of Building C (Building C1, defined above). Phase II was the first-stage PUD and included development of the northern portion of Building A (“Building A2”), the northern portion of Building C (Building C2, to be located on the Property), and Building D. (Ex. 3.)
5. Pursuant to the Original Order, the Overall Project was approved to have an aggregate density of approximately 7.1 floor area ratio (“FAR”) with approximately 1,091,201 square feet of gross floor area (“GFA”) devoted to residential use, approximately 52,968 square feet of GFA devoted to retail use, and approximately 217,558 square feet of GFA devoted to office use. (*See* Z.C. Order No. 15-27, Decision No. A(2).) The approved Overall Project included approximately 1,103 residential units and 682 parking spaces, with maximum building heights ranging from 78 to 130 feet. (Ex. 3.)
6. The affordable housing proffer approved for the Overall Project was 11% of the residential GFA within each residential building, with half reserved for households earning up to 50% of the median family income (“MFI”) (approximately 62 units) and half reserved for households earning up to 80% of the MFI (approximately 62 units). (Ex. 3.)
7. Following issuance of the Original Order, the Commission approved subsequent applications for the individual development parcels within the Overall PUD Site as follows:
 - a. Z.C. Order No. 15-27A (effective March 20, 2020) – First-stage PUD modification and second-stage PUD for Building A2;
 - b. Z.C. Order No. 15-27B(1) (effective October 30, 2020) – Modification of significance to approved consolidated PUD for Building C1;

- c. Z.C. Order No. 15-27B(2) (effective October 22, 2021) – Modification of significance to approved first-stage PUD and second-stage PUD for Building C2;
 - d. Z.C. Order No. 15-27D (effective February 21, 2020) – Modification of consequence to approved consolidated PUD for Building C1;
 - e. Z.C. Order No. 15-27E (effective June 11, 2021) – Second-stage PUD for Building D; and
 - f. Z.C. Order No. 15-27F (effective September 4, 2020) – Modification of consequence to approved second-stage PUD for Building A2.
- (Ex. 3.)
8. Prior First-Stage PUD for the Property. As part of the first-stage PUD in Z.C. Case No. 15-27, the Commission approved the Property to be developed with a new mixed-use building at 130 feet tall containing approximately 211,784 square feet of GFA devoted to residential use (approximately 232 residential units, plus or minus 10%), approximately 9,200 square feet of GFA devoted to retail use, and approximately 90 on-site parking spaces. The affordable housing proffer approved for Building C2 was 11% of the residential GFA, which resulted in approximately 11,648 square feet of GFA (13 units) reserved for households earning up to 50% of the MFI and approximately 11,648 square feet of GFA (13 units) reserved for households earning up to 80% of the MFI. (Ex. 3.)
 9. Prior Modification to the First-Stage PUD and Second-Stage PUD for the Property. Pursuant to Z.C. Order No. 15-27B(2), effective October 22, 2021, the Commission approved a modification of significance to the first-stage PUD and a second-stage PUD for Building C2 on the Property. The approval converted the primary use of Building C2 from residential to office use, with approximately 225,398 square feet of GFA devoted to office use, approximately 6,532 square feet of GFA devoted to retail use, and approximately 132 parking spaces. The approval also included special exception relief pursuant to Subtitle C § 1500.3(c) to permit restaurant/bar uses within the penthouse. Because Building C2 was converted to office use, the affordable housing proffer was revised to a contribution of \$1.5 million to the Housing Production Trust Fund, rather than the dedication of Inclusionary Zoning (“IZ”) units within the building, which was no longer possible since it was converted to office use. (Ex. 3.)
 10. The subject Application requested to modify the approved first- and second-stage PUDs for the Property to reinstate Building C2 as a residential building with ground floor retail. In doing so, Building C2 would revert back to the number of residential units approved in the first-stage PUD, i.e., approximately 232 units, plus or minus 10%. However, the affordable housing proffer would be enhanced such that 11% of the residential GFA in Building C2 would be devoted to IZ units, with half reserved for households earning up to 50% of the MFI and half reserved for households earning up to 60% of the MFI. (Ex. 3.)

Parties

11. Pursuant to Subtitle Z § 403.5(a), the Applicant is automatically a party to the Application.
12. Pursuant to Subtitle Z §§ 101.8 and 403.5(b), Advisory Neighborhood Commission (“ANC”) 5D is automatically a party to the Application as the “affected” ANC.

13. The Commission received no requests for party status.

Notice and Setdown

14. Pursuant to Subtitle Z §§ 300.7 and 300.8, on December 22, 2022, the Applicant sent ANC 5D and the owners of all property within 200 feet of the Property a “Notice of Intent” to file the Application. (Ex. 3F.)
15. Pursuant to Subtitle Z §§ 400.9-400.12, on July 13, 2023, at its duly noticed public meeting the Commission considered the Application and voted to set the case down for a public hearing. (Transcript [“Tr.”] of July 13, 2023 Regular Public Meeting at pp. 39-40.)
16. Pursuant to Subtitle Z §§ 402.1-402.2 and 402.6, on July 24, 2023, the Office of Zoning (“OZ”) sent notice of the November 13, 2023, public hearing concerning the Application to:
 - a. The Applicant
 - b. ANC 5D;
 - c. The ANC 5D01 Single Member District (“SMD”) Commissioner, whose district includes the Property;
 - d. The Ward 5 Councilmember, in whose Ward the Property is located;
 - e. The Office of ANCs;
 - f. The Office of Planning (“OP”);
 - g. The District Department of Transportation (“DDOT”);
 - h. The Department of Buildings (“DOB”);
 - i. The Zoning Commission Legal Department (“OZLD”);
 - j. The District Department of Energy & Environment (“DOEE”);
 - k. The Chair and At-Large Members of the DC Council; and
 - l. The owners of all property within 200 feet of the Property.(Ex. 19, 20.)
17. Pursuant to Subtitle Z § 402.1(a), OZ published notice of the November 13, 2023 public hearing, concerning the Application in the August 4, 2023, issue of the *District of Columbia Register* (70 DCR 010814 *et seq.*) as well as on the calendar on OZ’s website. (Ex. 18, 19.)
18. Pursuant to Subtitle Z §§ 402.3-402.4, 402.8-402.10, on September 29, 2023, the Applicant submitted evidence that it had posted notices of the public hearing on the Property on September 27, 2023, and on November 7, 2023, the Applicant submitted evidence that it had thereafter maintained such notices. (Ex. 22, 27-27C.)

Current Zoning

19. The underlying zoning for the Overall PUD Site, including the Property, is PDR-1 (C-M-1 under the 1958 Zoning Regulations under which the Overall PUD Site was originally approved). Pursuant to the Original Order approval, the Overall PUD Site, including the Property, was granted a PUD related map amendment to the MU-9 zone (C-3-C under the 1958 Zoning Regulations). (Ex. 3.)

Comprehensive Plan (Title 10-A DCMR)

20. The Comprehensive Plan Future Land Use Map (“FLUM”) designates the Overall PUD Site, including the Property, as mixed-use (High Density Commercial / High Density Residential / Production, Distribution and Repair (“PDR”). The Comprehensive Plan’s Framework Element provides that:
- a. The High-Density Commercial designation “is used to define the central employment district, other major office centers, and other commercial areas with the greatest scale and intensity of use in the District. Office and mixed office/retail buildings with densities greater than a FAR of 6.0 are the predominant use, although high-rise residential and many lower scale buildings (including historic buildings) are interspersed. The MU-9, D-3, and D-6 Zone Districts are consistent with the High-Density Commercial category, and other zones may also apply”; (10-A DCMR § 227.13)
 - b. The High-Density Residential designation “is used to define neighborhoods and corridors generally, but not exclusively, suited for high-rise apartment buildings. Pockets of less dense housing may exist within these areas. Density is typically greater than a FAR of 4.0, and greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The RA-4 and RA-5 Zone Districts are consistent with the High-Density Residential category, and other zones may also apply”; and (10-A DCMR § 227.8.)
 - c. The PDR designation “is used to define areas characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services, food services, printers and publishers, tourism support services, and commercial, municipal, and utility activities which may require substantial buffering from housing and other noise, air-pollution- and light-sensitive uses. This category is also used to denote railroad rights-of-way, switching and maintenance yards, bus garages, and uses related to the movement of freight, such as truck terminals. It is important to ensure that adequate, appropriate land is provided for these PDR uses that are critical to supporting the retail, transportation and service needs of the city. A variety of zone districts apply within PDR areas, recognizing the different intensities of use and impacts generated by various PDR activities. The corresponding zone category is PDR, and the present density and height limits set in these districts are expected to remain for the foreseeable future. Other districts may also apply where the PDR map designation is striped with other land uses. In an area striped to include PDR, development must include PDR space, and on sites containing existing PDR space the amount of PDR space on-site should be substantially preserved.”. (10-A DCMR § 227.14.)
21. The Comprehensive Plan Generalized Policy Map (“GPM”) designates the Overall PUD Site, including the Property, as a Multi-Neighborhood Center.² The Framework Element states that Multi-Neighborhood Centers “are generally found at major intersections and along key transit routes. These centers might include supermarkets, general merchandise

² The GPM also identifies part of the Overall PUD Site as within the New York Avenue, N.E. Corridor Future Planning Analysis Area (FPAA). As noted by OP in its reports, the Commission may consider the present Application prior to a planning study being completed since the Property is part of a PUD and is also governed by a Small Area Plan. (See 10-A DCMR §§ 2503.2-2503.3; Ex. 13, 25.)

stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers also may include residential and office space for small businesses, although their primary function remains retail trade.” (10-A DCMR § 225.17.) “Mixed-use infill development at these centers should be encouraged to provide new retail and service uses, and additional housing and job opportunities. Infrastructure improvements to allow safe access by all transportation modes to these centers are also important for increasing equitable access.” (10-A DCMR § 225.18.)

22. The Comprehensive Plan designates the Overall PUD Site, including the Property, within the Upper Northeast Area Element.
23. The Overall PUD Site, including the Property, is also subject to the Florida Avenue Market Study (“FAMS”), a Small Area Plan adopted by the D.C. Council on October 6, 2009, and the Ward 5 Works Industrial Land Transformation Study (“Ward 5 Works Study”).
24. Pursuant to 10-A DCMR §§ 2501.4-2501.6, 2501.8, the Commission is tasked with evaluating the Application’s consistency with the Comprehensive Plan through a racial equity lens. The Comprehensive Plan 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.) In addition, 10-A DCMR § 2501.8 suggests to prepare and implement tools to use as a part of the Commission’s evaluation process. Consistent with Comprehensive Plan guidance, the Commission utilizes a Racial Equity Analysis Tool (the “Tool”) in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023. The revised Tool requires submissions from applicants and OP analyzing the zoning action’s consistency with the Citywide and Area Elements of the Comprehensive Plan, and Small Area Plans, if applicable (Part 1); a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action (Part 2); and a submission from OP including disaggregated race and ethnicity data for the Planning Area affected by the zoning action (Part 3).

II. THE APPLICATION

The Project – Building C2

25. The first-stage PUD for Building C2, approved pursuant to the Original Order, approved the Property to be developed with a primarily residential building with ground floor retail. The second-stage PUD for Building C2, approved pursuant to Z.C. Order No. 15-27B(2), approved the Property to be developed with a primarily commercial office building with

ground floor retail. The subject Application proposed to modify the first- and second-stage PUDs for the Property to convert Building C2 back to its originally approved use as a primarily residential building with ground floor retail. (Ex. 3.)

26. As modified in the subject Application, Building C2 would have approximately 223,142 square feet of GFA devoted to residential use (approximately 232 residential units, plus or minus 10%) and approximately 5,645 square feet of GFA devoted to retail use, of which approximately 1,125 square feet of GFA would be devoted to “Maker Space” as that term is defined in the Original Order. Building C2 would continue to have a maximum building height of 130 feet and an overall density of approximately 228,787 square feet of GFA (10.75 FAR across the Property). (Ex. 3.)
27. Approximately 143 parking spaces³ would be located in Building C2 in three levels of below-grade parking accessed from the private alley to the east. One loading berth and one service/delivery space would be located on the ground floor and also accessed from the private alley. Approximately 79 long-term bicycle parking spaces would be located in a bicycle storage room on the ground floor, and approximately 16 short-term bicycle parking spaces would be provided on the perimeter of the Property. (Ex. 3, 11, 11A.)
28. The architectural design of Building C2 has a modern vocabulary with subtle references to the history of the neighborhood. The two street facing façades (north and west) are activated through playfully arranged balconies that contribute to the building’s active character and provide access to outdoor spaces and natural light. The balconies are comprised of bronze colored metal detailing and high-performance glass, which together offer a unique architectural expression. The building elevations along the private alley (east) and south façades are comprised of contrasting punched windows set in a metal panel façade system. (Ex. 3.) At the request of OP, the Applicant added a total of 24 additional balconies to the alley-facing façade. (Ex. 28; Tr. of November 13, 2023 Public Hearing at pp. 10-11.)
29. The ground floor contains the majority of the building’s amenities and lobby and serves as the social center for building residents. The primary residential entry to Building C2 is located on Union Street, with pedestrian access to the retail space provided from both Union Street and from the private alley to the east. Access to the Maker Space, parking, loading, and the ground floor long-term bicycle storage room is provided from the private alley. (Ex. 3.)
30. The rooftop contains both interior and exterior communal recreation and amenity space for building residents. The habitable portions of the penthouse are clad in metal panels and are punctuated by floor-to-ceiling glass. The upper penthouse parapet walls are solid and serve to screen the mechanical equipment. At the request of OP, the Applicant added a total of 500 square feet of solar panels to the upper penthouse parapet walls facing east and south. (Ex. 28; Tr. of November 13, 2023 Public Hearing at p. 11; Ex. 3.)

³ The Application initially proposed 95 vehicle parking spaces, but the Applicant increased the number of spaces to 143 after further discussions with its transportation consultants. (Ex. 11, 11A.)

31. Building C2 will achieve LEED Gold certification under the LEED for Building Design + Construction: Multifamily Midrise v4 rating standards. Sustainable features will include green roof areas, water-efficient landscaping, construction waste management techniques, recycled and sustainable materials, energy-efficient building design and systems, and high-density development in a transit-rich location. As noted, a minimum of 500 square feet of solar panels will be provided at the penthouse level. (Ex. 3.)

Applicant's Submissions and Testimony

32. Initial Application. On February 9, 2023, the Applicant filed its initial application materials, which included the following:
 - a. A Statement in Support of the Application that provided an overview of the Project and justifications relating to the PUD evaluation criteria;
 - b. An initial set of architectural plans and elevations;
 - c. An analysis of how the Application is not inconsistent with the Comprehensive Plan, as viewed through a racial equity lens, as further discussed below; and
 - d. Procedural materials required by the Zoning Regulations.
(Ex. 1, 2, 3, 3A-3H.)

33. Supplemental Filing. On March 30, 2023, the Applicant filed a letter and corresponding architectural drawing sheets showing the addition of a third level of below-grade garage parking at Building C2. (Ex. 11-11A.) The letter stated that after working with its transportation consultants and market experts, the Applicant determined that the anticipated parking demand for Building C2 generated a need to add a third level of parking and an increase in the number of vehicle parking spaces from 95 to 143. The drawing sheets attached to the letter replaced and superseded the corresponding sheets previously submitted as part of the initial application. (*Id.*)

34. Prehearing Submission. On July 14, 2023, the Applicant filed a Prehearing Submission and supporting materials responding to comments raised by OP in its June 29, 2023, Setdown Report. The Commission did not have any specific comments or requests for additional information at the July 13, 2023 public meeting. The comments raised by OP and the Applicant's responses thereto are summarized as follows:
 - a. The Applicant should add more balconies facing the alley and quantify the percentage of units with balconies:
 - The Applicant's Prehearing Submission stated that it would study adding more balconies and provide more information prior to the hearing. At the time, 23% of the units within the building had balconies;
 - b. The Applicant should coordinate with DOEE to determine if LEED v4.1 is more appropriate for Building C2, and is encouraged to include renewable energy generation on-site:
 - The Applicant's Prehearing Submission stated that the Building C2 would achieve LEED Gold certification under the LEED for Building Design + Construction: Multifamily Midrise v4 rating standards, which produces an optimum tenant experience, emphasizes on-site inspections and air sealings, and maximizes energy efficiency for each unit. LEED for Multifamily Midrise does

not yet have a v4.1, and accordingly, the Applicant stated that it would not pursue that standard. The Applicant also stated that it would study adding renewable energy generation and provide more information prior to the hearing; and

- c. The Applicant should consider more Maker Space in the building:
 - The Applicant responded that it would provide a minimum of 1,125 square feet dedicated to Maker Space, and that additional space was not available due to the limited area for commercial use. However, a total of 4,500 square feet of maker space will be provided across the Overall PUD Site, all of which will be marketed at a reduced rent by a retail broker with experience marketing to and securing a variety of tenant types, including makers.

The Prehearing Submission also included (i) a summary of the Applicant's continued engagement with ANC 5D, including a reference to the ANC resolution dated June 2, 2023 (Ex. 12.), in which the ANC stated that it voted in support of the Application at its regularly scheduled and duly noticed public meeting of May 8, 2023 (vote of 6-0 with one abstention); and (ii) other materials required by the Zoning Regulations. (Ex. 14-15C.)

35. Applicant's Transportation Report. On October 2, 2023, the Applicant filed a Comprehensive Transportation Review ("CTR") Report, which included a draft Transportation Demand Management ("TDM") plan and Loading Management Plan ("LMP"). The CTR concluded that the TDM plan would adequately promote non-vehicular modes and carry through the previous commitments of existing approvals; that the LMP would ensure efficient operation of the loading facilities, which would be accessed from the private alley to limit impacts of loading in public space, and that the Project would not have a detrimental impact on the surrounding transportation network. (Ex. 23-23A.)
36. Applicant's Supplemental Prehearing Submission. On October 24, 2023, the Applicant filed a Supplemental Prehearing Submission, which responded to the two outstanding issues raised in OP's Setdown Report and included a fully revised set of architectural plans and elevations (the "Building C2 Plans"). The Building C2 Plans showed the updates requested by OP and replaced and superseded all other architectural plans and elevations previously submitted to the case record. Specifically, the Building C2 Plans showed the following:
 - a. The addition of 12 new balconies on the alley-facing building façade, in response to OP's request to incorporate additional balconies in this location; and
 - b. The addition of a minimum of 250 square feet of solar panels on the south façade of the penthouse, in response to OP's request to include renewable energy generation on-site.(Ex. 24-24A4.)
37. Applicant's Direct Presentation. In advance of the November 13, 2023 public hearing, the Applicant filed a PowerPoint presentation. (Ex. 28.) At the public hearing the Applicant presented the Application as follows:
 - a. The Applicant did not provide testimony from any witnesses, but it did provide a response to comments raised in the OP Hearing Report (hereinafter defined) as follows:

- (i) The Applicant added 12 additional new balconies (24 total new balconies added) on the alley-facing building façade, as shown on Sheets 407 and 516 of the PowerPoint (Ex. 28.);
 - (ii) The Applicant agreed to double the amount of previously proposed solar panels on the project, increasing the minimum square footage from 250 square feet to 500 square feet, as shown on Sheets 516-517 of the PowerPoint (Ex. 28.); and
 - (iii) The Applicant provided a summary of its further engagement with DOEE regarding the project’s LEED proffer. The Applicant stated it met with DOEE and confirmed it is utilizing the right LEED standard, which is LEED for Building Design + Construction: Multifamily Midrise v4;
- b. The Applicant’s presentation also included a commitment agreeing to both of the conditions set forth in the DDOT Report (hereinafter defined); and
 - c. The Applicant’s presentation included architectural drawing sheets illustrating its additional commitments since the Building C2 Plans were filed with the Supplemental Prehearing Submission. The supplemental sheets (Sheets 407, 501-504, 506, 516-517, and 801 of the PowerPoint) combined with the Building C2 Plans are referred to herein as the “Approved C2 Plans.”
38. Draft Findings of Fact and Conclusions of Law. On November 27, 2023, the Applicant filed draft findings of fact and conclusions of law. (Ex. 30, 30A.)

III. APPLICANT’S JUSTIFICATION FOR RELIEF

Relief Requested

39. The Application requested that the Commission approve a modification of significance to the approved first- and second-stage PUDs for the Property. The proposed modifications would revert the approved use of Building C2 from office use back to residential use, while maintaining approximately the same overall GFA and building height. Building C2 would continue to have approximately 232 residential units (plus or minus 10%), which was the same number of units approved in the Original Order. Building C2 would have 143 total parking spaces, which is a minor increase from the 132 spaces approved in the second-stage PUD. Building C2 would have slightly less retail space than originally approved and would contain 1,125 square feet of Maker Space, as required by Z.C. Order No. 15-27B(2). (Ex. 3, 3D.)
40. The Application explained that the first-stage PUD approval for Building C included zoning flexibility under the 1958 Zoning Regulations from (i) the loading berth size requirements to provide a 30-foot berth where a 55-foot berth was required; (ii) the building lot control requirements; and (iii) the rear yard depth requirements to provide a rear yard depth of 24 feet for Building C, whereas a rear yard depth of 27 feet, one inch was required. The Application further explained that the 2016 Zoning Regulations (i) do not require a 55-foot-deep loading berth, so Building C2 no longer needed flexibility from the loading berth size requirements; and (ii) the 2016 Zoning Regulations allow for multiple primary buildings to be erected on a single record lot (Subtitle C § 302.4.), so Building C2 no longer needed flexibility from the building lot control requirements. However, the Application

requested continued flexibility from the rear yard depth requirements. The Application did not request any additional or new flexibility or development incentives. (Ex. 3, 3D.)

41. The Application requested various design flexibility as are set forth in the Conditions of this Order. (Ex. 3, 3D.)

PUD Balancing Test (Subtitle X § 304.3.)

42. The Application asserted that the development incentives requested, and potential impacts of the Project are appropriate and fully justified given the public benefits, project amenities, and positive impacts of the PUD, as discussed below. (Ex. 3, 3D.)

Not Inconsistent with Comprehensive Plan and Other Public Policies (Subtitle X § 304.4(a).)

43. The Application asserted that the Project is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. In granting the Original Order, the Commission found that the consolidated and first-stage PUDs and related Zoning Map amendment for the Overall PUD Site were not inconsistent with the Comprehensive Plan for the National Capital, adopted in 2006, as amended, including the Overall PUD Site's designation on the 2013 FLUM as mixed-use (High Density Commercial / High Density Residential / PDR), and on the 2013 GPM as a Multi-Neighborhood Center. *See* Z.C. Order No. 15-27, Finding of Fact ("FF") No. 88, 91-106. The Commission further found that the PUD advanced numerous goals and policies of the written elements of the Comprehensive Plan and other District planning goals for the immediate area (*see* Z.C. Order No. 15-27, Conclusion of Law ("CL") No. 10) and was consistent with FAMS and the Ward 5 Works Study (*see* Z.C. Order No. 15-27, Findings of Fact ["FF"] No. 126-131 and 133-135). The Commission also found that the PUD would implement the purposes of the 1958 Zoning Regulations to encourage well-planned developments that would offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. (*See* Z.C. Order No. 15-27, Conclusion of Law ["CL"] No. 5.)
44. The Application acknowledged that the Comprehensive Plan was updated in 2022, with a significant emphasis placed on reviewing all zoning actions through a racial equity lens as part of the overall Comprehensive Plan consistency analysis. Accordingly, the Application provided a full and complete analysis of how Building C2, as modified, would be not inconsistent with the current Comprehensive Plan, including when evaluated through a racial equity lens. (Ex. 3D and 28.)
45. The Applicant stated that the PUD, as amended by the Application, remains not inconsistent with the Comprehensive Plan for the following reasons:
 - a. **FLUM.** The PUD remains not inconsistent with the mixed-use (High Density Commercial / High Density Residential / PDR) FLUM designation. The approved PUD included a related map amendment to the C-3-C zone under the 1958 Zoning Regulations, which is equivalent to the MU-9 zone under the 2016 Zoning Regulations. The Framework Element describes the MU-9 zone as consistent with the High-Density Commercial designation. (10-A DCMR § 227.13.) The Project will consist of a residential building having an FAR of 10.75 across the Property which is not

- inconsistent with the densities contemplated by the High-Density Residential designation. (10-A DCMR § 227.8.) In addition, the Applicant stated that Building C2 will include 1,125 square feet of Maker Space, which is not inconsistent with the intent of the PDR designation;
- b. GPM. The PUD remains not inconsistent with the Multi-Neighborhood Center designation on the GPM. The proposed modification of Building C2 from an office use to a mixed-use residential and retail use is consistent with the intent of this designation, which encourages a mix of uses that includes both residential and retail. (10-A DCMR § 225.18.) The Project will add variety to the Florida Avenue Market Area, increasing its residential capacity and providing additional retail options for the neighborhood. Additionally, the inclusion of the Maker Space creates an opportunity for unique retail offerings, contributing to the distinctive neighborhood character;
 - c. Citywide Elements. The Application stated that the Project remains not inconsistent with the Land Use, Transportation, Housing, Environmental Protection, Urban Design, Economic Development, Community Services and Facilities, and Infrastructure Elements as it will provide residential, retail, and maker space uses on a vacant site, is consistent and compatible with adjacent uses, and will provide a number of benefits to the immediate neighborhood and to the city as a whole;
 - d. Upper Northeast Area Element. The Application stated that the Project will further the goals of the Area Element by redeveloping a vacant site in close proximity to transit and numerous other neighborhood amenities with a new mixed-use development. The Upper Northeast Area Element encourages compatible infill development (Policy UNE-1.1.2), Metrorail station development (Policy UNE-1.1.3), streetscape improvements (Policy UNE-1.2.1), and environmental quality improvements (Policy UNE-1.2.9), all of which are policies and goals that the Project directly supports. The Project will provide much-needed new infill housing, retail, maker space, and employment opportunities, while protecting the nearby lower density residences and increasing pedestrian accessibility and safety in the area; (Policies UNE-1.1.6, 1.2.5.)
 - e. Florida Avenue Market Study. The Application stated that the FAMS encourages new residential, office, and retail uses that create a vibrant, mixed-use destination that retains a revitalized wholesale/retail market and incorporates a mix of densities, ranging from moderate- to medium- to high-density, designed to be integrated into surrounding development and community fabric. The PUD's architecture, open spaces, and overall site plan will retain and improve the character of the Florida Avenue Market Area and will provide a mix of densities that are appropriate for the Property and integrate well into the surrounding community. In particular, the proposed PUD modification will be consistent with the FAMS, which encourages a mix of uses at a variety of densities, and will result in a significantly enhanced public realm providing connectivity throughout the PUD that activates the sidewalks and establishes a sense of place;
 - f. Ward 5 Works Industrial Land Transformation Study. The Application stated that the Project will subsidize business incubator spaces that will be dedicated exclusively to makers. The proposed ground-floor retail and Maker Space provide an opportunity for certain creative; start-up maker uses that complement the food-focused retail of the Market Area, consistent with the goals of the Study; and

Racial Equity

g. The Application made the following observations and conclusions about the surrounding neighborhood in its response to the Community Outreach and Engagement component of the Commission's revised Racial Equity Tool:

- *Community Outreach and Engagement:* The Applicant has been working with ANC 5D since filing the Application, including meeting with the ANC's Zoning Committee on February 16, 2023; meeting with the ANC's Committee of the Whole on March 27, 2023; meeting with the ANC Chair individually on April 27, 2023; and presenting the Application at the regularly scheduled and duly noticed public meetings of the ANC on April 10 and May 8, 2023. The Applicant has also continued to engage with the owner of the property located to the east of the Overall PUD Site, which was in support of the original PUD application. In addition, the Applicant asserted that the proposed PUD modification advances racial equity by virtue of the Project's location in a highly transit-accessible area, as well as through the provision of several benefits. The Project will provide a significant number of new market rate and affordable dwelling units within close proximity to Metrorail, Metrobus, bicycle trails and lanes, and in a walkable area providing neighborhood-serving retail and grocery stores. The overall PUD includes significant open space and consists of extensive landscaping and stormwater improvements. In addition, there will be no direct physical displacement of residents, as the Property was previously occupied by a warehouse and is currently vacant. (Ex. 3, 3D, 15.)

Potential CP Inconsistencies

46. The Application acknowledged that the proposed Project may be viewed as potentially inconsistent with certain policies of the Comprehensive Plan, specifically Policy H-1.6.5: Net-Zero, Energy Efficient Housing and Policy E-3.2.2: Net-Zero Buildings, since the Project will not generate net-zero housing. However, the Applicant asserted that these potential inconsistencies are outweighed by the Application's overall consistency with the Comprehensive Plan, FAMS, and the Ward 5 Works Industrial Land Transformation Study, as discussed above. (Ex. 3.)

No Unacceptable Project Impacts on the Surrounding Area or the Operation of City Services (Subtitle X § 304.4(b).)

47. The Application asserted that the Project would not result in unacceptable impacts on the surrounding area or on city services that are not mitigated or acceptable given the quality of the public benefits of the Project. The Application requested approval to reinstate residential use for Building C2, as approved in the Original Order, with the same overall bulk, building height, and approximate number of residential units. Pursuant to Z.C. Order No. 15-27, CL Nos. 8 and 9, the Commission previously found that the impact of the PUD was acceptable given the quality of the public benefits provided. The Commission further found that the impact of the PUD on the surrounding area and the operation of city services was not unacceptable, and agreed with the conclusions of the Applicant's traffic expert and DDOT that the PUD would not create adverse traffic, parking, or pedestrian impacts on the surrounding community, and that the application would be approved with conditions to

ensure that any potential adverse effects on the surrounding area from the development would be mitigated. *See* Z.C. Order No. 15-27, CL No. 9; Ex. 3.)

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

48. The Application asserted that the Project includes specific public benefits and project amenities that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.
49. In the Original Order, the Commission found that the approved PUD “includes significant public benefits and amenities that warrant the high-density development.” (*See* Z.C. Order No. 15-27, FF No. 130.) In making this determination, the Commission “judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and conclude[d] approval is warranted.” (*Id.* at CL No. 6.) The approved public benefits fell within the categories of exceptional urban design, architecture and open space; housing and affordable housing; environmental benefits; employment benefits; transportation benefits; and uses of special value to the neighborhood and to the District as a whole. (*Id.* at FF Nos. 69-87.)
50. The Application did not propose any changes to the approved public benefits, other than to enhance the affordable housing proffer for Building C2 by deepening the affordability level such that the IZ units would be provided at 50% and 60% of the MFI, instead of at 50% and 80% of the MFI, as approved in the Original Order. The Application did not request additional flexibility or development incentives that would warrant a re-balancing. Therefore, the Applicant has not changed any proffers in the subject Application other than to increase the affordable housing proffer approved in Z.C. Order No. 15-27. (Ex. 3.)

IV. RESPONSES TO THE APPLICATION

OP

51. On June 29, 2023, OP filed a setdown report recommending that the Commission set down the Application for a public hearing (“OP Setdown Report”). (Ex. 13.) The OP Setdown Report included the following comments on the Application:
 - a. The Application “would not be inconsistent with the maps and policies of the Comprehensive Plan, including when viewed through a racial equity lens” and the “proposal to change the use of the site from office to residential would not be inconsistent with the Comprehensive Plan, including the Plan’s land use maps and written policies.” OP also found that the proposed modification is consistent with the FAMS’ call for high density development and greater building heights on the west side of 4th Street. In light of the trends noted in the Ward 5 Works Study, OP supports the inclusion of maker space in the Project but encourages the Applicant to provide additional space for PDR uses. In addition, OP found that the proposed modification would help fulfill the goals of the Mayor’s Order on housing by revising the IZ proffer to include more deeply affordable units;
 - b. The Application would further various Comprehensive Plan policy and action objectives from the Upper Northeast Area Element (Policy UNE-1.1.6; Policy UNE-

- 1.1.8; Policy UNE-1.1.9; Action UNE-1.1.B; Policy UNE-1.2.5; Section 2411.3, Policy UNE-2.1.2; Policy UNE-2.1.4; Action UNE-2.1.A; Policy UNE-2.3.2) as well as the Land Use (Policy LU-1.4.1; Policy LU-1.4.3; Action LU-1.4.C; Policy LU-1.5.1; Policy LU-2.1.1; Policy LU-2.2.4; Policy LU-2.4.1; Policy LU-2.4.2; Policy LU-2.4.6; Section 315.1; Section 315.6; Policy LU-3.2.3; Policy LU-3.2.10; Action LU-3.2.E), Transportation (Policy T-1.4.1; Action T-2.3.B; Policy T-2.4.1), Housing (Policy H-1.1.1; Policy H-1.1.2; Policy H-1.1.3; Policy H-1.1.4; Policy H-1.2.1; Policy H-1.2.2; Policy H-1.2.7; Policy H-1.3.1), Environmental Protection (Policy E-1.1.2; Policy E-4.1.2), Economic Development (Policy ED-2.2.3; Policy ED-2.2.4; Policy ED-2.2.5; Section 711; Policy ED-2.5.2; Policy ED-3.1.1), and Urban Design (Policy UD-2.1.1; Policy 2.1.6; Policy UD-3.2.5; Policy UD-4.2.1; Policy UD-4.2.2; Policy UD-4.2.6; Policy UD-4.3.4) Elements;
- c. The OP Setdown Report noted that the “Commission previously found that the benefits proffered with the overall PUD were commensurate with the amount of flexibility requested by the application. The present modification would not change the proffered benefits associated with the PUD, other than to lower the IZ MFI levels provided in Building C2. Also, the present case does not propose any additional flexibility which would necessitate re-balancing the flexibility and benefits associated with the PUD.” In addition, OP found that “[t]he present case also has the same number of residential units as the original residential building, the same height, and essentially the same floor area and massing” and therefore the Project should not create any negative impacts not capable of being mitigated;
- d. The OP Setdown Report encouraged the Applicant to (1) incorporate additional balconies on the alley side and quantify the percentage of units with balconies; (2) coordinate with DOEE to determine if LEED v4.1 is more appropriate and include renewable energy generation on site; and (3) consider additional PDR space in the building in addition to the 1,125 square feet already proffered. The Applicant responded to these comments in its prehearing submission, as discussed above; and

Racial Equity

- e. Disaggregated Race and Ethnicity Data: In response to Part 3 of the revised Tool, the OP Setdown Report included a discussion of disaggregated race and ethnicity data for the Upper Northeast Planning Area, which indicated that for the 2017-2021 period, home ownership rates, home rental rates, poverty, median household income, and educational attainment data shows a significant disparity between White and Black populations. OP concluded that the proposed housing development could help to alleviate some degree of inequity, especially regarding housing costs and the number of families that are housing cost burdened and help to increase access to opportunities because of the proximity to employment and transportation.

(Ex. 13.)

52. On November 3, 2023, OP filed a hearing report recommending that the Commission approve the Application (“OP Hearing Report”), and largely reiterating the findings and conclusions from the OP Setdown Report. (Ex. 25.) The OP Hearing Report made the following conclusions:
- a. The modified Project, including the proposal to change the use of the Property from office to residential, would not be inconsistent with the maps and policies of the

Comprehensive Plan, including when viewed through a racial equity lens. (Ex. 25.) Several Comprehensive Plan policies would potentially be advanced by the requested modification, as summarized in the OP Setdown Report;

Racial Equity

- b. The OP Hearing Report’s racial equity analysis included additional disaggregated race and ethnicity data and concluded the following in response to the revised Tool:
 - (i) Disaggregated Race and Ethnicity Data: Data for the Upper Northeast Planning Area indicates that the area had a majority minority population with 65% of its residents being Black and 10% of its residents being Hispanic in the 2017 to 2021 period. Though in the majority, the Black population has decreased from 71.4% of the population to 65% between 2012 and 2021, which is reflective of the District-wide trend. In contrast, the White population increased from 18.4% to 21% during the same period;
 - (ii) In terms of specific factors examined by the Tool, OP concluded that the zoning action would have no impact on direct or indirect residential displacement. There would be no direct displacement, as the Property is currently vacant, and OP does not anticipate indirect displacement as a result of this zoning action. The provision of a large quantity of market rate and affordable housing could help to ease upward pressure on housing costs in the vicinity. Research shows that there is a positive relationship between the provision of more housing and the ability of Black populations to remain in a neighborhood. The proposed zoning action would have a positive impact on the quantity of housing and affordable housing, and would help to meet housing goals of the Comprehensive Plan as well as housing goals set by the Mayor. The revised IZ proffer for a deeper MFI has the potential to narrow the income disparity between White and Black populations in the Planning Area;
 - (iii) The IZ units created by the development would provide increased opportunity for lower-income families to remain in the District and the Planning Area. Given the income data disaggregated by race, it can be inferred that the families benefiting the most from the IZ housing on the Property would be Black or other minority groups, which could impact the present trends of declining Black population in the Planning Area; and
 - (iv) As of January 2023, according to DC’s Comeback Plan, the Upper Northeast Planning Area has only achieved 53.4 percent of its 2025 affordable housing production goal of 1,350 units. This Project should help alleviate some of that shortfall. The Applicant has revised the original IZ proffer so that instead of 50% and 80% MFI units, the building would include 50% and 60% MFI units, and a number of units would also contain three bedrooms. The proposed modification to change to residential uses would help to fulfill the goals of the Mayor’s Order on Housing; and
- c. OP remains supportive of the overall design of the Project. (Ex. 25.)

53. The OP Hearing Report also made the following recommendations to the Applicant:

- a. OP continues to recommend that the design of the building incorporate additional balconies on the alley side, where significant amounts of “free” space appears available to accommodate balconies;
- b. The ratio of solar panels to roof area seems to be lower than other recent projects, and the Applicant should continue to study ways to include more solar energy generation on the Property;
- c. The Applicant should continue to coordinate with DOEE to determine if LEED v4.1 would be more appropriate than the proposed LEED Gold under the LEED v4 standards; and
- d. OP continues to encourage the Applicant to consider additional PDR space in the building in addition to the 1,125 square feet already proffered.

(Ex. 25.)

54. At the public hearing, OP testified in support of the Application and acknowledged the updates the Applicant made in response to the recommendations raised in the OP Reports, including increasing the number of balconies from 12 to 24 total and increasing the solar panels from 250 square feet to a minimum of 500 square feet. OP noted that it appreciates the Applicant meeting with DOEE and “confirming the appropriate LEED system for the building,” which is LEED for Building Design + Construction: Multifamily Midrise v4. OP did not raise any additional information or provide further comments on the Application. (Tr. of November 13, 2023 Public Hearing at pp. 15-16.)

DDOT

55. DDOT submitted a report dated November 3, 2023 (Ex. 26) expressing no objection to the Application. The DDOT Report made the following findings:

- a. There are no proposed changes to vehicle or loading access. Both will continue to be provided from the private alley, consistent with DDOT standards;
- b. The Applicant proposes a revised LMP, modified to account for residential uses, to mitigate the impacts of the Property’s loading operations on public space, which DDOT finds appropriate;
- c. DDOT did not require a full Comprehensive Transportation Review (“CTR”) study since a CTR was conducted with the initial approval, but a transportation memo was required for this application which showed the new development plan will generate fewer trips; and
- d. The revised TDM plan carries forward commitments from the original PUD. DDOT finds the revised TDM plan is robust to encourage residents to use nonautomotive means of travel.

(Ex. 26.)

56. The DDOT Report also noted that there is a missing curb ramp on the southwest corner of Neal Place and the private alley that is critical to ADA accessibility and safety in the area. Since this is on private property and there will not be a public space review process, the PUD plans must be updated to show an ADA compliant crossing. (Ex. 26.)
57. The DDOT Report’s finding of no objection included the following two conditions:

- a. The Applicant will implement the TDM plan and LMP in Attachments 1 and 2 of the DDOT Report, for the life of the Project unless otherwise noted. The revised TDM plan and LMP shall supersede the prior commitments from any of the prior second-stage PUD approvals for Building C2; and
- b. The Applicant will install the missing ADA-compliant slope and will update the PUD plans to show an ADA compliant slope or curb ramp on the southwest corner of Neal Place and the private alley to facilitate crossing eastward across the alley. The Applicant's construction work would be limited to the west side of the private alley, as DDOT is in discussions with others to complete the receiving ramps on the east side. At the November 13, 2023, public hearing, the Applicant agreed to this condition and provided an updated plan sheet showing the ADA compliant slope or curb ramp in its PowerPoint presentation. (Ex. 28, Sheet 501; Tr. of November 13, 2023 Public Hearing at p. 11.)
(Ex. 26.)

58. DDOT did not testify at the public hearing.

Other District Agencies

59. No District agencies other than OP and DDOT submitted comments on the Application or testified at the public hearing.

ANC 5D

60. On June 6, 2023, ANC 5D submitted a resolution dated June 2, 2023, stating that at its regularly scheduled and duly noticed meeting on May 8, 2023, with a quorum of commissioners and the public present, ANC 5D voted 6-0 (with one abstention) to support the Application ("ANC Report"). (Ex. 12.)

61. The ANC Report stated that the "ANC believes that there is a greater need for housing, including affordable housing, and supports the design of the building, including the on-site parking which will help to alleviate potential parking demand on public streets." The ANC Report also stated that "given the extensive affordable housing proposed in this project, in addition to substantial benefits package which includes the construction of significant new infrastructure and public spaces, the ANC believes that the zoning action is not inconsistent with the Comprehensive Plan, will not create negative outcomes that cannot be mitigated, and has been developed with specific input from the community to achieve positive outcomes." (Ex. 12.)

62. The ANC Report reiterated the Applicant's continued outreach and engagement, which for the Application included meeting with the ANC's Zoning Committee and the ANC's Committee of the Whole, meeting individually with the ANC Chair, and presenting at multiple public meetings of the ANC. (Ex. 12.)

63. ANC 5D did not testify at the public hearing.

Organizations and Individuals in Support

64. No organizations or individuals filed written comments or testified in support of the Application at the public hearing.

Organizations and Individuals in Opposition

65. No organizations or individuals filed written comments or testified in opposition to the Application at the public hearing.

CONCLUSIONS OF LAW

Authority

1. Pursuant to the authority granted by the Zoning Act of 1938 (June 20, 1938, 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a PUD and modifications of significance to an approved PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 704.
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*
 - c. *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
3. Pursuant to Subtitle X § 303.1: “As part of the PUD process, the Zoning Commission may grant relief from any building development standard or other standard referenced in the zone reference table with the exception of use regulations. Housing and arts credits are considered use regulations and are not eligible for flexibility through the PUD process.”
4. 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.
5. 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.*

6. 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.

7. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b).) established the Comprehensive 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.*

8. In determining whether a PUD is not inconsistent with the Comprehensive Plan, the Commission shall balance the various elements of the Comprehensive Plan. The District of Columbia Court of Appeals discussed this balancing test:

“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, 1033–35. (D.C. 2016.)

9. Pursuant to Subtitle X § 302.2, “[a] two-stage application has two parts as follows:
 - The first-stage application involves general review of the site’s suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project; and
 - 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.”
10. Pursuant to Subtitle X § 309.2, 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.
11. Pursuant to Subtitle Z § 704.3, an application for a modification of a second-stage PUD “shall meet the requirements for, and be processed as, a second-stage PUD application.”
12. Pursuant to Subtitle Z § 704.4, the scope of the Commission’s hearing to evaluate modifications of significance “shall be limited to the impact of the modification on the subject of the original application and shall not permit the Commission to revisit its original decision.”

Not Inconsistent with the Comprehensive Plan and Other Adopted Public Policies Related to the Property (Subtitle X § 304.4(a).)

13. The Commission concludes that the Application results in no changes to the Commission’s determination in the Original Order that the Overall Project, including Building C2, is not inconsistent with the Comprehensive Plan for the following reasons:
 - a. FLUM. The Commission concludes that the Project, as revised, remains not inconsistent with the FLUM’s mixed-use (High Density Commercial/High Density Residential / PDR) designation because the proposed density of 10.75 FAR across the Property is not inconsistent with the densities contemplated by the High Density Commercial and High-Density Residential land use designations. While the Comprehensive Plan calls for existing PDR space to be “substantially preserved” in areas designated PDR, 10-A DCMR § 227.14, the Commission recognizes that the Property is currently vacant and that the Applicant is devoting approximately 1,125 square feet in the Project to Maker Space use as defined in the Original Order, as well as 4,500 square feet of maker space across the entire PUD Site. The Commission acknowledges OP’s recommendation that the Applicant consider adding even more PDR space but is persuaded by the Applicant’s statement that it cannot add additional space due to the limited amount of commercial area in the Project. Therefore, to the extent that the limited amount of PDR space in the Project is inconsistent with the FLUM’s policy regarding the PDR designation, the Commission believes this potential inconsistency is outweighed by the Project’s overall consistency with the Comprehensive Plan, especially in light of the Applicant’s commitment to provide

- affordable housing at deeper levels of affordability than previously approved under the Original Order; (FF Nos. 20, 43, 45, 51, 52.)
- b. GPM. The Commission concludes that the Project, as revised, remains not inconsistent with the GPM's Multi-Neighborhood Center designation, as it will bring a mix of residential, and retail uses to an amenity-rich neighborhood; (FF Nos. 21, 43, 45, 51, 52.)
 - c. Citywide Elements. The Commission concludes that the Project, as revised, furthers the goals of the Comprehensive Plan's Citywide Elements, including the Land Use, Transportation, Housing, Environmental Protection, Economic Development, and Urban Design Elements. The Commission concurs with OP's findings that the Application is not inconsistent with these Elements because it will enable a mixed-use Project in a transit-accessible area that will complement the neighborhood's existing retail environment; (FF Nos. 43, 45, 51, 52.)
 - d. Area Element. The Commission concludes the Project, as revised, remains not inconsistent with the Upper Northeast Area Element because it will provide housing, retail, and maker space uses in a neighborhood with access to transit and other amenities; and (FF Nos. 22, 43, 45, 51, 52.)
 - e. Other Adopted Policies. The Commission concludes the Project, as revised, remains consistent with the goals and objectives of the FAMS as well as the Ward 5 Industrial Land Transformation Study, since the Project will bring a mixed-use development to the Florida Avenue Market Area that incorporates a Maker Space and opportunities for ground-floor retail. (FF Nos. 23, 45, 51.)

Racial Equity

14. The Commission concludes that the Application is not inconsistent with the Comprehensive Plan when evaluated through a racial equity lens. The Commission reaches this conclusion based on the case record and the racial equity analyses provided by the Applicant, inclusive of community outreach and engagement information, and the OP reports, inclusive of disaggregated race and ethnicity data for the Upper Northeast Planning Area: (FF Nos. 24, 43, 45, 51, 52.)
- a. Applicant's Racial Equity Analysis. The Commission finds that the racial equity analysis provided by the Applicant addresses the components of the Commission's Racial Equity Tool and that the requested modifications will further Comprehensive Plan racial equity goals, primarily because of its potential to create infill housing and affordable housing, on an underutilized transit-accessible site in an amenity-rich neighborhood:
 - (i) *Community Outreach and Engagement*. The Applicant's racial equity analysis included evidence that it conducted community outreach and engagement, including meetings with ANC 5D and the owner of adjacent property located to the east of the Overall PUD Site. The Commission notes ANC 5D's support of the Application; and
 - (ii) *Displacement*. The Applicant noted that the action would not result in any direct displacement of residents as there is no existing residential use on the Property. The Commission agrees that direct displacement will not result from the Project, but acknowledges that indirect displacement in the surrounding area could result. The Commission is hopeful that any indirect displacement impacts will be

mitigated by the provision of housing and employment opportunities, and neighborhood serving retail at this transit rich location; and (FF Nos. 43, 45.)

- b. OP Racial Equity Analysis. OP’s racial equity analysis included disaggregated race and ethnicity data for the Upper Northeast Planning Area showing significant disparities between the White and Black population for the period of 2017-2021, and an overall decrease in the Black population from 2012 to 2021. The Commission is hopeful that the increased housing and IZ units provided by the requested modification will help mitigate housing cost burdens in the Planning Area and allow lower-income residents to remain in place. The Commission is encouraged by the fact that the Project, as revised, will include more deeply affordable housing units with half reserved for households earning up to 60% MFI, compared to half reserved for 80% MFI households as previously approved under the Original Order. (FF Nos. 51, 52, 54.)

Potential Adverse Impacts of the Project (Subtitle X § 304.4(b).)

15. Based on the case record and the Findings of Fact above, the Commission concludes that the Application will not result in any unacceptable impacts on the surrounding area or on District services or facilities that cannot be mitigated or that are not acceptable given the Overall Project’s benefits and amenities. (FF Nos. 47, 51, 52.)
16. As set forth in FF No. 47, the Commission previously found that the impact of the PUD was acceptable given the quality of the public benefits provided, and that the impact of the PUD on the surrounding area and the operation of city services was not unacceptable. (*See* Z.C. Order No. 15-27, CL Nos. 8, 9.) Specifically, the Commission previously found that the PUD would not create adverse traffic, parking, or pedestrian impacts on the surrounding community, and that the Project was approved with conditions to ensure that any potential adverse effects on the surrounding area from the development would be mitigated. (*See* Z.C. Order No. 15-27, CL No. 9.) The subject Application requested to reinstate the prior residential use for Building C2, as approved in the Original Order, with the same overall bulk and building height. Accordingly, the Commission finds that the impacts of the Project, as revised, will not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities.
17. In terms of the potential transportation, traffic, loading, and parking impacts that may result specifically from Building C2, the Commission concludes that the Applicant’s proposed TDM plan and LMP, as reviewed and approved by DDOT, will sufficiently mitigate any potential impacts. (FF Nos. 35, 55-57.)
18. The Commission therefore finds that the Application will not result in a change to the potential adverse impacts of the Overall Project that the Commission considered in the Original Order, and that any new potential impacts will be mitigated or are acceptable given the quality of the public benefits and amenities. (FF Nos. 47, 51, 52.)

PUD Flexibility Balanced Against Public Benefits and Project Amenities (Subtitle X § 304.4(c) and 304.3.)

19. The Commission previously determined that the PUD “includes significant public benefits and amenities that warrant the high-density development.” (*See* Z.C. Order No. 15-27, FF

No. 130.) In making this determination, the Commission “judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and conclude[d] approval is warranted.” (*Id.* at CL No. 6.; FF Nos. 48-50.)

20. The Application did not propose any changes to the approved public benefits other than to increase the affordable housing proffer for Building C2 by deepening the affordability level. The Application did not include a request for any additional PUD flexibility⁴ that would require the Commission to rebalance the flexibility against the public benefits or require additional public benefits. Therefore, the Applicant has not changed any proffers with this Application other than to enhance the affordable housing proffer approved in Z.C. Order No. 15-27, and the Commission accordingly continues to find that the PUD includes significant public benefits and amenities that warrant the high-density development. (FF Nos. 40, 48-51.)

“Great Weight” to Recommendations of OP

21. 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).)
22. The Commission finds persuasive OP’s analysis of the Application, its conclusion that the Application satisfies the PUD requirements and is not inconsistent with the Comprehensive Plan, including when reviewed through a racial equity lens, and its recommendation to approve the Application persuasive, and concurs with this judgment. (FF Nos. 51, 52, 54.)

“Great Weight” to Written Reports of the Affected ANC

23. 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.*)
24. The Commission finds persuasive and concurs with ANC 5D’s support for the Application. The Commission notes that the ANC Report did not list any issues or concerns and noted the Applicant’s proactive engagement with the community. (FF Nos. 60-62.)

⁴ The Commission notes the Applicant requested flexibility from the rear yard depth requirements for Building C under the first-stage PUD approval and that the Applicant continues to request such flexibility under the 2016 Zoning Regulations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Commission **ORDERS APPROVAL** of the Application for a modification of significance to an approved first- and second-stage PUD for the Property, approved pursuant to Z.C. Order No. 15-27 (the “Original Order”), as modified by Z.C. Order No. 15-27B(2) (the “Second-Stage Order”), subject to the following conditions and provisions (“Conditions”).

A. MODIFICATIONS TO THE ORIGINAL ORDER

The Conditions of the Original Order, as modified by Z.C. Order Nos. 15-27A, 15-27B(1), 15-27B(2), 15-27D, 15-27E, and 15-27F, remain in full force and effect, except that the following Conditions shall be modified to read as follows (text to be added is shown in **bold and underline** text and text to be deleted is marked in ~~**bold and strikethrough**~~ text.)

A.1 The Project shall be developed in accordance with:

- The Architectural Plans and Elevations dated December 23, 2016 (Ex. 61A1- 61A15.), as supplemented by the revised sheets dated January 26, 2017 (Ex. 72A1- 72A3.), as revised and supplemented by the sheets dated March 13, 2017 (Ex. 75A1-75A2.), as revised by the sheets dated April 7, 2017 (Ex. 76A.) (“Plans”), all in the record of Z.C. Case No. 15-27.);
- As revised by Ex. 14B of Z.C. Case No. 15-27A;
- As modified for the penthouse of Building C1, which shall be developed in accordance with the architectural drawings at Exhibit 1E of Z.C. Case No. 15- 27D, dated October 1, 2019 (“Modified C1 Penthouse Plans”), as modified by the architectural drawings at Exhibit 2C of Z.C. Case No. 15-27B, dated March 15, 2019;
- As revised by the Architectural Plans and Elevations included in Ex. 26A of Z.C. Case No. 15-27B, as revised by Sheets C-2_206, C-2_502, and C-2_505 of the Applicant’s Hearing Presentation (Ex. 31A of Z.C. Case No. 15-27B.);
- As revised by the Architectural Plans and Elevations included in Ex. 25A of Z.C. Case No. 15-27E, as revised by Sheets D_503, D_504A, 505, and D_506A-B of the Applicant’s Post Hearing Submission (Ex. 33A of Z.C. Case No. 15- 27E.);
- **As revised by the Architectural Plans and Elevations included at Ex. 24A1-A4 of Z.C. Case No. 15-27G;**
- **And as further modified by Sheets 407, 501-504, 506, 516-517, and 801 in the Applicant’s PowerPoint Presentation included at Ex. 28 of Z.C. Case No. 15-27G** (collectively, the “Approved Plans”); and
- As modified by the guidelines, conditions, and standards of this Order.

A.2 In accordance with the Plans, the PUD shall be a mixed-use project comprised of four buildings (“Building A,” “Building B,” “Building C,” and “Building D”) constructed in two phases. Phase I (consolidated PUD) shall include the southern portion of Building A (“Building A1”), Building B, and the southern portion of Building C (“Building C1”). Phase II (first-stage PUD) shall include the northern portion of Building A (“Building A2”), the northern portion of Building C (“Building C2”), and Building D. **Upon**

~~completion of all buildings, the Project shall have an aggregate density of approximately 7.1 FAR. Approximately 897,127 square feet of total gross floor area will be devoted to residential use, approximately 54,151 square feet of total gross floor area will be devoted to retail use (including Maker Space), and approximately 444,008 square feet of total gross floor area will be devoted to office use. Building heights shall range from approximately 78 feet to approximately 130 feet. The Project will include a total of approximately 719 off-street parking spaces.⁵~~

B.1.⁶ Prior to the issuance of a Certificate of Occupancy for ~~each residential building~~ **Building C2** and for the life of ~~the Project Building C2~~, the Applicant shall demonstrate to the Zoning Administrator the following:

a. For the life of ~~the Project Building C2~~, the Applicant shall:

- (i) Provide a total of approximately ~~897,127~~ **223,142** square feet of residential Gross Floor Area (“GFA”) of housing;
- (ii) Set aside no less than 11% of the residential GFA, equaling not less than ~~98,684~~ **24,546** square feet, as inclusionary units as follows:
 - ~~49,342~~ **12,272** square feet of GFA as inclusionary units for households earning equal to or less than 50% of the Area Median Income (“AMI”) (“50% AMI Units”);
 - ~~49,342~~ **12,272** square feet of GFA as inclusionary units for households earning equal to or less than ~~80%~~ **60%** of the AMI (“~~80%~~ **60%** AMI Units”); and
 - Additional square footage devoted to 50% and 60% AMI Units generated by residential space within building projections pursuant to Subtitle C § 1003.5(a)(2); and
 - ~~Additional GFA devoted to 50% AMI Units in Building A2 generated by habitable penthouse space, as required by Z.C. Order No. 15-27A;~~
 - ~~Additional GFA devoted to 50% AMI Units in Building D generated by habitable penthouse space, subject to the following chart:~~

~~b. The distribution of the affordable housing units shall be in accordance with:~~

- ~~Sheets 122-130 of the Plans dated March 13, 2017 (Ex. 75A2 of Z.C. Case No. 15-27);~~
- ~~As modified by approved architectural drawings for Building A2 in Z.C. Case No. 15-27A; and~~
- ~~As modified for Building D by Sheet D_505 of Exhibit 33A (Applicant’s Post Hearing Submission) in Z.C. Case 15-27E;~~

⁵ References to the total development numbers (GFA, parking count, etc.) for the Overall Project have been deleted, as all buildings other than Building C2 have been delivered as of the issuance of this Order. The development standards for Building C2 are included at Decision No. C.2 herein.

⁶ In Z.C. Order No. 15-27, Condition B.1. stated the affordable requirements for all of the residential buildings in the PUD, and the condition language was updated, as needed, with modifications to the PUD. All residential buildings in the PUD, except Building C2, are now constructed and PUD and IZ covenants are recorded for those buildings; therefore, the Condition B.1. language in this Order only references Building C2 and none of the other residential buildings in the PUD.

c. The Inclusionary Zoning Covenant required by D.C. Official Code §§ 6-1041.05(A)(2) (2012 Repl.) shall include a provision or provisions requiring compliance with all the terms of this condition. ~~and~~

~~d. Prior to the issuance of the first certificate of occupancy for above-grade space in Building C2, the Applicant shall demonstrate to the Zoning Administrator that it has contributed \$1,500,000 to the Housing Production Trust Fund.~~

B. APPLICABLE CONDITIONS OF THE ORIGINAL ORDER TO BUILDING C2

The Application shall continue to be subject to the following conditions approved in the Original Order applicable to Building C2. Text to be added is shown in **bold and underline** text and text to be deleted is marked in ~~**bold strikethrough**~~ text. Whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold text**:

B.4 **Prior to the issuance of a Certificate of Occupancy for each building in the ...⁷ second-stage PUD**, each building owner shall have the individual obligation to furnish a copy of the associated LEED certification application submitted to the USGBC for that building. The application shall indicate that the subject building has been designed to include at least the minimum number of points necessary to be consistent with the USGBC LEED-Gold for New Construction v2009 rating standards, **except that Building C2 shall be designed to include at least the minimum number of points necessary to be consistent with the USGBC LEED-Gold for Building Design + Construction: Multifamily Midrise v4 rating standards.**

B.5 **Prior to the issuance of a Certificate of Occupancy for each building within the consolidated PUD and the first-stage PUD**, each building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has executed and submitted a First Source Employment Agreement to DOES for the subject building, consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004.

B.22 For the purposes of Conditions B.23 through B.25 the term “Makers Uses” means uses within the following use list: production, sale, and/or distribution of food and beverages (provided that the on-site consumption of food and beverages shall be permitted only as an accessory use of such production, sale, and/or distribution user); small-scale production and repair of goods and related sales; media/communications production and distribution; arts and entertainment; traditional crafts and trades; specialty sports and recreation uses (not including traditional gyms or fitness clubs); engineering and design; and technology design and production);

⁷ The use of this and other ellipses indicate that other provisions exist in the subsection being amended and that the amendment of the provisions does not signify an intent to repeal.

- B.24 **Prior to the issuance of a Certificate of Occupancy for Building C2 and Building D,** the building owner shall have the individual obligation to demonstrate to the Zoning Administrator that:
- a. It has dedicated a minimum of 2,250 total square feet for Makers Uses in Buildings C2 and D, or located in either Building C2 or D);
 - b. It is marketing the Maker Spaces at 10% less rent than the average base rent charged for leased retail space across the PUD Site at the time that each Maker space is leased; and
 - c. It has and/or is in the process of marketing the 2,250 total square feet of Makers space to Makers Uses by retaining a retail broker with experience marketing to and securing a variety of tenant types, including Makers.
- B.25 **For the life of the Project,** a minimum of 4,500 square feet of gross floor area shall be reserved in Buildings A1, B, C2 and/or D for Maker Spaces, consistent with the immediately preceding condition.

C. SECOND-STAGE PUD FOR BUILDING C2 – PROJECT DEVELOPMENT

1. Building C2 shall be developed in accordance with the approved plans described in Condition No. A.1 of Z.C. Order No. 15-27 to the extent that they apply to Building C2, as modified by:
 - a. The Building C2 Plans included in the Applicant’s Supplemental Prehearing Submission (Ex. 24A1-A4.); and
 - b. As modified by Sheets 407, 501-504, 506, 516-517, and 801 included in the Applicant’s PowerPoint Presentation (Ex. 28.) (together, the “Approved C2 Plans”).
2. In accordance with the Approved C2 Plans, Building C2 shall have:
 - A maximum height of 130 feet;
 - Approximately 223,142 square feet of GFA devoted to residential use and approximately 5,645 square feet of GFA devoted to retail use, of which a minimum of 1,125 square feet of GFA shall be devoted to Maker Space;
 - 143 zoning compliant parking spaces; and
 - One loading berth at 30 feet deep, one loading platform at 100 square feet, and one service/delivery space at 20 feet deep.
3. The Applicant shall have flexibility with the design of Building C2 in the following areas:
 - a. To be able to provide a range in the number of residential units of plus or minus 10%;
 - b. To vary the number, location, and arrangement of parking spaces, provided that the total number is not reduced below the minimum number of parking spaces required by the Zoning Regulations;
 - c. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - d. To vary the sustainable design features of the Project, provided the total number of LEED points achievable for Building C2 is not below the total number of LEED points

equivalent to the USGBC LEED-Gold for Building Design + Construction: Multifamily Midrise v4 rating standards;

- e. 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; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, such that the refinements do not substantially change the external configuration or appearance of the building;
- f. In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area;
- g. To vary the features, means and methods of achieving the code-required Green Area Ratio (“GAR”) of 0.20; and
- h. To vary the location and placement of the solar panels on the penthouse of Building C2, so long as a minimum of 500 square feet of solar panels are provided.

D. SECOND-STAGE PUD REQUIREMENTS FOR BUILDING C2

1. **Prior to the issuance of the final Certificate of Occupancy for Building C2**, the Applicant shall demonstrate to the Zoning Administrator that a minimum of 500 square feet of solar panels have been installed and are operative on Building C2’s penthouse, as shown on Sheets 516-517 of Exhibit 28 of the record in Z.C. Case No. 15-27G.

E. SECOND-STAGE PUD TRANSPORTATION MITIGATION MEASURES FOR BUILDING C2

1. **For the life of Building C2**, unless otherwise noted, the Applicant shall:
 - a. 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;
 - b. Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators shall:
 - (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.

- (v) For retail uses, will 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 discouraging parking on-street in Residential Permit Parking (RPP) zones;
- (vi) For retail uses, distribute information on the Commuter Connections Guaranteed Ride Home (GRH) program, which provides commuters who regularly carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency;
- (vii) For retail uses, demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law and participate in at least 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;
- (viii) For retail uses, provide employees who wish to carpool with detailed carpooling information and refer 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;
- c. Offer a free SmarTrip card to each new resident or employee for the first year;
- d. Ensure that long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo and tandem bikes;
- e. Provide electric vehicle charging to a minimum of six parking spaces in the garage;
- f. Install a Transportation Information Center Display (electronic screen) within the building lobby containing information related to local transportation alternatives;
- g. Offer annual Capital Bikeshare memberships to each resident and retail employee 16 years of age or older during the initial three years after the building opens;
- h. Require retail employers to participate in the Capital Bikeshare Corporate membership program and offer discounted annual memberships to employees;
- i. Provide additional short and long-term bicycle parking spaces above requirements of the Zoning Regulations;
- j. Not lease unused surplus parking spaces to anyone aside from tenants of the building or Market Terminal PUD unless the other building provides zero on-site parking;
- k. Provide a bicycle repair station in the long-term bicycle storage room;
- l. Provide one (1) collapsible shopping cart (utility cart) for every 50 residential units, for a total of five (5), to encourage residents to walk to the grocery store and run errands;
- m. Provide an accessible connection from the sidewalk to the alley near the corner of Neal Place adjacent to Building C2;
- n. Following the issuance of a certificate of occupancy for Building C2, the Transportation Coordinator shall submit documentation from DOB 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;

- o. Following the issuance of a certificate of occupancy for Building C2, the Transportation Coordinator shall submit a letter to the Zoning Administrator, DDOT, and goDCgo every five years (as measured from the final certificate of occupancy for Building C2) summarizing continued compliance with the transportation and TDM conditions in the Order;
 - p. Contribute \$25,000 to the DDOT Transportation Mitigation Fund in lieu of installing the turn lane and making traffic signal adjustments. This money will be used by DDOT within ANC 5D (the ANC of Union Market) to fund these roadway geometric changes, other traffic flow improvements, traffic calming, bike/ped improvements, and/or improved transit connections.
 - q. Provide at least 16 short- and 79 long-term residential bicycle parking spaces across the Building C2 Property, exceeding ZR16 minimum requirements for at least 14 short- and 65 long-term bicycle parking spaces;
 - r. Ensure that the 79 long-term residential bicycle parking spaces additionally meet the requirements of DCMR 18-1214 to provide at least one space per three residential units; and
 - s. Accommodate non-traditional sized bikes including cargo, tandem, and kids bikes in the residential long-term bicycle storage room, with a minimum of four spaces that will be designed for longer cargo/tandem bikes (10 feet by 3 feet), a minimum of eight spaces that will be designed with electrical outlets for the charging of electric bikes and scooters, and a minimum 40 spaces that will be placed horizontally on the floor; and
 - t. Comply with the Loading Management Plan included as Attachment 2 to the DDOT Report in Z.C. Case No. 15-27G. (Ex. 26.)
2. **Prior to the issuance of the final Certificate of Occupancy for Building C2**, the Applicant shall demonstrate to the Zoning Administrator that it has:
- a. Constructed the interior bicycle parking within Building C2;
 - b. Exceeded the zoning requirements for bicycle parking for Building C2; and
 - c. Installed a transit information screen in the lobby of Building C2.
3. **Prior to the issuance of the final Certificate of Occupancy for Building C2**, the Applicant shall demonstrate to the Zoning Administrator that it has installed an Americans with Disabilities Act (ADA) compliant slope or curb ramp on the southwest corner of Neal Place and the private alley as shown on Sheet 501 of the Approved C2 Plans.
- F. SECOND-STAGE PUD LOADING MANAGEMENT PLAN FOR BUILDING C2**
1. **For the life of Building C2**, unless otherwise noted, the Applicant shall ensure that the following LMP components are implemented:
- a. A loading dock manager will be designated by 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;
 - b. 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 the private alley except during those times when a truck is actively entering or exiting a loading berth;
- c. All tenants and retail vendors will be required to schedule deliveries that utilize the loading zone (any loading operation conducted using a truck 20-feet in length or larger);
 - d. Delivery trucks for the retail tenants will be prohibited from serving the Property between the commuter peak hour times of 8:00 to 10:00 AM and 4:00 to 6:00 PM, Monday through Friday;
 - e. Retail loading in the 30-foot berth will be restricted to times before 8:00 AM and after 6:00 PM to allow for deliveries to be accessed through the building lobby from the loading berth to the retail space;
 - f. Outside of these hours, retail tenants may access the loading dock via the sidewalk along the private alley. This is projected to occur no more than five (5) times in a week;
 - g. Trucks using the loading zone 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);
 - h. 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 (e.g., no left turn onto Neal Place Extension). The dock manager will also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, 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.

G. SECOND-STAGE PUD FOR BUILDING C2 – VALIDITY

1. No building permit shall be issued for Building C2 until the Applicant has recorded a covenant in the land records of the District of Columbia, for the benefit of the District of Columbia, that is satisfactory to the Office of Zoning Legal Division and the Zoning Administrator, Department of Buildings. Such covenant shall bind the Applicant and all successors in title to construct and use Building C2 in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. This Second-Stage PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within that time, the Applicant shall file for a building permit for Building C2 and shall begin construction of Building C2 within three years of the effective date of this Order.

VOTE (November 13, 2023): 4-0-1

(Robert E. Miller, Joseph S. Imamura, Anthony J. Hood and Tammy Stidham to **APPROVE**; 3rd Mayoral Appointee seat vacant)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 15-27G shall become final and effective upon publication in the *District of Columbia Register*; that is, on May 10, 2024.



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.