

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-34K
Z.C. Case No. 08-34K
Capitol Crossing IV LLC

(Modification of Significance to First-Stage PUD @ Square 566, Lot 861 – Capitol Crossing Center Block)

October 24, 2019

FINDINGS OF FACT

Notice

1. On August 7, 2019, the Office of Zoning (“**OZ**”) sent notice of a public hearing for an application for a Modification of Significance to an approved first-stage planned unit development (“**PUD**”) for property located at Square 566, Lot 861 (part of Record Lot 50) (“**Property**”) to the following:
 - The affected Advisory Neighborhood Commissions (“**ANCs**”) 2C and 6C;
 - The affected ANC Single Member Districts (“**SMDs**”) 2C03 and 6C02;
 - The Office of Planning (“**OP**”);
 - The District Department of Transportation (“**DDOT**”);
 - The Department of Energy and the Environment (“**DOEE**”);
 - The General Counsel for the Department of Consumer and Regulatory Affairs (“**DCRA**”);
 - The D.C. Council; and
 - Property owners within 200 feet of the Property.

(Exhibit [“**Ex.**”] 17.)

2. On August 16, 2019, OZ published notice of the public hearing in the *D.C. Register* (66 DCR 34) (Ex. 16.), as well as through the calendar on OZ’s website.
3. On October 24, 2019, the Zoning Commission for the District of Columbia (“**Commission**”) considered the application at its public hearing and at the close of the hearing voted 5-0-0 to approve the application. The Commission considered the application pursuant to Subtitle X, Chapter 3 and Subtitle Z of the 2016 Zoning Regulations for the District of Columbia (Title 11 of the District of Columbia Municipal Regulations (“**DCMR**”)).

Parties

4. The parties to the case were the Applicant and ANCs 2C and 6C.
5. There were no requests for party status.

The Site

6. The Property is part of the overall Capitol Crossing PUD, which consists of the land and air rights above the Center Leg Freeway in an area generally bounded by Massachusetts

Avenue, NW to the north, 2nd Street, NW to the east, E Street, NW to the south, and 3rd Street, NW to the west (“**Overall PUD Site**”).

7. Pursuant to Z.C. Order No. 08-34, dated May 23, 2011, and effective on July 1, 2011, the Commission approved a first-stage PUD and Zoning Map amendment to the C-4 zone for the Overall PUD Site and a consolidated PUD for (i) the project’s platform and base infrastructure; (ii) the mix of uses, height, and density of each building, and the site plan for the Overall PUD Site; (iii) the North Block (defined below); (iv) construction of all below-grade parking, concourse, and service levels; and (v) the landscaping and streetscape design for the Overall PUD Site.
8. The Overall PUD Site is divided into three segments: Square 564, Lots 858 and 859 (“**North Block**”), Square 566, Lots 860-863 and 7000 (“**Center Block**”), and Square 658, Lots 862-864 and 7000 (“**South Block**”). The Center Block was approved as part of the first-stage PUD and included (i) a commercial building containing office use with ground floor retail (“**Commercial Building**”) on the Property; (ii) a residential building with approximately 150 units and ground floor retail on Lot 862; and (iii) facilities for the Holy Rosary Church. The subject Modification of Significance application applied to the Commercial Building on the Property only.
9. The Commercial Building on the Property was approved to contain approximately 297,311 square feet of gross floor area devoted to office and retail uses, and a maximum building height of 130 feet and 12 stories.
10. The areas to the south and east of the Overall PUD Site are characterized by commercial and government office buildings of varying heights. The areas to the north and west are generally characterized by high density residential uses as well as commercial uses. Immediately to the east of the Site is the Georgetown University Law complex.

The Application

11. The application was filed on July 1, 2019, by Capitol Crossing IV LLC¹ (“**Applicant**”) for a Modification of Significance to the approved first-stage PUD to permit office, hotel, and/or college or university educational uses, in addition to the already approved ground floor retail use, in the Commercial Building at the Property (“**Application**”).
12. The first-stage PUD for the Property was approved prior to the effective date of the 2016 Zoning Regulations, and therefore has vested development rights under the 1958 Zoning Regulations.² Pursuant to 11-A DCMR § 102.4, “a modification (other than a minor modification) to a vested project shall conform with the 2016 Regulations *as the 2016 Regulations apply to the requested modification*” (emphasis added). The modification

¹ The original applicant in Z.C. Case No. 08-34 was Center Place Holdings LLC, on behalf of the District of Columbia through the Office of the Deputy Mayor for Planning and Economic Development. Capitol Crossing IV LLC is the current owner of the Property.

² The 1958 Zoning Regulations were repealed on September 6, 2016, and replaced with the 2016 Zoning Regulations. References to the “Zoning Regulations” or “11-DCMR” in this Order are a reference to the 2016 Zoning Regulations unless otherwise stated.

requested was to permit additional uses in the Commercial Building not previously approved. Under the 2016 Zoning Regulations, the proposed lodging and college/university educational uses are permitted as a matter-of-right. *See* 11-I DCMR § 302.1 and 11-U DCMR §§ 510.1(o), 512.1(a), 515.1(a), and 515.1(c). Therefore, the Commission finds that the proposed modification conforms with the 2016 Zoning Regulations as they apply to the requested modification for a change in use.

13. The Application did not include any changes to the overall height, bulk, or density of the Commercial Building from that which was approved under the first-stage PUD. The Application stated that the Applicant would identify the selected use(s) for the Commercial Building and submit corresponding architectural drawings as part of a second-stage PUD application for the Property.
14. The proposed commercial uses are consistent with the goals of the overall PUD to create a mixed use development. Both hotel and/or educational uses, in addition to the previously approved office use, will contribute to daytime, evening, and weekend pedestrian activity in the area, and in the case of a hotel use, will help to satisfy the demand for overnight lodging in the downtown core. The hotel, educational, and/or office uses will complement the mix of existing uses within the PUD and will support the other commercial and institutional uses in the surrounding neighborhood. Moreover, hotel, educational, and/or office uses will bring economic benefits to the District through the generation of job growth for a wide-ranging workforce. These uses will create stable new jobs with fair wages and benefits for District workers, thus minimizing income inequality and helping to improve the city's affordable housing crisis.
15. In order to permit the additional uses, the Application requested revisions to the following condition approved in Z.C. Order No. 08-34 (inserted text shown in **bold and underlined**):

Decision No. A(4): The Overall Project shall have an approximate gross floor area of 2,226,625 square feet, or 8.74 FAR based on the Site Area. As shown on the Final First Stage PUD Plans, the Overall Project shall include approximately 1,910,386 square feet of gross floor area devoted to office uses **of which up to 276,688 square feet of gross floor area within the Center Block may be devoted to “lodging” and/or “education, college/university” uses,**³ a minimum of 62,687 square feet of gross floor area devoted to retail uses, approximately 180,384 square feet of gross floor area devoted to residential uses, and approximately 73,168 square feet of gross floor area devoted to institutional uses related to the Holy Rosary Church and the Jewish Historical Society.

16. As part of the Application, the Applicant requested a waiver from 11-Z DCMR § 400.9 to permit the public meeting to consider setting down the Application to occur less than 35 days after the application was filed. Pursuant to 11-Z DCMR § 400.10, if an applicant seeks to waive the 35 day period between filing the application and a public meeting to consider

³ The inserted text was amended slightly from the text proposed in the Applicant's Statement in Support based upon the Applicant's consultation with the Office of the Attorney General.

setdown, it shall obtain the consent of OP and the affected ANC(s), and provide such proof to the Commission. Consistent with 11-Z DCMR § 400.10, the Applicant received consent for the waiver from OP and the affected ANCs 2C and 6C. (*See* Ex. 3, 5 and 13.)

17. On July 19, 2019, OP submitted a report recommending that the Commission setdown the Application for a public hearing. (Ex. 13.) The OP setdown report did not request any additional information from the Applicant or raise any concerns with the Application. The report stated that OP had no objection to the Applicant's request for a waiver from 11-Z DCMR § 400.9.
18. ANCs 2C and 6C submitted letters dated June 28, 2019 and June 14, 2019, respectively, stating that they had no objection to the Applicant's request for a waiver from 11-Z DCMR § 400.9. (Ex. 5 and 3, respectively.)
19. At the July 29, 2019 public meeting, the Commission setdown the Application for a public hearing. At the public meeting, the Commission granted the Applicant's request for a waiver from 11-Z DCMR § 400.9 to allow the case to be considered for setdown less than 35 days from the date that the Application was filed. In making this determination, the Commission considered the reports filed by ANCs 2C and 6C and the recommendation in OP's setdown report. The Zoning Commission did not request any additional information from the Applicant at the setdown meeting.
20. On July 30, 2019, the Applicant filed its Prehearing Submission. (Ex. 15.) The Applicant's Prehearing Submission included the information and materials required to be filed prior to a public hearing pursuant to 11-Z DCMR § 401. Upon its filing, OZ scheduled a public hearing on the Application for October 24, 2019.

Relief Requested

21. As part of the first-stage PUD approval, the Commission granted zoning flexibility from the loading requirements of the 1958 Zoning Regulations to allow for shared use of the loading facilities for the overall PUD within a single below-grade loading facility.
22. The Application did not include any modifications to the approved zoning flexibility, and the Applicant's Statement in Support provided evidence that the approved loading facilities and configuration would adequately accommodate the anticipated demand generated by the proposed hotel and/or educational uses. *See* Applicant's Transportation Assessment Memorandum ("**Transportation Memo**") dated April 15, 2019, prepared by Wells + Associates. (Ex. 2F.) Thus, no additional loading flexibility was requested or is required.
23. As part of the first-stage PUD approval, the Commission granted design flexibility for the overall PUD, which was superseded in Z.C. Order No. 08-34E to the following:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the total number of parking spaces provided meets

the number of spaces required by Z.C. Order No. 08-34 (i.e., 1,146 spaces in the below-grade, consolidated parking area);

- c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;
 - d. To vary the location, attributes and general design of the public spaces and streetscapes incorporated in the project to comply with the requirements of and the approval by the District Department of Transportation Public Space Division;
 - e. To locate retail entrances in accordance with the needs of the retail tenants and to vary the façades in accordance with the specifications for the Kit of Parts identified in Condition Nos. A.11 and A.12 and to locate retail or service uses where "retail" is identified and to locate retail, service or office uses where "retail/office" is identified;
 - f. To vary components of the project to coordinate or comply with modifications to the I-395 ramp systems resulting from the environmental review process required by the National Environmental Policy Act, including but not limited to modifications to ramp systems and freeway configuration, so long as such changes do not change the exterior configuration of the buildings or modify the site plan for the Overall Project; and
 - g. To make minor refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals.
24. The Applicant did not propose to change the design flexibility approved in Z.C. Order No. 08-34K. If additional flexibility is needed, the Applicant will be required to submit that request as part of the second-stage PUD application for the Property.

Applicant's Statement
Public Benefits and Amenities

25. Pursuant to 11-X DCMR § 304.3, the Commission “shall judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.”
26. In the first-stage PUD approval, the Commission determined that the “number and quality of the project benefits and amenities offered are a more than sufficient trade-off for the flexibility and development incentives requested.” Z.C. Order No. 08-34, Conclusion of Law No. 7. The Commission also found that the PUD offered “a high level of public benefits and project amenities. When compared with the amount of development flexibility

requested and project impacts, the Applications satisfy the balancing test required in § 2403.8 of the Zoning Regulations.” Z.C. Order No. 08-34, Finding of Fact (“FF”) No. 82.

27. The approved public benefits included housing and affordable housing; historic preservation; exceptional urban design, landscaping, and the creation of open spaces; environmental benefits; transportation management measures; employment and training opportunities; space for technology incubators; benefits related to the construction of new facilities for the Holy Rosary Church; and the construction of a platform over the Center Leg Freeway and the re-opening of F and G Streets, NW. *See* Z.C. Order No. 08-34, FF No. 79. This major infrastructure project had the effect of linking District neighborhoods that were historically separated, creating a more efficient use of underutilized land, and revitalizing the neighborhood. As stated in the Applicant’s filings, the infrastructure required to construct the platform was an investment of over \$200 million, and the platform and the related benefits are currently being delivered. The Applicant did not propose to change any of the approved public benefits as part of the Application.
28. The Application does not propose to modify any of the public benefits and amenities approved in Z.C. Order No. 08-34. The Application also does not propose to modify the flexibility or development incentives approved in Z.C. Order No. 08-34. The Commission finds that the additional proposed hotel and/or educational uses in the Commercial Building do not impact the Commission’s original conclusions of law related to the balancing of benefits and amenities to the development flexibility granted. Therefore, the Commission concludes that the public benefits and amenities offered are more than sufficient trade-offs for the flexibility and development incentives requested.

Project Impacts

29. Pursuant to Section 2403.3 of the 1958 Zoning Regulations (11-X DCMR § 304.4(b)), the Commission shall find that proposed developments do not result in unacceptable project impacts on the surrounding area or on the provision 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.
30. Pursuant to Z.C. Order No. 08-34, Conclusions of Law Nos. 5-6, the Commission found the impacts of the overall PUD were not unacceptable and that the application could be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development would be mitigated. As set forth herein, the Commission finds that the proposed hotel and/or educational uses in addition to the office use will not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities.
31. Based on its review of the Applicant’s Transportation Memo (Ex. 2F), the Commission finds that the proposed hotel and/or educational use will not have an adverse transportation impact as compared to the previous evaluation for office use at the Property for the following reasons:
 - a. The anticipated trip generation for the hotel use will result in 12 more vehicle trips than the office use during the morning peak hours and 16 fewer vehicular trips than

the office use during the afternoon peak hours. (Ex. 2F, p. 3.) If the Applicant moves forward with the hotel use at the Property, it will be required to work with DDOT during the second-stage PUD application to complete any required studies and determine what, if any, mitigation is required to ensure that there are no adverse impacts as a result of the change in use. The Commission will evaluate the hotel's specific impact on transportation and the Applicant's proposed mitigation measures when it evaluates the second-stage PUD.

- b. The anticipated trip generation for the college/university educational use will generate three more vehicle trips than the office use during the morning peak hours and one more vehicle trip than the office use during the afternoon peak hours. (Ex. 2F, p. 4.) This minimal increase in vehicle trip generation is below DDOT's threshold for a traffic impact analysis and is not considered significant. Therefore, the Commission finds that no adverse traffic impacts will result from the proposed college/university educational use.
- c. The Commission also finds that the PUD's approved parking and loading facilities will adequately accommodate the anticipated demand generated by the proposed hotel or educational uses. Parking demand for hotels within the District is approximately 0.20 vehicles per room, compared to approximately 3.30 vehicles per 1,000 square feet of office space. (Ex. 2F, pp. 5-6.) Thus, the parking demand for a hotel use would be significantly lower than for the approved office use.
- d. For college/university educational uses, parking demand is based on the overall campus and individual buildings. If the Applicant moves forward with the college/university use at the Property, then it will be required to work with DDOT at the time of filing the second-stage PUD application to complete any required studies to demonstrate that the parking allocated for the college/university use is adequate. The Commission notes, however, that parking is not required for a college/university use in the C-4 district.
- e. Moreover, according to the Zoning Regulations, the proposed hotel and educational uses generate lower parking and loading requirements than the approved office use. *See* Ex. 2F, pp. 5-6, stating that the hotel use generates a requirement of approximately 33 parking spaces, the college/university use generates no parking requirements, and the office use generates a requirement of approximately 154 parking spaces.
- f. For loading, one 30-foot berth, one 55-foot berth, and one 20-foot service/delivery space are required for hotel use; one 30-foot berth, one 55-foot berth, and one 20-foot service/delivery space are required for college/university use; and three 30-foot berths are required for the office use. (Ex. 2F, pp. 6-7.) Thus, although the proposed hotel and college/university uses require a 55-foot berth, the total number of required berths is less than the number required for the approved office use. With a 55-foot berth being provided, the Commission finds that the proposed loading facilities are adequate and that the approved garage facilities will be able to

accommodate the anticipated parking and loading demand and required facilities for the proposed hotel and/or educational uses.

32. In finding no adverse impacts, the Commission also credits the report submitted by DDOT, which confirmed that the analysis in the Applicant's Transportation Memo demonstrated relatively minor differences in trip generation, parking, and loading for the hotel and educational uses compared to the approved office use, other than parking which has a higher requirement for office use. (Ex. 22, p. 1). DDOT also stated that the operational and curbside needs of each land use would be different and influenced by the site design, and that it would work with the Applicant during the second-stage PUD application process to perform any additional analysis on the selected land use and specific site design. DDOT's report stated overall that it had "no objection to the requested relief." (Ex. 22, p. 1.)
33. Based on the information provided in the Applicant's Transportation Memo and the comments in the DDOT report, and given that the Applicant will continue to work with DDOT to evaluate the final design, operation, and program of the parking and loading facilities at the time of the second-stage PUD application, the Commission finds that there will be no adverse impacts created as a result of the proposed change in use of the Commercial Building on the Property.

Not Inconsistent with the Comprehensive Plan

34. Pursuant to Section 2403.4 of the 1958 Zoning Regulations (11-X DCMR § 304.4(a)), the Zoning Commission shall find that a proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. In addition, a request for a modification of significance to an approved first-stage PUD must meet the first-stage PUD application requirements, including an evaluation of the Comprehensive Plan. *See* 11-X DCMR § 302.2(a) and 11-Z DCMR § 300.11.
35. In Z.C. Order No. 08-34, the Commission found that the overall PUD advanced the purposes of the Comprehensive Plan, was consistent with the Future Land Use and Generalized Policy Maps ("FLUM" and "GPM," respectively), complied with the guiding principles in the Comprehensive Plan, and furthered a number of the major elements of the Comprehensive Plan. *See* Z.C. Order No. 08-34, FF. No. 87.
36. Specifically, the Commission found that the Applicant's proposal to construct a mixed-use development with office, retail, residential, and institutional uses was consistent with the FLUM, which designates the Overall PUD Site for High-Density Commercial land uses, and the GPM, which designates the Overall PUD Site within Central Washington and in the Central Employment Area. *See* Z.C. Order No. 08-34 FF No. 87(a). The Commission determined that the overall PUD was not inconsistent with many guiding principles in the Comprehensive Plan, including Managing Growth and Change, Creating Successful Neighborhoods, and Increasing Access to Education and Employment, as set forth in Z.C. Order No. 08-34, FF No. 87(b). Finally, the Commission also found that the overall PUD was not inconsistent with many city-wide and area elements of the Comprehensive Plan, including the Land Use; Transportation; Housing; Environmental Protection; Economic

Development; Parks, Recreation and Open Space; Urban Design; Historic Preservation, and Central Washington Elements. *See* Z.C. Order No. 08-34, FF No. 87(c).

37. The Applicant submitted an analysis of the Application’s consistency with the Comprehensive Plan (“**Comp Plan Analysis**”), which provided a thorough discussion of how hotel and educational uses at the Property would continue to be not inconsistent with the FLUM, GPM, guiding principles, and the city-wide and area elements Comprehensive Plan. (Ex. 2C.) Specifically, the Comp Plan Analysis demonstrated how the proposed uses would be not inconsistent with the guiding principles of Managing Growth and Change, Creating Successful Neighborhoods, and Increasing Access to Education and Employment. It also explained how the uses were not inconsistent with the Land Use; Transportation; Housing; Environmental Protection; Economic Development; Parks, Recreation and Open Space; Urban Design; and Historic Preservation city-wide elements, as well as with the Central Washington Area element of the Comprehensive Plan. Based on its review of the Comp Plan Analysis, and for the reasons set forth therein, the Commission concludes that the proposed modification to permit office, hotel and/or educational uses in the Commercial Building, in addition to the approved ground floor retail use, will be not inconsistent with the Comprehensive Plan.

Responses to Application

Office of Planning (“OP”)

38. By report dated July 19, 2019, OP recommended that the Commission setdown the Application for a public hearing. (Ex. 13.) The OP setdown report stated that the proposed hotel and educational uses were permitted uses in the C-4 zone, and that there would be no change to the Commercial Building’s approved height, bulk, or density. (Ex. 13, p. 3.) The OP setdown report did not request any additional information from the Applicant or raise any concerns with the Application.
39. By report dated October 11, 2019, OP recommended approval of the Application. (Ex. 23.) The OP report stated that the Applicant’s proposal to expand the mix of uses for the Commercial Building “is in keeping with a goal of the Capitol Crossing PUD to provide daytime and nighttime activation of the neighborhood” and that the “proposed range of uses in this location and as a part of the overall Capitol Crossing development would be in keeping with the intent of the original PUD approval.” Therefore, OP stated that it “supports this modification to the PUD.” (Ex. 23, pp. 3-4.)
40. OP referred the Application to the following District agencies: DOEE; Department of Housing and Community Development; DDOT; Department of Parks and Recreation (“DPR”); Department of Public Works; DC Public Schools; DC Public Libraries; Fire and Emergency Medical Services Department; Metropolitan Police Department; and DC Water. OP’s report stated that DDOT’s Urban Forestry Division and DPR both indicated to OP that they had no comments on the Application. (Ex. 23, p. 4.)
41. DOEE provided comments to OP that, among others, encouraged the Applicant to increase the use of renewable energy and maximize opportunities for energy efficiency for the Commercial Building. (*See* Ex. 23, pp. 5-6.) DOEE’s comments also stated that the

Commercial Building would undergo full regulatory compliance review by DOEE and other appropriate agencies during the permit application process. Therefore, the Commission finds that the Applicant was not required to specifically respond to or address the comments issued by DOEE as part of this Application for a change in use only.

42. Other than DOEE, no other District agencies provided comments to OP on the Application.

District Department of Transportation (“DDOT”)

43. By report dated September 27, 2019, DDOT stated that it had no objection to the Application. (Ex. 22.) The DDOT report indicated that it had reviewed the Applicant’s Transportation Memo and agreed that the analysis demonstrated “relatively minor differences” in trip generation, parking, and loading for the hotel and educational uses compared to the approved office use. (Ex. 22, p. 1.) DDOT stated that the number of approved parking spaces for the approved office use exceeds the number required for hotel and educational uses, and confirmed that the operational and curbside needs of each land use would be different and influenced by the site design. DDOT also stated that it would work with the Applicant during the second-stage PUD application process to perform any additional analysis on the selected land use and specific site design. DDOT’s report stated “no objection to the requested relief.” (Ex. 22, p. 1.)

Advisory Neighborhood Commissions (“ANCs”)

44. By letter dated June 14, 2019, ANC 6C stated its support for the Applicant’s request for a waiver from 11-Z DCMR § 400.9, to allow the Commission to consider setting down the Application for a public hearing less than 35 days from the date that the Application was filed. (Ex. 3.)

45. By letter dated June 28, 2019, ANC 2C stated its support for the Applicant’s request for a waiver from 11-Z DCMR § 400.9, to allow the Commission to consider setting down the Application for a public hearing less than 35 days from the date that the Application was filed. (Ex. 5.)

46. By letter dated June 28, 2019, ANC 2C stated that on June 11, 2019, at the regularly scheduled, duly noticed public meeting of ANC 2C, with a quorum of 3 of 3 commissioners present, the ANC 2C voted to support the Application. (Ex. 4.) The letter stated that “ANC 2C believes that the proposed modification will be an overall benefit to the PUD and the surrounding area. The increased variety of commercial uses will activate the neighborhood 24-hours a day, complement the mix of approved uses within the PUD, and support the other commercial and institutional uses in the surrounding neighborhood. The additional nonresidential uses within the approved commercial building will create no additional adverse impacts.”

47. By letter dated July 15, 2019, ANC 6C stated that at a regularly scheduled, duly noticed monthly meeting of ANC 6C, with a quorum of 6 out of 6 commissioners and the public present, the ANC voted unanimously, 6:0:0, to support the Application. (Ex. 12.)

Persons in Support and Opposition

48. No persons submitted written materials or testified in support of or in opposition to the Application at the public hearing.

Public Hearing of October 24, 2019

49. At the public hearing of October 24, 2019, the Applicant presented a brief summary of the Application and otherwise rested on the materials submitted to the case record.

50. Ms. Anne Fothergill testified on behalf of OP in support of the Application at the public hearing. Ms. Fothergill reiterated OP's recommendation to approve the Application and otherwise referenced OP's report in the case record.

51. DDOT did not present any testimony at the public hearing.

52. ANCs 2C and 6C did not present any testimony at the public hearing.

53. Commission members did not raise any questions or concerns at the public hearing and did not request additional information from the Applicant, District agencies, or ANCs. The Commission stated that the proposed modification to allow flexibility for the Commercial Building to have hotel and/or university uses would "be more 24/7 activating of this neighborhood which is near downtown." (See Oct. 24, 2019 Public Hearing Video at 17:10.)

54. At the close of the public hearing the Commission voted 5-0-0 to take final action to approve the Application.

CONCLUSIONS OF LAW

Flexibility Outweighed by Public Benefits

1. Pursuant to 11-X DCMR § 304.3, the Commission "shall judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case." In Z.C. Order No. 08-34, the Commission found that the "number and quality of the project benefits and amenities offered are a more than sufficient trade-off for the flexibility and development incentives requested." Z.C. Order No. 08-34, Conclusion of Law No. 7. The Commission also found that the PUD offered "a high level of public benefits and project amenities. When compared with the amount of development flexibility requested and project impacts, the Applications satisfy the balancing test required in § 2403.8 of the Zoning Regulations." Z.C. Order No. 08-34, FF. No. 82.
2. The Applicant did not request any additional or different flexibility as part of the Application and did not propose to add, remove, or modify any of the previously-approved public benefits. Therefore, the Commission finds that the subject Application has no impact on the flexibility requested or on the public benefits proffered. Accordingly, the Commission continues to conclude that the benefits associated with the PUD outweigh the flexibility requested.

Mitigation of Impacts

3. Pursuant to Section 2403.3 of the 1958 Zoning Regulations (11-X DCMR § 304.4(b)), the Commission shall find that proposed developments do not result in unacceptable project impacts on the surrounding area or on the provision 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. Pursuant to Z.C. Order No. 08-34, Conclusions of Law Nos. 5-6, the Commission found that the impacts of the overall PUD were not unacceptable and that the application could be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development would be mitigated.
4. As set forth in FF Nos. ____ of this Order, the proposed hotel and/or educational uses will not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities. Specifically, the Commission credits the Applicant's Transportation Memo (Ex. 2F) and the DDOT Report (Ex. 22) in concluding that the proposed uses will not have any adverse transportation impact as compared to the previous evaluation for office use at the Property. The Commission also finds that the Applicant will fully evaluate any proposed mitigation measures needed during the second-stage PUD application for the Property. Therefore, the Commission concludes that the Application will not result in any unacceptable project impacts that cannot be fully mitigated or which are acceptable given the quality of public benefits in the project.

Not Inconsistent with the Comprehensive Plan

5. Pursuant to Section 2403.4 of the 1958 Zoning Regulations (11-X DCMR § 304.4(a)), the Commission shall find that a proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. In addition, a request for a modification of significance to an approved first-stage PUD must meet the first-stage PUD application requirements, including an evaluation of the Comprehensive Plan. *See* 11-X DCMR § 302.2(a) and 11-Z DCMR § 300.11.
6. In Z.C. Order No. 08-34, the Commission found that the overall PUD advanced the purposes of the Comprehensive Plan, was consistent with the FLUM and GPM, complied with the guiding principles in the Comprehensive Plan, and furthered a number of the major elements of the Comprehensive Plan. *See* Z.C. Order No. 08-34, FF. No. 87.
7. The Applicant provided a detailed analysis of how the Application is not inconsistent with the Comprehensive Plan in its Comp Plan Analysis, which described how the hotel and educational uses at the Property would also be not inconsistent with the FLUM, GPM, guiding principles, and the city-wide and area elements Comprehensive Plan. (Ex. 2C.) The Comp Plan Analysis specifically described how the uses would be not inconsistent with the guiding principles of Managing Growth and Change, Creating Successful Neighborhoods, and Increasing Access to Education and Employment, or with the Land Use; Transportation; Housing; Environmental Protection; Economic Development; Parks, Recreation and Open Space; Urban Design; Historic Preservation; and Central Washington Area elements of the Comprehensive Plan. Based on its review of the Comp Plan Analysis,

and for the reasons set forth therein, the Commission concludes that the proposed modifications to the use of the Commercial Building will be not inconsistent with the Comprehensive Plan.

Great Weight to the Recommendations of OP

8. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP’s recommendations. The Commission carefully considered the OP report in this case and finds its recommendation to grant the Application persuasive.

Great Weight to the Written Report of the ANC

9. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (DC. Law 1-21; D.C. Official Code § 1-309 10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The affected ANCs in this case are ANCs 2C and 6C, both of which submitted reports in support of the Application with no issues raised. The Commission finds the ANCs’ reports persuasive and concurs in their judgement.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a Modification of Significance to the approved first-stage PUD to permit office, hotel, and/or educational uses, in addition to the approved retail use, in the Commercial Building at the Property. The conditions in Z.C. Order No. 08-34 and the design flexibility in Z.C. Order No. 08-34E remain unchanged, except that Decision No. A(4) in Z.C. Order No. 08-34 is hereby amended and restated as follows (additions shown in **bold and underlined** text):

Decision No. A(4): The Overall Project shall have an approximate gross floor area of 2,226,625 square feet, or 8.74 FAR based on the Site Area. As shown on the Final First Stage PUD Plans, the Overall Project shall include approximately 1,910,386 square feet of gross floor area devoted to office uses **of which up to 276,688 square feet of gross floor area within the Center Block may be devoted to “lodging” and/or “education, college/university” uses,**⁴ a minimum of 62,687 square feet of gross floor area devoted to retail uses, approximately 180,384 square feet of gross floor area devoted to residential uses, and approximately 73,168 square feet of gross floor area devoted to institutional uses related to the Holy Rosary Church and the Jewish Historical Society.

VOTE (October 24, 2019): **5-0-0** (Michael G. Turnbull, Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Peter G. May to **APPROVE**).

⁴ The inserted text was amended slightly from the text proposed in the Applicant’s Statement in Support based upon the Applicant’s consultation with the Office of the Attorney General.

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order No. 08-34K shall become final and effective upon publication in the *D.C. Register*; that is, on

ANTHONY HOOD
Chairman, Zoning Commission

SARA B. 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.