

June 7, 2017

VIA HAND DELIVERY

Sharon S. Schellin
Secretary to the Zoning Commission
D.C. Office of Zoning
441 4th Street, N.W. Suite 200-S
Washington, D.C. 20001

2017 JUN -7 PM 1:16

Re: PUD Covenant – Z.C. Case No. 14-07

Dear Ms. Schellin,

Enclosed please find a certified copy of the PUD Covenant recorded for Zoning Commission Case Number 14-07. Feel free to contact me if you have any questions regarding the enclosed document.

Sincerely,



Meghan Hottel-Cox

MHC
Enclosure

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PLANNED UNIT DEVELOPMENT COVENANT

2017 JUN -7 PM 1:16

**Z.C. CASE NO. 14-07
1250 4TH ST (EDENS) LLC
(Consolidated PUD and Related Map Amendment @ Square 3587)**

THIS COVENANT (“Covenant”), is made as of this 17 day of February 2017, by and between (i) 1250 4TH ST (EDENS) LLC, a South Carolina limited liability company; (ii) UNION MARKET APARTMENTS LLC, a Delaware limited liability company; (together, “Owner”); and (ii) the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the “District”).

WITNESSETH:

WHEREAS, the Owner is the owner of property located at 1270 4th Street NE (Square 3587, Lots 822 – 828, 7006 – 7013¹), which is more particularly described on the attached Exhibit A (“PUD Site”);

WHEREAS, pursuant to Chapter 24 of the version of Zoning Regulations of the District of Columbia in effect at the time (the “1958 Zoning Regulations”), the Zoning Commission for the District of Columbia (the “Zoning Commission”) approved an application for a planned unit development (the “PUD”) and related Zoning Map amendment for the PUD Site by Zoning Commission Order No. 14-07, effective July 3, 2015, in Zoning Commission Case No. 14-07, as modified by Zoning Commission Order No. 14-07A, effective May 5, 2017, in Zoning Commission Case No. 14-07A (together, “Order”, attached as Exhibit B); and

¹ The PUD Site was identified as Parcels 129/95 and 129/96 in the initial PUD application. Pursuant to an approved subdivision, Parcels 129/95 and 129/96 were combined with Parcel 129/77 into Lot 9 in Square 3587. (Parcel 129/77 was also included in the PUD but only received first-stage PUD approval.) Pursuant to an approved Division of Lots application, Lot 9 was divided into multiple assessment and taxation lots: Lots 823 – 828 and 7006 – 7013, which corresponds to the old Parcels 129/95 and 129/96 (that is, the PUD Site), and Lot 822, which corresponds to the old Parcel 129/77.

WHEREAS, said Chapter 24 of the 1958 Zoning Regulations requires that the Owner, as the owner of the PUD Site, enter into this Covenant with the District assuring the Owner's (and its successors and assigns) development and use of the Project as approved by the Zoning Commission in the Order and all modifications, alterations or amendments thereto.

WHEREAS, on September 6, 2016, the 1958 Regulations were repealed and replaced by a new set of regulations (the "**2016 Zoning Regulations**"); and

WHEREAS, Subtitle X § 311.3 of the 2016 Zoning Regulations continues to require this Covenant (all subsequent citations to zoning regulations made herein are to the 2016 Zoning Regulations).

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed among the parties hereto as follows:

1. Approved Plans, Terms, and Conditions. The terms and conditions of the Zoning Commission's approval of the PUD and related Zoning Map amendment for the PUD site in the Order (as the same may be amended and/or modified from time to time, the "**Order**"), are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The PUD Site will be developed and used in accordance with the plans approved by the Order and in accordance with conditions and restrictions contained in the Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia may authorize pursuant to Subtitle A § 304.5 or Subtitle X § 311.6, or changes made by the Zoning Commission pursuant to Subtitle Z §§ 703 or 704. Owner covenants that it will use the PUD Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Subtitle X Chapter 3 of the Zoning Regulations.

2. Additional Time to Construct PUD. If Owner should fail to file for a building permit for and/or to commence construction of the approved PUD within the time specified in Subtitle Z §§ 702.2 or 702.3 and the Order, the Zoning Commission may duly consider an application for an extension of time for good cause in accordance with and subject to the limitations of Subtitle Z § 705.

3. Default. In the event that Owner fails to file for a building permit for and/or to commence construction of the approved PUD within the time specified in Subtitle Z §§ 702.2 and 702.3 and in the Order, or within any extension of time granted by the Zoning Commission for good cause shown pursuant to Subtitle Z § 705, the benefits granted by the Order shall terminate pursuant to Subtitle Z § 702.6 and this Covenant shall be deemed null and void.

4. Future Conveyance. Owner covenants that if any conveyance of all or any part of the PUD Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns, to develop and use the PUD Site in accordance with the terms and conditions of this Covenant and the grantee, its successors and assigns shall be considered a declarant to this covenant.

5. Covenants to Run with the Land. The covenants and restrictions contained herein shall be deemed real covenants running with the land and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the PUD Site. The District shall have the right to enforce all covenants, conditions, and restrictions contained herein.

6. Recordation. Owner shall record this Covenant, as fully executed by the parties hereto, among the land records of the District of Columbia (the “**Land Records**”), and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of Chapter 24 Covenant. If the Order is modified or amended by the Zoning Commission, no formal amendment of this Covenant shall be required, provided that Owner, or its successors or assigns, records a notice of modification in the Land Records together with a copy of the written order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Zoning Commission.

[SIGNATURES ON FOLLOWING PAGES]

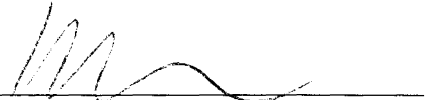
IN WITNESS WHEREOF, 1250 4TH ST (EDENS), LLC, a South Carolina limited liability company, has as of the day and year first above written, caused this Covenant to be signed and the same acknowledged and delivered according to law.

1250 4TH ST (EDENS), LLC, a South Carolina limited liability company

By: Florida Marketplace (E&A), LLC, a South Carolina limited liability company, its sole member

By: Edens Limited Partnership, a Delaware limited partnership, its sole member

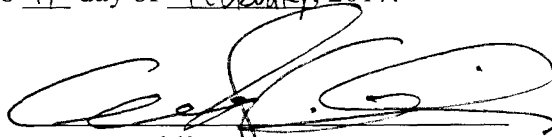
By: Edens GP, LLC, a Delaware limited liability company, its sole general partner

By: 
William C. Caldwell, Managing Director

State of Maryland
County of Frederick, ss:

I HEREBY CERTIFY that on this 17 day of February 2017, before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared in said jurisdiction William C. Caldwell, personally well known to me (or satisfactorily proven) to be the authorized representative of 1250 4TH ST (EDENS), LLC, and personally well known to me (or satisfactorily proven) to be the person who executed the foregoing instrument; and acknowledge that, having authority so to do, he executed the foregoing instrument, on behalf of and as the act and deed of said limited liability company for the purposes therein contained, and delivered the same as such.

GIVEN under my hand and seal this 17 day of February, 2017.


Notary Public

My commission expires: 9/15/2017

EVELYN SIOLO CHANDELLE HAWKINS
Notary Public-Maryland
Frederick County
My Commission Expires
September 05, 2017

IN WITNESS WHEREOF, UNION MARKET APARTMENTS LLC, a Delaware limited liability company, has as of the day and year first above written, caused this Covenant to be signed and the same acknowledged and delivered according to law.

By: Union Market Apartments LLC,
a Delaware limited liability company

By: SCH 109 Union Market L.P.,
a Delaware Limited partnership, its Managing Member

By: Maple Multi-Family Development L.L.C.,
a Texas limited liability company, its general partner

By: Robert Brooks
Name: Robert Brooks
Title: Vice President

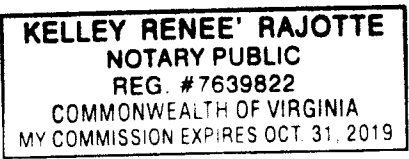
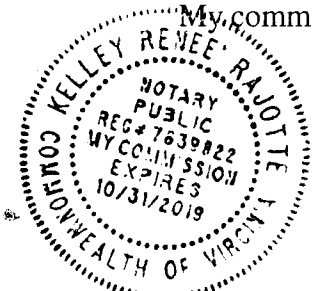
State of Virginia
County of Arlington ss:

I HEREBY CERTIFY that on this 7th day of March 2017, before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared in said jurisdiction Robert Brooks personally well known to me (or satisfactorily proven) to be the authorized representative of UNION MARKET APARTMENTS LLC, and personally well known to me (or satisfactorily proven) to be the person who executed the foregoing instrument; and acknowledge that, having authority so to do, he executed the foregoing instrument, on behalf of and as the act and deed of said limited liability company for the purposes therein contained, and delivered the same as such.

GIVEN under my hand and seal this 7th day of March, 2017.

Kelley Renee Rajotte
Notary Public


My commission expires: 10-31-2019

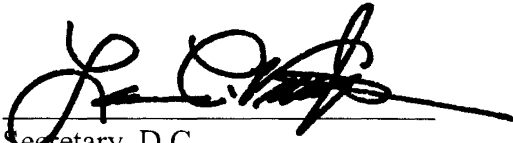


IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

WITNESS:

DISTRICT OF COLUMBIA
a Municipal Corporation



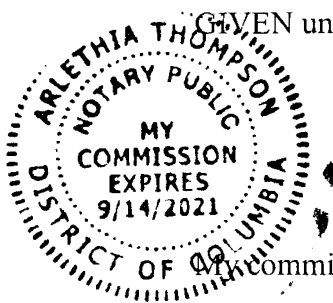
By: 
Secretary, D.C.

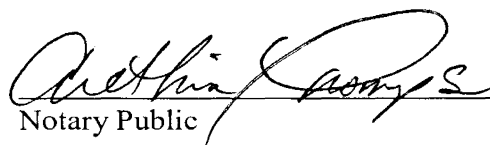
(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, Arlethia Thompson, a Notary Public in and for the District of Columbia, do hereby certify that Lauren Vaughn, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing PUD Covenant bearing date of the 2 day of June, 2017 and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this 2 day of JUNE, 2017.




Notary Public

My commission expires: 09/14/2021.

APPROVED:

Matthew L. King S-S-1

Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:

Allen Zepher 5-23-17

Assistant Attorney General
Office of the Attorney General
for the District of Columbia

EXHIBIT A
SUBJECT SITE

EXHIBIT B

Z.C. ORDER NO. 14-07 AND Z.C. ORDER No. 14-07A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-07
Z.C. Case No. 14-07
1250 4TH ST EDENS, LLC
(First-Stage and Consolidated PUD & Related Map Amendment
@ 1270 4th Street N.E. (Parcels 129/77, 129/95, and 129/96))
June 8, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on March 26, 2015 to consider an application from 1250 4TH ST EDENS, LLC (“Applicant”) for review and approval of a first-stage and consolidated planned unit development (“PUD”) for Parcels 129/77, 129/95, and 129/96 (“Property”) and a related Zoning Map amendment to rezone the Property from C-M-1 to C-3-C. The application proposes a mixed-use development incorporating retail and residential uses (“Project”). The Commission considered the application pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

FINDINGS OF FACT

Application, Parties, Hearing, and Post-Hearing Submissions

1. The Property consists of Parcel 129/77 (“North Parcel”) and Parcels 129/95 and 129/96 (“South Parcel”) and is located in the 1200 block of 4th Street, N.E.
2. On May 5, 2014, the Applicant submitted an application to the Commission for the review and approval of a consolidated PUD and a related Zoning Map amendment to rezone the South Parcel from the C-M-1 Zone District to the C-3-C Zone District. The original application proposed a mixed-use building with residential, retail, and commercial parking uses. (Exhibits [“Ex.”] 2-2I.) On June 19, 2014, the Office of Planning (“OP”) submitted a setback report. (Ex. 6.)
3. At a public meeting on June 30, 2014, the Commission voted to set the original application down for a public hearing. On August 6, 2014 and August 27, 2014, the Applicant filed prehearing submissions responding to issues raised by the Commission and OP at setback. (Ex. 7-7C, 8-8G2.)

4. The Commission set the original application for public hearing on December 18, 2014. Notice of the public hearing was published in the *D.C. Register* on September 26, 2014 and was mailed to Advisory Neighborhood Commission (“ANC”) 5D and to owners of property within 200 feet of the South Parcel. (Ex. 10, 11.)
5. On November 26, 2014, the Applicant requested a postponement of the hearing. (Ex. 15.) The Commission rescheduled the public hearing for February 19, 2015, published notice of the rescheduled hearing in the *D.C. Register* on December 12, 2014, and mailed notice of the rescheduled public hearing to ANC 5D and to all property owners within 200 feet of the South Parcel. (Ex. 16, 17.)
6. On January 9, 2015, the Applicant posted notice of the public hearing scheduled for February 19, 2015. The notice specifically referenced the inclusion of the North Parcel in the PUD. (Ex. 20.)
7. On January 21, 2015, the Applicant requested an additional postponement of the hearing. (Ex. 22.) On January 26, 2015, the Applicant amended the original application to incorporate the North Parcel as a first-stage PUD and related rezoning from the C-M-1 Zone District to the C-3-C Zone District. The Applicant proposed the construction of an additional mixed-use building with residential, retail, and commercial parking uses on the North Parcel in order to accommodate the design of the Neal Place extension through the original property. The Applicant also submitted revised plans for the South Parcel modifying the design of the South Parcel building to incorporate an extension of Neal Place through the Property. Finally, the Applicant presented evidence that it had discussed the modifications to incorporate the North Parcel and the Neal Place extension with OP, the District Department of Transportation (“DDOT”) and ANC 5D. The Applicant requested that the Commission set down the first-stage PUD for a public hearing, asked that the Commission waive the requirement for certification under § 3013.7 for the initial pre-hearing submission for the first-stage PUD, and requested that the Commission authorize an abbreviated public notice period so that the modified PUD could be heard at a rescheduled public hearing on March 26, 2015. (Ex. 24-24H.) On January 30, 2015, OP submitted a setdown report for the modified PUD. (Ex. 25.)
8. At a public meeting on February 9, 2015, the Commission voted to set down the modified application for a public hearing, and granted the Applicant’s requests for waivers of the Commission’s certification and notice. The Commission rescheduled the public hearing for March 26, 2015, published notice of the rescheduled hearing in the *D.C. Register* on February 20, 2015, and mailed notice of the rescheduled hearing to ANC 5D and to property owners within 200 feet of the Property. (Ex. 27, 29.)
9. The Applicant further updated the application with a supplemental prehearing statement on March 6, 2015. (Ex. 30, 31-31H.)

10. A public hearing was conducted on March 26, 2015. The Commission accepted Shalom Baranes as an expert in the field of architecture, Dan Van Pelt as an expert in the field of traffic engineering, Mark Pelusi as an expert in the field of landscape architecture, and Dan Duke as an expert in the field of civil engineering. The Commission did not accept Geoff Sharpe as an expert in the field of urban design because he was an employee of the Applicant. The Applicant presented testimony from the experts as well as Sharpe and Jeff Kaufman on behalf of the Applicant and submitted additional plans in support of the application. (Ex. 40A1-40A4.)
11. In addition to the Applicant, ANC 5D was automatically a party in the proceeding and submitted a report in support of the application. (Ex. 26.)
12. At the hearing, the Commission heard testimony and received evidence from OP, DDOT, and the District Department of the Environment (“DDOE”). (Ex. 33, 34.) The Commission also received a letter in support from the Ward 5 Councilmember, Kenyan McDuffie, and received testimony in support from Ronan Gulstone, Deputy Chief of Staff and Legislative and Policy Director to Councilmember Kenyan McDuffie. (Ex. 41.)
13. The Commission also received a report and testimony in support of the application from ANC 6C, a neighboring ANC, as an organization in support with conditions.¹ (Ex. 37, 42.) At the conclusion of the hearing, the Commission closed the record except for the Applicant’s post-hearing submission and proposed order as well as responses to the Applicant’s post-hearing submission from OP, DDOT, DDOE, and ANC 5D. In the post-hearing submission, the Commission requested that the Applicant provide information regarding the following: an increase in the PUD’s affordable housing component and, in lieu of floor plans identifying the location of affordable housing units, information on how affordable units would be distributed within the PUD; further plans and information regarding the proposed canopies; further plans and information regarding the rooftop recreation space; an increase in the PUD’s LEED commitment; and additional public benefits and project amenities. The Applicant submitted these materials to the Commission in its post-hearing submission dated April 9, 2015. (Ex. 46-46E.)
14. On April 15, 2015, DDOT submitted a supplemental report. (Ex. 51.)
15. On April 15, 2015, ANC 6C submitted a request to re-open the record and a supplemental report. (Ex. 47, 48).
16. On April 21, 2015, the Applicant filed a document objecting to ANC 6C’s request to re-open the record and opposing its additional report. (Ex. 52.)
17. At its April 27, 2015 public meeting, the Commission voted to re-open the record to receive ANC 6C’s supplemental report, and to take proposed action to approve the

¹ ANC 6C originally submitted a letter in opposition, but later retracted this letter. (Ex. 21, 23.)

application. The Commission also left the record for the Applicant to submit additional clarification regarding its request for flexibility in the residential unit count, its affordable housing proffer, roof structure plans showing roof setbacks and night lighting, its sustainability commitments, a commitment to tie the construction of Neal Place to issuance of a certificate of occupancy for the North Parcel building, a clarification of its request for parking flexibility, and additional proposed language regarding the project's relationship to the Ward 5 Works Industrial Study.

18. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") as required by the District of Columbia Home Rule Act on April 28, 2015. (Ex. 54.) The NCPC Executive Director, by delegated action dated May 13, 2015, found that the proposed PUD would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 54A.)
19. On May 4, 2015, the Applicant submitted its list of proffered public benefits of the PUD and draft conditions, pursuant to 11 DCMR § 2403.16, and on May 18, 2015 submitted its final list of proffered public benefits and draft conditions, pursuant to 11 DCMR § 2403.20. (Ex. 53, 55.)
20. On May 18, 2015, the Applicant submitted the information requested by the Commission at the proposed action meeting. (Ex. 56-56C.)
21. On June 8, 2015, 2015, the Commission voted to take final action to approve the application subject to the conditions enumerated in this Order.

THE MERITS OF THE APPLICATION

Description of Property and Surrounding Areas

22. The Property consists of approximately 67,200 square feet of land area and is located on the west side of 4th Street, S.E. in the Union Market area. The South Parcel is currently improved with a low-scale warehouse and is used for wholesale distribution. The North Parcel is a surface parking lot. The Property is located mid-block and is bounded to the west by a 48-foot-wide strip of property that is privately owned by the District of Columbia and, pursuant to an easement agreement, functions as an alley for surrounding property owners. (Ex. 2-2I, 31-31H.)
23. The entrance to the NoMa/Gallaudet Metrorail station is located approximately one-third of a mile to the southwest of the Property. (Ex. 2-2I, 31-31H.)
24. Adjacent and nearby properties are also improved with low-scale industrial warehouse and wholesale buildings and uses. (Ex. 2-2I, 31-31H.)

25. The Future Land Use Map designates the Property in the mixed-use High-Density Residential/High-Density Commercial/Production, Distribution, and Repair Land Use category. The Property is identified as a Multi-Neighborhood Center on the Generalized Policy Map. (Ex. 2, 2D.)
26. The Union Market area has been targeted for redevelopment by the District as set forth in the Florida Avenue Market Study (“Small Area Plan”). The Small Area Plan calls for rezoning of parcels within the area, including the Property, to permit high-density residential and commercial development. The Small Area Plan also calls for the creation of an urban street grid. (Ex. 2, 2I.)
27. The Property is located within the boundaries of ANC 5D. ANC 6C is located two blocks south of the Property, across Florida Avenue N.E. (Ex. 40A1-40A4.)

The Project

28. The Applicant proposes to redevelop the Property into a mixed-use development with two buildings containing a total of approximately 41,042 square feet of retail space and approximately 545-680 residential units. (Ex. 31-31H.)
29. As a part of the Project, the Applicant will also establish an urban street grid surrounding the Property:
 - a. Most significantly, the Applicant will incorporate an extension of Neal Place through the Property. The 50-foot-wide extension will match the alignment and dimension of the existing right-of-way to the east of the Property. The Neal Place extension will be provided through a public access easement over a portion of the Project’s parking garage. The Applicant revised the design of the Project to incorporate the extension at the request of OP, DDOT, ANC 5D, and ANC 6C, and in furtherance of the Small Area Plan. Until such time as the extension is required to be opened to vehicular traffic, the Applicant will design and construct a temporary pocket park located on the road extension. The pocket park will deliver much needed green space within the Union Market district on an expedited basis;
 - b. Fourth Street, N.E. is currently a one-way street with head-in parking. The Applicant will reconfigure 4th Street to two-way traffic and convert the head-in parking to parallel parking. This will eliminate a significant amount of truck traffic and unloading activity that currently takes place on 4th Street;
 - c. The reconfiguration of 4th Street will widen the public streetscape area along the west side of 4th Street. Pursuant to Streetscape Design Guidelines under development with DDOT, the Applicant will construct an urban streetscape along

the west side of 4th Street from Neal Place to Morse Street containing street trees, a new sidewalk, and a pedestrian amenity zone; and

- d. The Applicant will also reconstruct a 35-foot wide segment of the private alley to the west of the Property, along the Property's frontage and extending south to Morse Street, with a five-foot wide planting strip, a 30-foot wide paved alley, and security lighting. The Applicant will use the reconstructed public alley for access to the Project's parking garage and loading facilities, which will separate vehicular traffic from pedestrian traffic along 4th Street, as requested by DDOT.

(Ex. 31-31H.)

30. The Project will have a total density of 8.0 floor area ratio ("FAR") across the Property. The Project will have a maximum height of 110 feet for each building. (Ex. 31-31H, 40A1-40A4.)

South Parcel Building – Consolidated PUD

31. For the building on the South Parcel, the Applicant requested consolidated approval to construct a building with approximately 465 residential units above approximately 29,042 square feet of retail space. (Ex. 31-31H.)
32. The Applicant proposed to incorporate portions of the existing façade into the architectural design of the South Parcel building in order to convey the neighborhood's authentic industrial characteristics. The Applicant proposed high ceiling retail space along 4th Street, which will recapture the feeling of the existing warehouse and create high-quality shopping and dining opportunities along 4th Street as called for in the Small Area Plan. (Ex. 31-31H.)
33. The residential portion of the South Parcel building will rise above the retail base in four distinct volumes that articulate the massing along the Property's 4th Street frontage. The upper-story residential component has been set back from the retained warehouse façade to celebrate and strengthen the warehouse façade and developed with fenestration and materials intended to knit together the upper-story residential component with the retained warehouse base. The building is designed to have two distinct cores to make the building feel as if it is two smaller buildings rather than one single building. (Ex. 31-31H.)
34. The South Parcel building includes approximately 400-550 parking spaces within the garage, which will serve not only the Project but also be open to the public and satisfy broader parking demands within the Union Market area.
 - a. The Applicant explained that the conversion of one-way streets and head-in parking within the market, combined with the anticipated redevelopment of a

surface parking lot that is open to the public, will eliminate a significant amount of parking within the Market area. To replace this lost parking and at the request of the community, the Applicant is constructing replacement public parking spaces within the Project and at other locations. The Applicant provided evidence that the replacement parking essentially replaces the lost supply on an approximately net zero basis;

- b. The Applicant's transportation study evaluated the impact of the maximum number of parking spaces proposed by the Applicant for the South Parcel building and confirmed that the additional vehicles would not impose adverse impacts on traffic conditions. DDOT concurred with the Applicant's analysis; and
- c. The Applicant requested the range of spaces to accommodate flexibility to add or remove parking based on site conditions and financial costs that will be determined through further study in connection with the advancement of building design.

(Ex. 31-31H, 40A1-40A4; Transcript ["Tr."] March 26, 2015.)

- 35. The South Parcel building's parking and loading will be accessed from the private alley to the west of the Project. The Applicant submitted evidence that the reconstructed portions of the alley would be able to accommodate truck turning needs. (Ex. 31-31H.)
- 36. The South Parcel building will contain approximately 147 to 179 bicycle parking spaces within the building, as well as approximately 20 short-term bicycle parking spaces on the sidewalks surrounding the South Parcel building. (Ex. 31-31H.)
- 37. The South Parcel will feature rooftop recreation space consisting of a series of outdoor rooms as well as a pool and terrace, which together provide the building's residents with a variety of outdoor recreational amenities. The three indoor rooms associated with these spaces are incidental and accessory to the outdoor areas, and together constitute less than 20% of the overall rooftop recreation space. (Ex. 46-46E.)
- 38. The South Parcel building will be designed and constructed to the Silver Certification level under the LEED-2009 rating system. In its post-hearing submission, the Applicant further agreed to achieve a minimum of 53 points under the LEED-2009 system, and to obtain Silver Certification. The Applicant also agreed to design and construct the South Parcel building to a minimum green area ratio ("GAR") of 0.22, which exceeds the requirement by 10%. (Ex. 31-31H, 46-46E, 56-56C.)
- 39. The total gross floor area for the South Parcel building is approximately 384,351 square feet, for a total density of approximately 5.68 FAR. The South Parcel building will have a maximum height of 110 feet. (Ex. 31-31H, 40A1-40A4.)

North Parcel Building – First-Stage PUD

40. For the building on the North Parcel, the Applicant requested first-stage approval to construct a building with approximately 165 residential units and approximately 12,000 square feet of retail use. The Applicant proposed a range of residential units +/- 20% for the first-stage PUD component based on market conditions, and agreed to narrow the range prior to the submission of a second-stage PUD for the North Parcel building. (Ex. 31-31H; Tr. March 26, 2015.)
41. The Applicant proposed a range of 80-200 parking spaces for the North Parcel building, depending on site conditions, financial costs, and market demand. The Applicant agreed to narrow the range of parking spaces prior to the submission of a second-stage PUD for the North Parcel Building, as well as conduct a parking study to assess the demand for and impact of the additional parking spaces and potentially remove parking. The North Parcel building's parking garage will connect to the South Parcel garage and share access through the same entrance off the alley. (Ex. 31-31H, 40A1-40A4; Tr. March 26, 2015.)
42. Loading for the North Parcel building will also be located off the alley. (Ex. 31-31H.)
43. The North Parcel building will contain approximately 48 to 71 bicycle parking spaces within the building. (Ex. 31-31H.)
44. The total gross floor area for the North Parcel building is approximately 153,249 square feet, for a total density of approximately 2.32 FAR. The North Parcel building will be constructed to a maximum height of 110 feet. (Ex. 31-31H, 40A1-40A4.)

Zoning Map Amendment

45. The Property is located in the C-M-1 Zone District. Surrounding property is also located in the C-M-1 Zone District. The C-M-1 Zone District permits "low bulk commercial and light manufacturing uses" with a maximum density of 3.0 FAR, maximum height of 40 feet, a maximum of three stories, and no lot occupancy limit. New residential uses are not permitted in the C-M-1 Zone District. (11 DCMR §§ 800.1, 800.4, 840.1, and 841.1.)
46. The Applicant requested a PUD-related Zoning Map amendment to the C-3-C Zone District for the Property to permit the proposed residential use and to permit the structures to reach the requested height and density. The maximum permitted height in the C-3-C Zone District is 130 feet and the maximum permitted density is 8.0 FAR. (Ex. 31-31H.)
47. Pursuant to the Future Land Use Map and the Small Area Plan, the Commission previously approved two other PUDs and related rezonings from the C-M-1 Zone District to the C-3-C Zone District for a parcel located one block to the south of the Property in

Z.C. Order No. 06-40C (2014) (“Gateway PUD”) and a parcel located one block to the east of the Property in Z.C. Order No. 14-12 (2015) (“Angelika PUD”).

PUD Flexibility Requested

Development Flexibility

48. The PUD will consist of two above-grade structures separated by the Neal Place extension but connected underground through a shared parking garage. Therefore, the Project will be one building for code purposes but two buildings for zoning purposes. Accordingly, the Applicant proposed to construct the entire PUD on a single lot of record, with multiple buildings on the single record lot, pursuant to § 2517 of the Zoning Regulations. (Tr. March 26, 2015.)
49. For the South Parcel building, the Applicant requested flexibility from the rear yard, court, roof structure, parking, and loading requirements. The flexibility was requested in order to accommodate the design of the South Parcel building.
50. Under § 2603 of the Inclusionary Zoning (“IZ”) Regulations, the North Parcel Building would have a minimum set-aside requirement of approximately 11,298 square feet, which constitutes eight percent of its proposed residential gross floor area of 141,249 square feet. As noted in Finding of Fact No. 52c., the Applicant wishes to account for 20% of this set-aside, i.e. 2,260 square feet, in the South Parcel Building. This would not only result in that portion of the North Parcel Building’s IZ requirement being provided in advance of the North Parcel Building’s construction, but all of this additional GFA will be devoted to households earning up to 50% of the Area Median Income. Since the Inclusionary Zoning set-aside is based upon individual buildings, rather than being aggregated throughout the PUD, the Applicant is asking that the Commission reduce the North Parcel Building’s eight percent IZ set-aside requirement by the 2,260 square feet that will be accounted for in the South Parcel Building. Additional flexibility for the North Parcel building will be identified with the future second-stage submission for that building. (Ex. 31-31H, 40A1-40A4, 56-56A.)

Design Flexibility

51. The Applicant requested flexibility to modify the interior and exterior design of the PUD as set forth in the conditions of approval and shown on the approved plans. The Applicant also requested flexibility to modify the design of PUD-related improvements in public space to correspond with the final streetscape design guidelines for the Union Market area as well as other design changes requested by DDOT. (Ex. 31-31H, 40A1-40A4, 46-46E.)

Project Amenities and Public Benefits

52. As detailed in the Applicant's testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits:
- a. Exemplary Urban Design, Architecture, and Open Spaces, through the use of high-quality materials and design that will enhance and celebrate the industrial characteristics of the Union Market district, incorporate portions of the existing warehouse façade, complete the urban street grid, establish the temporary pocket park on the Neal Place extension, and commit to sustainable design features;
 - b. Site Planning and Efficient Land Utilization, through the replacement of low-scale structures and surface parking lot with a mixed-use, transit-oriented development that creates an urban street grid, provides multi-modal transportation connections, strengthens the emerging Union Market area, and fulfills many of the planning goals and policies of the Small Area Plan;
 - c. Housing and Affordable Housing, through the provision of approximately 465 residential units (+/- 10%) in the South Parcel Building and approximately 165 residential units (+/- 20%) in the North Parcel Building; and compliance with the requirement of Chapter 26 of the Zoning Regulations subject to the flexibility requested in Finding of Fact 50 to account for 2,260 square feet of the North Parcel Building's IZ requirement in the South Parcel Building. Nevertheless, the PUD in its totality will set aside the required eight percent of its residential gross floor area, or approximately 39,724 square feet based on the proposed residential gross floor area of the North and South Parcel Buildings, for Inclusionary Units. In addition, the Applicant will set aside 20% of this aggregate Inclusionary Zoning set-aside (i.e., 7,946 square feet) Inclusionary Units for households earning up to 50% of the Area Median Income ("AMI"), a deeper level of affordability than is required by Chapter 26 of the Zoning Regulations (the remainder of the Inclusionary units shall be set aside for households earning up to 80% AMI, as required by Chapter 26 of the Zoning Regulations). All of the 50% AMI units will be located in the South Parcel Building. Because the Property is being rezoned from the CM Zone District, which does not allow for the construction of residential uses, all of the housing and affordable housing created by the PUD will exceed what would be delivered as a matter of right, and is therefore considered a public benefit of the PUD;
 - d. Street-Engaging Retail Offerings, including approximately 41,000 total square feet of retail space to activate the public realm along 4th Street and germinate other development in the vicinity;

- e. Effective and Safe Vehicular and Pedestrian Access and Transportation Demand Management Measures, through pedestrian-oriented street grid patterns and clear separation of pedestrian and vehicular circulation patterns including the design, construction, and maintenance of the Neal Place extension, reconfiguration of 4th Street, construction of streetscape improvements on the west side of 4th Street, reconstruction of portions of the alley, funding for the Metropolitan Branch Trail transportation demand, parking, loading, and curbside management plans;
- f. Uses of Special Value: Trash Clean-Up, through the regular clean-up of trash along 4th Street, N.E. between Florida Avenue and Penn Street, N.E. at the Applicant's expense;
- g. Employment Opportunities, including a First Source Employment Agreement submitted as Ex. 31F of the Record and notice to ANC 5D of opportunities created through the PUD; and
- h. Sustainability Features, including that both buildings will be designed and constructed to the Silver certification level under the LEED-2009 rating system. In its post-hearing submission, the Applicant further agreed to achieve a minimum of 53 points under the LEED-2009 system, and to obtain Silver Certification.

(Ex. 46-46E, 56-56C.)

Compliance with PUD Standards

- 53. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” The Commission finds that the development incentives for the height, density, flexibility, and related rezoning to C-3-C are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines set forth in the Applicant's statement and the OP report.
- 54. The Commission credits the testimony of the Applicant and its architectural experts as well as OP, DDOT, and ANC 5D, and finds that the superior design, site planning, streetscape and transportation network improvements, housing and affordable housing, uses of special value, transportation demand, parking, loading and curbside management plans, and employment opportunities of the PUD all constitute acceptable project amenities and public benefits.

55. The Commission finds that the PUD as a whole is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities related to urban design, landscaping, and open space, housing and affordable housing, effective and safe transportation access, and uses of special value to the neighborhood and the District as a whole. The Commission credits the testimony of OP, ANC 5D, and Councilmember McDuffie that the PUD will provide significant and sufficient public benefits and project amenities.
56. The Commission finds that the character, scale, mix of uses, and design of the PUD are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high-quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant's architectural and transportation planning experts that the PUD represents an efficient and economical redevelopment of a strategic and transit-oriented parcel one-third of a mile from a Metrorail station entrance.
57. The Commission credits the testimony of OP and ANC 5D that the PUD will provide benefits and amenities of substantial value to the community and the District commensurate with the additional density and height sought through the PUD. Further, the Commission credits OP and DDOT's testimony that the impact of the PUD on the level of services will not be unacceptable.
58. The Commission credits the testimony of the Applicant's traffic consultant, who submitted a detailed transportation impact analysis that concluded that the PUD would not generate an adverse traffic impact on the surrounding roadway network due to traffic or parking impacts. The Applicant's traffic expert also concluded that the number of parking and loading spaces and the location of access to parking and loading spaces from the alley would not generate adverse impacts on neighboring property. The Commission credits the Applicant's transportation expert and DDOT and finds that the traffic, parking, and other transportation impacts of the PUD on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD, provided that the Applicant submit a parking study and, if required by DDOT, a comprehensive transportation review in connection with the second-stage PUD application for the North Parcel building.

Compliance with the Comprehensive Plan

59. The Commission credits the testimony of OP and the Applicant regarding the Property's designation as Mixed-Use High-Density Commercial, High-Density Commercial, and Production, Distribution, and Repair on the Future Land Use Map of the District of Columbia. The proposed rezoning to the C-3-C Zone District as well as the height and density of the PUD is consistent with this designation, and the rezoning is necessary to permit the mix of uses, height, and density of the PUD, including in particular residential

use. Further, the rezoning is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public benefits and amenities against the requested zoning flexibility.

60. The Commission credits the testimony of the Applicant and OP regarding the compliance of the PUD with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide, and area elements of the plan:
 - a. The Commission finds that the proposed PUD is not inconsistent with the written elements of the Comprehensive Plan and promotes the policies of its Land Use, Transportation, Housing, and Urban Design Citywide Elements and its Upper Northeast Area Element;
 - b. The project implements Land Use Element policies that designate the area around the New York Avenue-Florida Avenue-Gallaudet University Metrorail station for future growth and encourage infill development and development near Metrorail stations. The PUD and map amendment bring growth and revitalization to the Union Market district;
 - c. The project implements Transportation Element policies that promote transit-oriented development and urban design improvements. The PUD brings new housing or office use and retail uses within walking distance of the Metrorail station and, through its Transportation Demand Management Plan, provides effective incentives to discourage motor vehicle use;
 - d. The project implements Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing, including affordable housing units that exceed the requirements of Inclusionary Zoning;
 - e. The project implements Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves the appearance of a key site in the Union Market area and will catalyze additional investments in the neighborhood; and
 - f. The project implements Upper Northeast Area Element policies stating that the Capital City Market area should be a regional destination that could include housing and retail uses.
61. The Commission credits the testimony of the Applicant, OP, ANC 5D, and Councilmember McDuffie that the PUD is consistent with and furthers the goals of the Small Area Plan and the Ward 5 Industrial Land Transformation Study.

Agency Reports

62. By report dated March 16, 2015 and by testimony at the public hearing, OP recommended approval of the application. OP supported the PUD-related rezoning to the C-3-C Zone District, which would support the written elements of the Comprehensive Plan and the Florida Avenue Market Small Area Plan and would not be inconsistent with Future Land Use and Generalized Policy maps of the Comprehensive Plan. OP concluded that the benefits and amenities of the PUD were acceptable given the development incentives requested, and found that the PUD was particularly strong in the area of providing safe and effective transportation access:
- a. OP conditioned its support on the conversion of the Neal Place extension from a park to a road pursuant to terms acceptable to DDOT. The Applicant reached agreement with DDOT on the timing of the conversion of the extension, as set forth in the conditions of approval;
 - b. OP supported the proposed amount of parking within the South Parcel building, and requested that the Applicant provide a parking study with the second-stage PUD for the North Parcel building. The Applicant also agreed to conduct the parking study, as set forth in the conditions of approval;
 - c. OP concluded that retail and pedestrian access should be focused on the public streets, and the primary function for the alley should be parking and loading;
 - d. OP requested that the Applicant narrow the proposed range of residential units and parking spaces. At the public hearing, the Applicant explained the justification for the ranges, which was based on a mix of market and site conditions, particularly with respect to the first-stage component of the Project. Specifically, the range of +/- 10% of residential units for the South Parcel and +/- 20% for the North Parcel is appropriate for a PUD of this size, the broader range being provided for the North Parcel because it is in an earlier development stage. Likewise, the number of parking spaces needed will depend on market conditions, and the range provided for the North Parcel will be narrowed for the second-stage PUD; and
 - e. OP requested that the Applicant further demonstrate how the PUD furthers the goals of the Ward 5 Works Industrial Land Use study. At the hearing, the Applicant summarized its efforts to incentivize both producers/makers and retailers to come to the Union Market area, and agreed specifically to notify ANC 5D of job opportunities and training programs created through the PUD. The Applicant also provided testimony regarding how the PUD would provide sustainability and streetscape improvements, promote pedestrian and other non-automobile forms of transportation, and invest in new community amenities such

as parks, retail, and streetscape improvements, all of which fulfill specific action items of the Ward 5 Works study.

(Ex. 34, Tr. March 26, 2015.) Based on the foregoing, the Commission concludes that the Applicant has addressed OP's conditions and issues.

63. By report dated March 16, 2015 and by testimony at the public hearing, DDOT concurred with the findings and conclusions of the Applicant's transportation study and raised no objection to the PUD:
- a. DDOT conditioned its support on certain terms related to the timing of the conversion of the Neal Place extension to a roadway. The Applicant and DDOT reached agreement on these terms, as set forth in the conditions of approval;
 - b. DDOT also requested the Applicant consider additional elements to strengthen the transportation demand management plan. As set forth in the conditions of approval, the Applicant agreed to install a transit information screen in the residential lobbies of both the South Parcel building and the North Parcel building, provide each new resident with an annual membership for a car-sharing or bike-sharing program up to a maximum of \$35,000, provide information and website links to transportation services, unbundle parking costs from the price of lease or purchase, and provide six electric car charging stations within the garage;
 - c. DDOT also indicated that DDOT would continue to review and approve components of the PUD within its jurisdiction for review and permitting, including streetscape guidelines for the Union Market area, design and construction of streetscape elements in public space, operational and geometric changes to roadways, and a curbside management plan;
 - d. DDOT indicated that an additional comprehensive transportation review could be required for the North Parcel building. The Applicant agreed to perform this additional study, if required by DDOT; and
 - e. DDOT noted that the proposed canopies exceeded the extent permitted under existing regulations. In its post-hearing submission, the Applicant explained the justification and rationale for the proposed canopies and provided evidence that the canopies were not likely to interfere with other improvements in public space.

(Ex. 33, 46-46E.)

In a supplemental report dated April 15, 2015, DDOT responded to the Applicant's statements in its post-hearing submission related to the canopy projection. DDOT stated that it agreed with the Applicant that the canopies were not likely to interfere with public

space, but that DDOT reserved final judgment until the final design of the canopies is submitted during the permitting process. (Ex. 51.)

Based on the foregoing, the Commission finds that the Applicant has addressed DDOT's conditions and issues.

64. Through testimony at the public hearing, a representative of DDOE testified in general support of the PUD:
- a. DDOE raised concerns regarding the amount of parking within the PUD and potential impacts on air quality, and requested that the Commission condition approval on the Applicant's contribution to further air quality studies. The Commission has previously determined that such environmental reviews take place through established environmental impact screening as a part of the building permit process, separate and apart from zoning approval processes; (See Z.C. Order No. 06-27 (Square 54 PUD) at 19-20); and
 - b. DDOE testified that the Applicant's commitment to LEED-Silver Certification exceeded the minimum code requirements. DDOE identified potential additional credits that would permit the PUD to achieve Gold Certification, though DDOE also acknowledged that some of the credits would require different building systems. In its post-hearing submission, the Applicant responded to DDOE's recommendations and agreed to achieve additional credits beyond the LEED-Silver minimum.

(Tr. March 26, 2015; Ex. 46-46E.)

65. By letter dated March 25, 2015, Councilmember Kenyan McDuffie, the Councilmember for Ward 5, submitted a letter in support of the PUD. The Councilmember supported the PUD's benefits and found that the PUD fulfilled District objectives as well as goals outlined in the Small Area Plan and in the Ward 5 Industrial Land Transformation Study. The Councilmember also supported the transportation components of the PUD, including the use of the alley for parking and loading access as well as the proposed amount of parking within the PUD. At the hearing, a member of the Councilmember's staff presented additional testimony in support. (Ex. 41; Tr. March 26, 2015.)

Advisory Neighborhood Commission 5D Report

66. ANC 5D submitted a letter in support of the PUD indicating that at a duly noticed and regularly scheduled monthly meeting on December 9, 2014, with a quorum present, ANC 5D unanimously voted to support the PUD. The ANC supported the integration of the Neal Place extension into the PUD as well as the temporary use of the extension as a pocket park as major public benefits. The ANC also expressed support for the proposed amount of parking, which would serve not only the PUD but also surrounding businesses

and the community. Finally, the ANC expressed support for the PUD's retail space, which will bring retail options and amenities to the neighborhood that previously required residents to travel to other parts of the city. (Ex. 26.)

Parties in Support or Opposition

67. No parties appeared in support or opposition to the application.

Persons and Organizations in Support or Opposition

68. ANC 6C appeared as an organization in support. The PUD is located approximately two blocks north of the ANC. ANC 6C conditionally supported the application and expressed strong support for PUD's design and proposed uses, including in particular the Neal Place extension. The ANC also expressed support for the Applicant's outreach efforts. ANC 6C recommended that the Applicant: (1) add clear glass along 50% of the alley façade; (2) improve the alley with a different configuration than proposed by the Applicant and including a pedestrian and bicycle trail; (3) purchase a Capital Bikeshare station; (4) improve the sidewalk along 4th Street north from the PUD site to New York Avenue; and (5) provide street cleaning on 4th Street from Florida Avenue to New York Avenue. ANC 6C also submitted a plan for the alley prepared by an adjacent property owner. (Ex. 37, 42, 48.)

69. The Commission finds that the Applicant has reasonably addressed these conditions and balanced ANC 6C's desires with the viewpoints and priorities expressed by ANC 5D, OP, DDOT, and the Applicant and its expert witnesses:

- a. Alley Windows: The Applicant explained that it had purposely designed the PUD to focus retail and pedestrian activity on 4th Street, the public street, and away from vehicular and truck traffic in the alley. The Applicant also testified that it had explored ANC 6C's request and in response added in clearstory windows to the ground-floor retail uses as well as landscaping along the alley edge, adjacent to the building. The Applicant also agreed to incorporate retail windows along the alley if a retail tenant desires such presence on the alley. The Commission agrees that the focus of retail and pedestrian activity should be on 4th Street, and finds that the Applicant has made reasonable efforts to accommodate ANC 6C's concerns;
- b. Alley Configuration: The Applicant explained that the alley is located on District-owned property and is maintained as an alley for surrounding property owners through an easement agreement. The Applicant proposed using the alley as the main vehicular and truck access point to separate vehicles from pedestrians. The Applicant submitted truck turning movements into and out of the PUD's loading facilities. The Applicant explained that it proposed to improve 35 of the 48 feet of alley width, but leave the remaining 13 feet to be improved by other adjacent

property owners in connection with the development of their parcels. The Commission agrees with the Applicant, OP, and DDOT that the primary purpose of the alley should be for vehicular and truck traffic, and finds that the Applicant's proposed alley design will not impose adverse impacts on surrounding property owners;

- c. Bikeshare Station: The Applicant explained that it focused its public improvements and benefits on providing basic street and sidewalk infrastructure within the Union Market area, and submitted evidence that a Capital Bikeshare station was already located two blocks east of the Property. The Applicant also agreed to contribute \$10,000 to the NoMa BID's Metropolitan Branch Trail Study, which will further improve the basic transportation infrastructure by assessing and recommending improvements to safety infrastructure and access points to the Metropolitan Branch Trail south of Rhode Island Avenue, N.E. The Commission agrees with the Applicant that a contribution to a Bikeshare station is not necessary given all of the other proffered public benefits and improvements created by the PUD, and finds that the proposed contribution to the Metropolitan Branch Trail Study will further improve the PUD's bicycle connectivity;
 - d. Sidewalk Improvements North to New York Avenue: The Applicant submitted evidence that through this PUD and other PUDs in the immediate area, it has focused on creating connections to, from, and among various destinations within the Union Market area, the nearby Metrorail station, and the adjacent neighborhoods to the south and east. The Commission finds that pedestrian access improvements will be facilitated along all of the key pedestrian pathways through the area; and
 - e. Trash Clean-up: The Applicant agreed to regularly clean 4th Street from Florida Avenue, N.E. to Penn Street, N.E. The Commission finds that this responds to the ANC's request.
70. A draft concept plan was filed in the record on behalf of an adjacent property owner. (Ex. 43.) The Commission only reviews the proposal pending before it and whether it satisfies the goals and standards of the PUD process. The Applicant is not required to demonstrate or satisfy that there are no other alternative ways to design components of the PUD which may have greater or lesser impacts than the proposed design. The Applicant is only required to demonstrate that the proposed PUD meets the specific standards of Chapter 24 of the Zoning Regulations. *Washington Canoe Club v. D.C. Zoning Comm'n*, 889 A.2d 995, 99 (2005) (“[T]he applicant is not charged with considering every option that any party in opposition might conceptualize.”) Here, the Commission concludes that the plans for the alley developed by the Applicant and supported by OP, DDOT, ANC 5D, and Councilmember McDuffie meet the PUD standards because it will not have adverse effects on surrounding properties and, in fact,

will significantly improve the safety and function of the overall circulation network in the immediate area.

CONCLUSIONS OF LAW

1. Pursuant to Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, welfare, and convenience.” (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the application as a consolidated PUD or a two-stage PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.
3. The Property meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
4. Proper notice of the proposed PUD and related rezoning was provided in accordance with the requirements of the Zoning Regulations and as approved by the Zoning Commission.
5. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate. The proposed redevelopment of the Property, with a mix of residential and commercial uses, capitalizes on the Property’s strategy and transit-oriented location and is compatible with citywide and area plans of the District of Columbia.
6. The Applicant seeks a PUD-related zoning map amendment to the C-3-C Zone District as well as, for the consolidated portion of the PUD, flexibility from the rear yard, court, roof structure, parking, and loading requirements. The Commission has 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 concludes approval is warranted for the reasons detailed below.
7. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential and retail office uses for this PUD are appropriate for the Property’s location.

- The PUD's height, bulk, and uses are consistent with the District's planning goals for the surrounding neighborhood.
8. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe transportation features and measures, housing and affordable housing, ground-floor retail uses, and uses of special value are all significant public benefits. The impact of the PUD is acceptable given the quality of the public benefits of the PUD.
 9. The impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, or pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
 10. Approval of the PUD and rezoning is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed PUD is consistent with the Property's Mixed-Use High-Density Residential, High-Density Commercial, and Production, Distribution, and Repair designation on the Future Land Use Map and furthers numerous goals and policies of the written elements of the Comprehensive Plan as well as other District planning goals for the immediate area.
 11. The Commission concludes that the proposed PUD-related Zoning Map amendment for the Property from the C-M-1 Zone District to the C-3-C Zone District is not inconsistent with the Comprehensive Plan, including the Property's land use designation on the Future Land Use map, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives. The PUD-related rezoning of the PUD site to C-3-C is consistent with the purposes and objectives of zoning as set forth in the Zoning Act of 1938, approved June 20, 1938.
 12. The PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
 13. 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) to give great weight to the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.

14. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the ANC 5D position supporting approval of the application and concurred in its recommendation of approval. The Commission was not required to give such “great weight” to the recommendations of ANC 6C, since the ANC was not an affected ANC nor was it a party to the proceeding. Nevertheless, the Commission carefully considered the issues and concerns raised by ANC 6C and concludes that the Applicant has satisfactorily addressed the ANC’s conditions.
15. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for the review and approval of a consolidated and first stage Planned Unit Development and a related Zoning Map amendment from C-M-1 to C-3-C for the Property subject to the following conditions:

A. PROJECT DEVELOPMENT

Consolidated PUD Conditions

1. The South Parcel shall be developed in accordance with the architectural drawings submitted into the record on March 6, 2015 as Exhibits 31A1-31A2, as modified by the drawings submitted on March 26, 2015 as Exhibits 40A1-40A4 and the drawings submitted on April 9, 2015 as Exhibits 46D and 46E, and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").
2. The South Parcel shall include a mixed-use building containing 384,351 square feet of gross floor area (5.68 FAR) consisting of 29,042 square feet of retail use, 355,309 of residential use with approximately 465 residential units, and a parking garage containing approximately 400-550 parking spaces for both commercial parking and accessory parking for the Project, as shown on the Plans.
3. The South Parcel shall be rezoned from the C-M-1 Zone District to the C-3-C Zone District. Pursuant to 11 DCMR § 3028.9, the change of zoning shall be effective upon the recordation of the covenant discussed in Condition No. D.2.

4. The PUD shall be constructed as two buildings on a single record lot pursuant to § 2517 of the Zoning Regulations.
5. The Applicant shall have flexibility from the rear yard, court, roof structure, parking, and loading requirements as shown on the Plans.
6. The Applicant shall retain and incorporate portions of the existing building façade into the South Parcel building as shown on the Plans.
7. In the event that a retail tenant desires retail space at market rents with an entrance facing the alley, the Applicant shall modify the west façade to incorporate doors and windows to accommodate this tenant.
8. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - b. To vary final selection of the exterior materials within the color ranges and materials types as proposed, based on availability at the time of construction;
 - c. To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - d. To vary the residential unit count of the South Parcel building by up to 10%;
 - e. To vary the size, location and design features of the retail component of the South Parcel Building, including the size, location, and design of windows, doors, awnings, canopies, signage, and similar features, to accommodate the needs of specific retail tenants and storefront design, provided, the storefront design is consistent with the guidelines included in Exhibit 31B of the record;

- f. To vary the size, location, type and other features of proposed building signage related to the proposed retail uses, provided, the signage is consistent with the guidelines included in Exhibit 31B of the record;
- g. In the event that a retail tenant desires retail space at market rents with an entrance facing the alley, flexibility to modify the west façade to incorporate doors and windows to accommodate this tenant;
- h. To vary the number, type, and location of doors related to the rooftop uses to accommodate changes in building operation and function;
- i. To vary the location of the green roof areas on the roofs, provided that the total green area is not decreased in size;
- j. To revise the design of the public space surrounding the South Parcel building to be consistent with the forthcoming streetscape design guidelines for the Union Market area, and to modify the exterior design of the South Parcel building to the extent necessary to obtain approvals from District agencies and/or service to the Property from utilities as would otherwise be in accordance with the pending streetscape design guidelines; and
- k. To vary the design of the parking garage, to permit the aisle width and parking space dimensions as shown on page A2 of the Plans, provided that the parking garage contain approximately 400-550 vehicular parking spaces.

First Stage PUD Conditions²

- 9. The North Parcel shall be developed in accordance with the architectural drawings submitted into the record on March 6, 2015 as Exhibits 31A1-31A2, as modified by the drawings submitted on March 26, 2015 as Exhibits 40A1-40A4 and the drawings submitted on April 9, 2015 as Exhibits 46D and 46E, and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans") and the Commission's second-stage approval.
- 10. The North Parcel shall include a mixed-use building containing approximately 12,000 square feet of retail use, approximately 165 residential units (+/-20%), and a parking garage containing approximately 80-200 parking spaces for both

² Several of these conditions concern the provision of public benefits that are to occur prior to the issuance of a certificate of occupancy or for the life of the project. These conditions will become relevant only if a second-stage application is timely filed and that application is granted. By including these conditions, the Commission does not in any way suggest that it is pre-disposed to the grant of any such application.

commercial parking and accessory parking for the Project, as shown on the Plans; provided that the Applicant shall narrow the range of residential units and parking spaces prior to submitting a second-stage application for the North Parcel building.

11. The North Parcel shall be rezoned from the C-M-1 Zone District to the C-3-C Zone District. The change of zoning shall be effective upon the Commission's approval of second-stage PUD application for the North Parcel building and, pursuant to 11 DCMR § 3028.9, the recordation of the covenant discussed in Condition No. D.2.
12. The PUD shall be constructed as two buildings on a single record lot pursuant to § 2517 of the Zoning Regulations. The combined density of the North Parcel building and the South Parcel building shall not exceed 8.0 FAR.

B. PUBLIC BENEFITS

Consolidated PUD Conditions

1. Prior to the issuance of the certificate of occupancy for the South Parcel, the Applicant shall provide the Zoning Administrator with access to the Project's Green Building Certification, Inc. website to demonstrate evidence that the South Parcel building has achieved a minimum of 53 points. Within 12 months after the issuance of the certificate of occupancy for the South Parcel building, the Applicant shall submit evidence that it has secured Silver certification or higher for the South Parcel building from the U.S. Green Building Council under the LEED-2009 rating system.
2. Prior to the issuance of the certificate of occupancy for the South Parcel building, the Applicant shall submit evidence that it has achieved a minimum green area ratio ("GAR") of 0.22.
3. For so long as the project exists, and as required by the Inclusionary Zoning ("IZ") Regulations (Chapter 26 of Title 11), the Applicant shall set aside a minimum of: (a) eight percent of the residential gross floor area of the South Parcel Building, i.e. 28,425 square feet ("South Parcel's Required Set Aside") for Inclusionary Units; and (b) the North Parcel 50% AMI Component (defined below) as Inclusionary Units in the South Parcel Building.
 - a. The South Parcel's Required Set-Aside shall be broken down as follows:
 - i. 20% of the South Parcel Inclusionary Set-Aside, i.e. 5,685 square feet shall be set aside for households earning up to 50% AMI; and

- ii. 80% of the South Parcel's Inclusionary Set-Aside, i.e. 22,740 square feet shall be set aside for households earning up to 80% AMI; and
 - b. In addition to the South Parcel's Required IZ Set-Aside, and for so long as the project exists, the Applicant shall set aside an additional 2,260 square feet of residential gross floor area in the South Parcel Building for units reserved for households earning up to 50% AMI (the "North Parcel 50% AMI Component"). This amount represents 20% of the 11,300 square feet of gross floor area that the North Parcel is required to set aside as Inclusionary Units pursuant to 11 DCMR § 2603 based on the proposed residential gross floor area of the North Parcel Building (141,249 square feet x 8%). Because these units are in satisfaction of a portion of the North Parcel Building's IZ requirements, the units, although located in the South Parcel Building, shall be deemed "inclusionary units" required under Chapter 26 of title 11, and therefore subject to all statutes and regulations regulating Inclusionary Units.
4. Neal Place extension:
- a. Prior to the issuance of a certificate of occupancy ("C of O") for the South Parcel building, the Applicant shall complete construction of the interim park over the Neal Place extension as shown on the Plans, and shall further demonstrate that the infrastructure of the road (as part of the parking garage) for the Neal Place extension has been constructed beneath the park to ensure that the majority of the investments into the permanent road is made at the outset;
 - b. Prior to the issuance of the C of O for the South Parcel building, the Applicant shall demonstrate that it has placed \$165,000 for the cost of construction of the final Neal Place extension into an interest-bearing escrow account (such escrowed funds to be invested by the Applicant at its discretion in investment-grade securities with interest to be paid to the Applicant on a regular basis);
 - c. Except as provided in subparagraph (d) below, prior to the issuance of the C of O for the North Parcel Building, the Applicant shall complete construction of the final Neal Place extension as shown on the Plans and open the roadway to vehicular traffic; and
 - d. Notwithstanding the foregoing and pursuant to DDOT's request, the Applicant agrees to complete construction of the final Neal Place extension within 12 months after the earlier of any of the following events,

if such event occurs earlier than the issuance of the C of O for the North Parcel building:

- i. After the review of a Monitoring Study (defined below) that demonstrates queuing extending on 4th Street south from Morse Street toward Florida Avenue does not allow enough queuing space to accommodate two additional average size vehicles without blocking the crosswalk on more than two instances per peak period on more than one observation day, and DDOT concludes and communicates to the Applicant that the Neal Place Extension is needed to alleviate traffic queuing conditions at 4th and Morse Street. Each Monitoring Study should be the result of typical traffic patterns rather than the result of atypical traffic events (e.g. construction, holidays, or special events); or
- ii. DDOT communicates to the Applicant that all required permits have been issued for the proposed 3rd Street, N.E. as a public or private street, alley, or driveway connection serving vehicular traffic and construction has commenced; or
- iii. DDOT communicates to the Applicant that all required permits have been issued for Neal Place to the immediate west as a public or private street, alley, or driveway connection serving public vehicular traffic and construction has commenced; or
- iv. The fifth anniversary of the issuance of the C of O for the South Building with an option to extend for another five years with DDOT approval.

For purposes of this condition, the Monitoring Study shall be as follows: Within 12 months after the issuance of the C of O for the South Parcel building, and on an annual basis thereafter (“Study Anniversary”) or within six weeks of DDOT requesting additional observation prior to a subsequent Study Anniversary (“Requested Study”), the Applicant shall initiate a performance monitoring study of the length of queues along the northbound 4th Street approach to Morse Street (“Monitoring Study”). DDOT requests for a Requested Study cannot be made more than one time per year and shall eliminate the requirement for an additional study to be performed at the subsequent Study Anniversary. Instead, the date upon which the Applicant initiates a Requested Study shall establish a new Study Anniversary such that the next Monitoring Study shall be due within 12 months after that date.

Each Monitoring Study shall be conducted by a professional transportation engineering or planning firm that regularly works in the District and consist of

observations for two observation periods during a three- week timeframe. An observation period is defined as Wednesday-Thursday and Saturday peak periods. The weekday peak period is defined as between the hours of 4:00 p.m. to 7:00 p.m. when DC Public Schools and Congress are in session. The weekend peak period is defined as between 11:00 a.m. to 2:00 p.m. during a Saturday during a week when DC Public Schools and Congress are in session. The Applicant shall provide a copy of each Monitoring Study to DDOT.

5. Prior to the issuance of a C of O for the South Parcel building and provided that DDOT has granted final approval for the reconfiguration, the Applicant shall demonstrate that it has contributed 100% of the design, engineering, and construction costs to the reconfiguration of 4th Street, N.E. to eliminate head-in parking and convert the street to two-way traffic. The final design of such improvements shall be subject to approval of DDOT.
6. Prior to the issuance of a C of O for the South Parcel building, the Applicant shall demonstrate that it has constructed streetscape improvements along the west side of 4th Street, N.E. between Neal Place and Morse Street, N.E. pursuant to streetscape design guidelines for the Union Market area as approved by DDOT.
7. Prior to the issuance of a C of O for the South Parcel Building, the Applicant shall demonstrate that it has reconstructed a 35-foot-wide segment of the private alley along the Property's west frontage and south to Morse Street and installed a planting strip and security lighting as shown on the Plans.
8. The South Parcel building shall provide a minimum of 147-179 bicycle parking spaces within the building and 20 bicycle parking spaces on racks outside the building. The final number and location of improvements in public space shall be subject to the discretion of DDOT.
9. Prior to the issuance of a building permit for the South Parcel building, the Applicant shall contribute \$10,000 to the NoMa Business Improvement District ("BID") toward the BID's proposed Metropolitan Branch Trail Study, and provide evidence that the study has commenced.
10. The Applicant shall provide each new resident for the first year after the issuance of the C of O for the South Building with an annual membership in a car-sharing or bike-sharing program, up to a maximum of \$35,000.
11. The Applicant shall provide parking within the South Parcel building as shown on the Plans. Prior to the issuance of a C of O for the South Parcel building, the Applicant shall demonstrate that it has created a parking management plan that includes the following measures:

- a. Controlled access to the parking garage; and
- b. For the residential portion of the garage, parking costs shall be unbundled from the cost of lease or sale of each residential unit.

The Applicant shall maintain the parking management plan for the life of the South Parcel building.

12. The Applicant shall provide loading facilities within the South Parcel building as shown on the Plans. Prior to the issuance of a C of O for the South Parcel building, the Applicant shall demonstrate that it has undertaken the following loading management measures:
 - a. Designate a loading facility manager, who shall coordinate with residents and retail vendors to schedule deliveries; and
 - b. Require all residential and retail tenants to schedule deliveries that utilize the loading dock.

The Applicant shall maintain the loading management plan for the life of the South Parcel building.

13. Prior to the issuance of a C of O for the South Parcel building, the Applicant shall demonstrate that it has developed a curbside management plan for 4th Street, N.E. to introduce striping and signage along 4th Street, N.E. The final details of the plan shall be subject to final discretion of DDOT.
14. Prior to the issuance of a C of O for the South Parcel building and for the life of the Project, the Applicant shall, at its own expense, clean up trash along 4th Street, N.E. no less than four times a week between Florida Avenue and Penn Street, N.E. (except that the Applicant is relieved of this condition if the South Parcel Building becomes part of a business improvement district that assumes responsibility for such duties).
15. Prior to the issuance of the first C of O for the South Parcel building, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services (“DOES”) in the form submitted into the record as Ex. 31F to achieve the goal of utilizing District of Columbia residents for at least 51% of the new construction jobs created by the project.
16. In accordance with the time frames set forth in the First Source Employment Agreement, the Applicant shall provide ANC 5D with notice of new job needs and job vacancies after providing DOES with notice of such opportunities under the First Source Employment Agreement. To the extent that the Applicant and

DOES agree to develop skills or on-the-job training programs, the Applicant shall provide ANC 5D with notice of such training program. This requirement shall expire when the First Source Employment Agreement ends.

First-Stage PUD Conditions

17. Prior to the issuance of the C of O for the North Parcel building, the Applicant shall provide the Zoning Administrator with access to the Project's Green Building Certification, Inc. website to demonstrate evidence that the North Parcel building has achieved a minimum of 53 points. Within 12 months after the issuance of the C of O for the North Parcel building, the Applicant shall provide evidence that it has secured Silver Certification or higher from the U.S. Green Building Council under the LEED-2009 rating system.
18. Prior to the issuance of a C of O for the North Parcel Building, the Applicant shall provide evidence that it has designed the building to a minimum GAR of 0.22:
 - a. The Commission approves a maximum residential gross floor area for the North Parcel Building of approximately 141,249 square feet. The North Parcel Building shall comply with the Inclusionary Zoning set-aside requirement presently stated at 11 DCMR § 2603 (that is, eight percent of the residential gross floor area of the North Parcel Building), less 2,260 square feet, which represents the "North Parcel Building's 50% AMI Component" that is being accounted for in the South Parcel Building. The actual affordable housing requirement associated with the North Parcel Building shall be determined and calculated based on the residential gross floor area for the North Parcel Building as approved in the second-stage PUD.
19. The North Parcel building shall provide a minimum of 48-71 bicycle parking spaces within the building.
20. Prior to the issuance of the first C of O for the North Parcel building, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services ("DOES") in the form submitted into the record to achieve the goal of utilizing District of Columbia residents for at least 51% of the new construction jobs created by the project. (Ex. 31F.)
21. In accordance with the time frames set forth in the First Source Employment Agreement, the Applicant shall provide ANC 5D with notice of new job needs and job vacancies after providing DOES with notice of such opportunities under the First Source Employment Agreement. To the extent that the Applicant and DOES agree to develop skills or on-the-job training programs, the Applicant shall

provide ANC 5D with notice of such training program. This requirement shall expire when the First Source Employment Agreement ends.

C. TRAFFIC MITIGATION

Consolidated PUD Condition

1. For the life of the Project, the Applicant shall provide the following transportation demand management (“TDM”) measures:
 - a. Designate a TDM coordinator responsible for organizing and marketing the TDM plan;
 - b. Provide information and website links to commuterconnections.com, goDCgo.com, and other transportation services on developer and property management websites;
 - c. Provide a transportation information screen within the South Parcel residential lobby;
 - d. Reserve at least two car-sharing spaces within the South Parcel portion of the garage; provided, that upon the completion of the North Parcel portion of the garage, the car-sharing spaces may be located in either portion of the garage; and
 - e. Install at least six electric car-charging stations within the South Parcel portion of the garage; provided, that upon the completion of the North Parcel portion of the garage, the car-sharing spaces may be located in either portion of the garage.

First-Stage PUD Conditions

2. For the life of the North Parcel building, the Applicant shall provide the following transportation demand management (“TDM”) measures:
 - a. Designate a TDM coordinator responsible for organizing and marketing the TDM plan;
 - b. Provide information and website links to commuterconnections.com, goDCgo.com, and other transportation services on developer and property management websites; and

- c. Provide a transportation information screen within the North Parcel residential lobby.
3. If requested by DDOT, the Applicant shall provide an additional Comprehensive Transportation Review (“CTR”) for the second-stage PUD application for the North Parcel that is consistent with the CTR analysis provided as Exhibit 24H of the record.
4. In connection with the second-stage PUD application, the Applicant shall provide a parking analysis of the proposed amount of parking in the North Parcel building.

D. Miscellaneous

1. The first-stage approval shall be valid for a period of eight years from the effective date of this Order, within which time the Applicant must file an application for second-stage PUD approval of the North Parcel building.
2. No building permit shall be issued for this project until the Applicant has recorded a covenant among the land records of the District of Columbia between the owner and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Commission.
3. The consolidated PUD approval for the South Parcel building hereunder shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for the building permit for the South Parcel building as specified 11 DCMR § 2409.1. Construction shall begin within three years after the effective date of this Order.
4. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, *et seq.* (“Act”) and this Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, 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 also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by

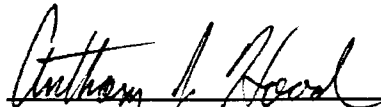
the Act. Discrimination in violation of the Act shall not be tolerated. Violators shall be subject to disciplinary action.

For the reasons stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that the application be **GRANTED**.


On April 27, 2015, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On June 8, 2015, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of § 3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on July 3, 2015.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-07A
Z.C. Case No. 14-07A
1250 4th Street (EDENS), LLC and Union Market Apartments, LLC
(Minor Modification of Consolidated Planned Unit Development)
May 9, 2016**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on May 9, 2016 to consider the request of 1250 4th Street (EDENS), LLC and Union Market Apartments, LLC (collectively, the “Applicants”) for a modification of the consolidated planned unit development (“PUD”) approved in Z.C. Case No. 14-07. The property (Lot 9, Square 3587)¹ that is the subject of Z.C. Order No. 14-07 is located in the 1200 block of 4th Street, N.E. (“Property”). The instant Order relates to the “South Parcel Building” and Neal Place extension (i.e., Lots 823-828 and 7006-7013, Square 3587). The public meeting was held in accordance with the provisions of 11 DCMR § 3030 and the Commission considered the application pursuant to 11 DCMR §§ 2400 et seq.

FINDINGS OF FACT

1. Z.C. Case No. 14-07 included a consolidated PUD approval and a first-stage PUD approval. Z.C. Order No. 14-07 (“Order”), which became final and effective on June 8, 2015, approved a consolidated PUD for a building with approximately 465 residential units above approximately 29,042 square feet of retail space on the southern portion of the Property (“South Parcel Building”). The South Parcel Building’s retail and residential components have frontage along 4th Street, S.E., and the building will have a maximum height of 110 feet. A 400-550-space parking garage was also approved as part of the South Parcel Building. Z.C. Order No. 14-07 also approved a Zoning Map amendment for the Property from the C-M-1 Zone District to C-3-C Zone District.
2. The first-stage PUD approval included a building on the northern portion of the Property (“North Parcel Building”) with approximately 165 residential units and approximately 12,000 square feet of retail use, which will have a maximum height of 110 feet. A parking structure with 80-200 parking spaces was also included in the first-stage PUD approval. The first-stage PUD approval is effective until June 8, 2023. The North Parcel Building is not the subject of this Order.

¹ At the time of the issuance of Z.C. Order No. 14-07, the Property was known as Parcels 129/77, 129/95, and 129/96. The Applicants combined these three parcels into one single record lot, Lot 9, and then further created a set of assessment and taxation lots on Lot 9.

3. On April 8, 2016, the Applicants filed an application for a minor modification in accordance with § 3030 of the Regulations. The specific elements of the minor modification are detailed in the record. (Exhibit [“Ex.”] 2, 2C.) The Applicants sought approval of the following modifications to the plans approved in Z.C. Case No. 14-07:
- Façade modifications – The façades have been modified due to permissible changes made to the internal layout of the South Parcel Building.
 - Due to shifts in the quantity and layout of units in the South Parcel Building, the fenestration and balconies have been reconfigured. The proposed 4th Street elevation now contains balconies only on odd floors, as opposed to every floor, and the projection of the balconies has been reduced from four feet to one and one-half foot. Additionally, the South Parcel Building’s western façade has been revised, including the refinements to the fenestration and balconies on the floors above the building’s brick base and the addition of fenestration, louvers, and doors along the ground and second floors. The aesthetics and materials of the modified facades appear the same as those originally approved by Z.C. Order No. 14-07.
 - Due to the changes in the South Parcel Building’s internal configuration, the closed courts along the east and south elevation have been enlarged while the closed courts along the west elevation have been reduced. The original order approved flexibility for the construction of noncompliant courts. The instant minor modification retains such element of court relief, while increasing the degree of relief needed on the three courts on the western façade and decreasing the degree of relief needed along the southern façade, with modified dimensions as shown in the record. (Ex. 2C, p. 5.)
 - The South Parcel Building’s lot occupancy has been increased from 83.6% to 84.5%. There is no maximum lot occupancy in the C-3-C Zone District.
 - Penthouse – The penthouse has been modified in compliance with § 411.24 of the Zoning Regulations. Subsection 411.24 allows for minor modification requests to add habitable penthouse space in a building approved by the Commission as a PUD.
 - The penthouse has been modified to be enlarged from up to approximately 16,834 square feet to up to approximately 22,250 square feet, including habitable space. In addition, two cores have been combined into one, the trellis at the covered pool deck has been reconfigured, and fenestration and doors have been added. The heights of the penthouse have been revised from 13 feet and 18 feet, six inches, to 11 feet, six inches for the habitable penthouse-level height; 17 feet, six inches for an elevator override height;

and 20 feet for the mechanical-level height. A one-to-one setback has been provided from all exterior walls, complying with the penthouse regulations, as shown in the record. (Ex. 2C, pp. 8-9.) The Order approved flexibility to allow for multiple roof structure heights. The instant minor modification would retain such roof structure relief by allowing for a differing height for the elevator override shown in the record. (Ex. 2C, pp. 8-9.)

- The amount of the South Parcel Building’s affordable housing has been increased as the result of the habitable space in the penthouse, in compliance with Inclusionary Zoning requirements. The modification of the penthouse, having a habitable area of up to approximately 15,280 square feet, requires a maximum of up to approximately 1,222 square feet of affordable housing (eight percent) at 50% of the Washington, D.C. Area Median Income (“AMI”) pursuant to § 2603.2 of the Zoning Regulations. Such amount of Inclusionary Zoning units would be in addition to the Order’s initial approval of the Inclusionary Zoning set aside. The additional Inclusionary Zoning units will be distributed throughout the South Parcel Building.
- Loading and parking garage – The design of the parking garage and the loading ramps and drive aisles have been modified. The express ramp originally intended for residential users of the garage has been eliminated and a shared ramp for residential and retail has been provided. Additionally, the width of the drive aisle has been reduced from 24 feet to 22 feet. Similarly, the layout of the garage has been reconfigured as areas such as the bicycle parking area have been relocated and revised on the B1 level. The loading facilities have been rotated from 90 degrees to 30 degrees allow for easier ingress and egress and more favorable vehicular turning radii.
- Timing of Neal Place extension construction – The timing of the construction of the Neal Place “extension” between 3rd and 4th Streets, N.E., has been modified to permit the construction prior to the issuance of the Certificate of Occupancy for the South Parcel Building. Condition B(4) of the Order contained a complex condition that described triggers for Neal Place’s construction. Such condition has been deleted and replaced with a simpler condition providing a faster delivery of the “extension”.

(Ex. 2-2C.)

4. The Applicants noted that otherwise, the proposed project remains the same as that approved by the Order. No other substantive changes to the benefits and amenities package was incorporated into this modification application. The Order approved a range of 415-510 dwelling units, and the modification provides approximately 430 units. The Order approved a range of 400-550 parking spaces and the modification provides approximately 400-430 spaces. (Ex. 2-2C.)

5. The Applicant served the application on Advisory Neighborhood Commission (“ANC”) 5D.
6. At the Commission's May 9, 2016 public meeting, the Commission approved the Applicants’ minor modification request on its consent calendar, specifically citing the project’s “greater affordable housing requirement” as a beneficial feature. At the public meeting, the Commission voted to approve the application.

AGENCY REPORTS

7. The Office of Planning (“OP”) submitted its report on April 29, 2016. OP recommended approval of the proposed modifications of the approved PUD. OP noted that, “The proposed modifications are generally in character with the original approval, and would overall represent an improvement to the project, particularly with respect to the conditions relating to Neal Place. With the exception of minor court adjustments along the alley, none of the requested modifications would result in new or expanded nonconformities to the Zoning Regulations.” (Ex. 5.)
8. No other agency reports were received nor required in the record.

ADVISORY NEIGHBORHOOD COMMISSION

9. ANC Commissioner Peta-Gay Lewis of District 5D01 submitted a letter into the record on May 6, 2016. This letter noted that the ANC supported the proposed changes, stating “Overall, we support the modifications to the project approved under Z.C. Order No. 14-07 and believe that the proposed revisions constitute a minor modification that can be approved without delay.” (Ex. 6.)

PARTIES AND/OR PERSONS IN SUPPORT OR OPPOSITION

10. There were no other persons or parties in opposition to the PUD modification.

CONCLUSIONS OF LAW

Upon consideration of the record of this application, the Commission concludes that the Applicants’ modifications to the approved plans are consistent with the intent of the previous PUD approval made in the Order. The Commission agrees with the conclusions of OP that the proposed modifications are in many respects an improvement over the original project. The Commission acknowledges the increase in the amount of affordable housing provided by the project and the expediting of the construction of the Neal Place “extension” and finds that the project has been improved as the result of these modifications. The Commission concludes that the proposed modifications are in the best interest of the District of Columbia and are consistent with the intent, purpose, and integrity of the Zoning Regulations and the Zoning Act. The Commission also concludes that the approval of the modification application is not inconsistent with the Comprehensive Plan.

Subsection 2409.9 of the Zoning Regulations authorizes the Commission to approve proposed modifications to an approved PUD that are beyond the limited scope of authority granted to the Zoning Administrator. Furthermore, § 3030 of the Zoning Regulations provides for an expedited “Consent Calendar” procedure, allowing the Commission to make minor modifications and technical corrections to an approved PUD Order without need for a public hearing. Pursuant to § 3030.2, “minor modifications” are those modifications of little or no consequence. The Commission concludes the requested modification can be approved without a hearing because of the minor consequences of the proposed changes. The Applicants have redesigned the interior of the South Parcel Building, resulting in minor exterior modifications, and otherwise implemented the recently adopted penthouse regulations and refined the proposal. The modifications described above do not affect the building height, density, or design concept that was approved by the Commission. Nor does it affect the benefits and amenities offered by the project.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC. As noted above, ANC 5D01 submitted a letter in support of this application and the Commission concurs with its opinion. No other ANC correspondence was received nor required.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP recommended approval of this application and the Commission concurs in its recommendation.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for a minor modification of the approved consolidated PUD. The approval of this modification incorporates the conditions stated in Z.C. Order No. 14-07 and modifies the conditions as stated below:

Conditions A(1), A(2), and B(3) of the Order are revised to read as follows (new text shown in bold and underlined; deletions shown in strikethrough):

A. PROJECT DEVELOPMENT

1. The South Parcel shall be developed in accordance with the architectural drawings submitted into the record on March 6, 2015 as Exhibits 31A1-31A2 **in Z.C. Case No. 14-07**, as modified by the drawings submitted on March 26, 2015 as Exhibits 40A1-40A4 **in Z.C. Case No. 14-07** and the drawings submitted on April 9, 2015 as Exhibits 46D and 46E **in Z.C. Case No. 14-07, as amended by the plans and materials submitted as Exhibit 2C of Z.C. Case No. 14-07A**, and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").

2. The South Parcel shall include a mixed-use building containing approximately 384,351 square feet of gross floor area (5.68 FAR) consisting of approximately 29,042 square feet of retail use, approximately 355,309 of residential use with approximately ~~465~~ **430** residential units, and a parking garage containing approximately ~~400-550~~ **430** parking spaces for both commercial parking and accessory parking for the Project, as shown on the Plans.

B. PUBLIC BENEFITS

3. For so long as the project exists, and as required by the Inclusionary Zoning (“IZ”) Regulations (Chapter 26 of Title 11), the Applicant shall set aside a minimum of: (a) eight percent of the residential gross floor area of the South Parcel Building not located in the structure’s penthouse, i.e. 28,425 square feet (“South Parcel’s Main Building Required Set Aside”) for Inclusionary Units; ~~and~~ (b) the North Parcel 50% AMI Component (defined below) as Inclusionary Units in the South Parcel Building; **and (c) the South Parcel Building Penthouse Required Set Aside (defined below) in the South Parcel Building.**

- a. The South Parcel’s Main Building Required Set-Aside shall be broken down as follows:
 - i. 20% of the South Parcel Main Building Required Inclusionary Set-Aside, i.e. 5,685 square feet shall be set aside for households earning up to 50% AMI; and
 - ii. 80% of the South Parcel Main Building Required Inclusionary Set-Aside, i.e. 22,740 square feet shall be set aside for households earning up to 80% AMI;
- b. In addition to the South Parcel’s Main Building Required IZ Set-Aside, and for so long as the project exists, the Applicant shall set aside an additional 2,260 square feet of residential gross floor area in the South Parcel Building for units reserved for households earning up to 50% AMI (the “North Parcel 50% AMI Component”). This amount represents 20% of the 11,300 square feet of gross floor area that the North Parcel is required to set aside as Inclusionary Units pursuant to 11 DCMR § 2603 based on the proposed residential gross floor area of the North Parcel Building (141,249 square feet x eight percent). Because these units are in satisfaction of a portion of the North Parcel Building’s IZ requirements, the units, although located in the South Parcel Building, shall be deemed “inclusionary units” required under Chapter 26 of title 11, and therefore subject to all statues and regulations regulating Inclusionary Units; and
- c. **In addition to the South Parcel Main Building Required Set-Aside and the North Parcel 50% AMI Component, the Applicant shall demonstrate that it has set aside a minimum of eight percent of the**

residential gross floor of the penthouse habitable space located on the South Parcel Building (up to approximately 1,222 square feet), as Inclusionary Units reserved for households earning up to 50% AMI ("South Parcel Penthouse Required Set Aside"). These IZ units may be distributed throughout the South Parcel Building.

Delete the entirety of Condition B(4) and replace it with the following:

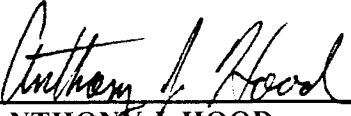
4. Prior to the issuance of the certificate of occupancy ("C of O") for the South Parcel Building, the Applicant shall complete construction of the final Neal Place extension as shown on the Plans and open the roadway to vehicular traffic;


On May 9, 2016, upon motion by Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** this application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.8, this Order shall become final and effective upon publication in the *D. C. Register* on May 5, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

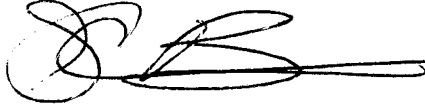
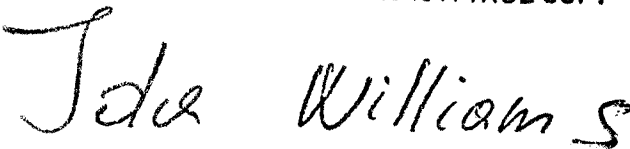
A majority of the Commission members approved the issuance of this Order.


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION


SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

Doc #: 2017062095 Fees: \$31.50
06/06/2017 02:43 PM Pages: 50
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WASH DC RECORDER OF DEEDS IDA WILLIAMS

RECORDING FEES \$25.00
SURCHARGE \$6.50


THIS IS TO CERTIFY THAT THIS IS A TRUE COPY

Ida Williams
Recorder of Deeds, D.C.

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