

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-12E

Z.C. Case No. 14-12E

Clarion Gables Multifamily Trust, L.P. and EAJ 1309 5th Street, LLC
(Second-Stage PUD @ Square 3591 [1329 5th Street, N.E.]
January 13, 2020

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on November 25, 2019, to consider an application (the “Application”) from Clarion Gables Multifamily Trust, L.P. and EAJ 1309 5th Street, LLC (collectively, the “Applicant”) for review and approval of a second-stage planned unit development (“PUD”) pursuant to the first-stage PUD (the “First-Stage PUD”) approved by the Commission in Z.C. Order No. 14-12 (the “First-Stage Order”) for Lots 809, 810, 7020, 7022, 7024-7030, 7032, and 7035 in Square 3591, with an address of 1329 5th Street, N.E. (the “North Parcel”).¹

The Commission considered the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”] to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

NOTICE

1. On June 6, 2019, the Office of Zoning (“OZ”) sent notice of the public hearing to: (Exhibit [“Ex.”] 19.)
 - The Advisory Neighborhood Commission (“ANC”) 5D (the “affected” ANC pursuant to Subtitle Z § 101.8);
 - The affected ANC Single Member District 5D01;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Consumer and Regulatory Affairs (“DCRA”);
 - The Office of the Attorney General;
 - The District Department of Energy and Environment (“DOEE”);

¹ These lots are the portions of Record Lot 5 in Square 3591 north of and including the urban plaza space located at the south of the building approved by this Order. The North Parcel also has an address of 1325 5th Street, N.E.

- The DC Housing Authority – Relocation Committee;
 - The DC Council’s At-Large Councilmembers;
 - Councilmember McDuffie; and
 - Property owners owning property within 200 feet of the Overall PUD Site (as hereinafter defined).
2. OZ also published notice of the November 25, 2019 public hearing in the *D.C. Register* on October 11, 2019, as well as through the calendar on OZ’s website. (66 DCR 13369; Ex. 17.)
 3. The Applicant posted notice of the Property pursuant to the Zoning Regulations. (Ex. 22.)

PARTIES

4. The parties to the case were the Applicant and ANC 5D. The Commission received no requests for party status.

THE FIRST-STAGE PUD

5. In the First-Stage Order, the Commission approved:
 - The First-Stage PUD for the North Parcel;
 - A consolidated PUD for Lots 802, 808, 7004-7005, 7011-7013, 7034, and 7036-7038 in Square 3591 (the “South Parcel,” and collectively with the North Parcel, the “Overall PUD Site”); and
 - A related map amendment for the Overall PUD Site, which is Record Lot 5 in Square 3591, to the C-3-C Zone District (the current MU-9 zone).
6. The First-Stage PUD established the height and massing, program of uses, and vehicular access considerations for the mixed-use building (the “North Building”) to be constructed on the North Parcel, its below-grade parking garage, and related exterior improvements, within the following parameters:
 - A maximum height of 120 feet;
 - A total floor area of up to approximately 325,000 square feet of gross floor area (“GFA”);
 - A floor area ratio (“FAR”) of 3.78 (6.3 for the Overall PUD Site); and
 - A lot occupancy of approximately 77% (84% for the Overall PUD Site).
7. In Z.C. Order No. 14-12A, the Commission approved a two-year time extension for the filing of building permits for the South Parcel Consolidated PUD and Map Amendment until May 9, 2019. (Ex. 2G.)
8. In Z.C. Case No. 14-12B, the Applicant requested a second-stage PUD approval for the North Parcel and a modification of the South Parcel Consolidated PUD. However, the application was subsequently withdrawn by the Applicant. (Ex. 2G.)
9. In Z.C. Order No. 14-12C, the Commission approved a modification of consequence for the South Parcel to allow interim conditions. (Ex. 2G.)

10. In Z.C. Order No. 14-12D, the Commission approved a one-year time extension to file for building permits for the South Parcel Consolidated PUD and Map Amendment until May 9, 2020. (Ex. 2G.)

II. THE APPLICATION

THE SECOND-STAGE PUD

11. The Application requested second-stage PUD approval to construct the following (the “Project”):
 - A new 11-story mixed-use building (the “North Building”), with approximately 317,950 gross square feet and a FAR of 3.71, containing street-activating ground-floor retail/commercial and “PDR/Maker” uses (defined below), a ground-floor residential lobby and residential amenity uses, and upper-story multifamily residential uses;
 - A new urban plaza (the “Plaza”) that separates the North Building from the South Parcel and its proposed buildings (the Plaza was sometimes referred to as the “Urban Plaza” in the First-Stage Order); and
 - Three-and-a-half levels of below-grade parking with approximately 310 parking spaces (plus or minus 10%) to serve the North Building, the South Parcel, and surrounding properties. (Ex. 2.)
12. The North Building’s approximately 287,530 square feet of residential uses includes a mix of studio, one-bedroom, two-bedroom, and two-bedroom-plus-den units for a total of approximately 300 units. The Project has dedicated amenity space for resident events as well as numerous private outdoor balconies and terraces. The penthouse of the North Building also contains approximately 15,568 square feet of amenity space for residents. (Ex. 2.)
13. At the ground-floor level, the North Building contains approximately 23,053 square feet of retail/commercial space (including PDR/Maker space, defined below), plus a residential lobby, residential amenity areas, and back-of-house functions. The retail/commercial area includes a space potentially accessible from the Plaza and 5th and 6th Streets, N.E. and will be able to be further divided as necessary to accommodate particular tenants. The ground-floor layout can accommodate numerous pedestrian entrances in order to activate the Plaza and the surrounding streets. (Ex. 2.)
14. At least five percent of the approximately 23,053 square feet of non-residential uses on the ground floor of the Project shall be dedicated to “PDR/Maker” uses, which include:
 - Production, sale, and/or distribution of food and beverages (provided that the onsite consumption of food and beverages shall only be permitted when associated with such production, sale, and/or distribution user);
 - Food incubators and food hubs;
 - Robotics and 3-D manufacturing;
 - Small-scale production, distribution or repair of goods and related accessory sales;
 - Curation and sale of small-scale production goods;

- New and locally-owned small businesses as certified with the Department of Small & Local Business Development;
 - “Creative economy” uses including incubators, graphic design, product or industrial design, engineering and design, technology design and production, design and product curation, fashion design, horticultural design, green businesses and sustainable design, specialty sports and recreation uses, and media/communications production and distribution; and
 - “Arts” uses including the arts, design, and creation uses as defined in Subtitle B § 200.2(e) and the entertainment, assembly, and performing arts as defined in Subtitle B § 200.2(m).
- (Ex. 2 at 7.)
15. The Application asserted that the Project’s architectural design, materials, and detailing are a contemporary interpretation of Union Market’s mercantile heritage and serve to relate the Project to the surrounding development, as well as to activate the surrounding public realm. (Ex. 2.)
 16. The Application asserted that the hardscaped public Plaza will separate the North and South Parcels. The Plaza is intended to be an active, pedestrian-friendly space that is both a public amenity and community-gathering place for area residents and workers in the Union Market District and ANC 5D, as well as a destination for visitors from Ward 5, the District, and the broader metro region. (Ex. 2.)
 17. The Application provided a conceptual rendering of the Project’s retail/commercial and building signage, which is intended to be contextual in scale and character while still in keeping with modern design. (Ex. 2)
 18. The Project features a variety of landscaping improvements at street level, at the second-story terrace level, and on the various rooftop areas of the building, including on the streetfront canopies. The 5th and 6th Street, N.E. frontages adjacent to the Project feature wide sidewalks with outdoor seating/café spaces, planting areas, street trees, and unique, large canopies, with green plantings atop. Vegetation is also included at the rooftop level as a green amenity for building occupants and for the environmental and stormwater benefits. The Project’s lighting plan ensures pedestrian comfort and safety and also serves as an organizing and distinctive design element. The design of the public spaces adjacent to the North Parcel is in accordance with Union Market Streetscape Guidelines, which the Applicant has worked to finalize with DDOT and OP. (Ex. 2.)
 19. The Project contains three-and-a-half levels of below-grade parking to serve the residential and retail/commercial uses. The residential spaces will be access-controlled, but the retail/commercial spaces will be available to the public generally. The Project is anticipated to include up to approximately 310 parking spaces (plus or minus 10%), which significantly reduces and narrows the 300-475 parking spaces range approved by the First-Stage PUD. As established in the First-Stage PUD, the Project’s garage includes parking spaces for the uses on the South Parcel and potentially elsewhere in the Union Market District. (Ex. 2.)

20. In addition, the first below-grade level of the garage includes a secure bicycle storage room with capacity for approximately 111-119 long-term bicycle spaces. The bicycle storage room also has access via the parking ramp from 6th Street, N.E., the retail jump elevator from 5th Street, N.E., and the pair of residential elevators from 5th Street, N.E. An additional approximately 17-27 short-term bicycle parking spaces are provided in public areas around the North Parcel. In accordance with the First-Stage PUD, the Project’s garage includes long-term bicycle parking for the future retail/commercial uses in the South Building. (Ex. 2.)
21. The Project contains a total of two 30-foot loading berths with adjacent platforms and one smaller retail/commercial trash compactor space. The two fully-enclosed loading spaces serving both the retail/commercial and residential uses are located on the ground level on the north side of the North Building via a shared entry area with the parking garage entrance. As discussed below, the Application requested flexibility from the loading requirements. (Ex. 2.)
22. The Project is designed to LEED Silver v4 (the functional equivalent of LEED Gold 2009 in effect at the time the First-Stage PUD became effective). As discussed further below, the Project’s level of sustainability exceeds that required under the First-Stage PUD. Specific sustainable design features include, among other things, provision of photovoltaic solar panels on the penthouse roof. (Ex. 2, 20D.)

CHANGES FROM FIRST-STAGE

23. The Application asserted that the Project is consistent with the First-Stage PUD and does not request modifications of either:

- The building envelope parameters established by the First-Stage PUD and the plans approved thereby, specifically:

<u>North Building</u>	<u>First-Stage PUD</u>	<u>Proposed Second-Stage PUD</u>
Lot Occupancy	77% (84% overall)	77% (84% overall)
GFA – Total	325,000 square feet (“sf”)	317,950 sf
Retail/Non-Residential	35,000 sf	23,053 sf
Residential	290,000 sf of office or residential (no residential penthouse)	287,530 sf (including 15,568 sf residential penthouse) with approximately 300 units
Service/BOH/Loading	Included in retail and residential sf above	7,367 sf
FAR	3.78 (North Parcel)	3.71 (North Parcel)
Height	120 feet	120 feet
Parking (Below Grade)	300-475 spaces	310 spaces (+/- 10%)

- Or, the conditions of the First-Stage Order applicable to the North Parcel. (Ex. 2, 20D, 35A.)
24. The Application proposed the following changes, which are all within the parameters of the First-Stage PUD:
 - Changes to approved uses and plans, including committing to residential instead of potential office space and reduced GFA, as well as new residential amenity space in the penthouse;

- Changes to zoning flexibility; and
- Additional public benefits.

Changes to Approved Uses and Plans

25. The Application requested to withdraw the flexibility approved by the First-Stage PUD to provide either office or residential uses above the lower-floor retail, because the Application committed to providing only residential uses in the upper stories of the North Building.
26. The Application proposed to reduce, by approximately 7,050 square feet, the 325,000 square feet of GFA approved in the First-Stage PUD to a total of approximately 317,950 square feet. This reduced GFA is the result of the Applicant providing appropriately scaled floor plates, articulation, and an over-sized court on the north side of the Project, all of which together create interesting exterior architecture and improve access to light and air. (Ex. 2.)
27. This 317,950 residential square feet included approximately 15,568 square feet of shared building amenity space in the North Building's penthouse that was not permitted at the time the Commission approved the First-Stage PUD.
28. The Application reduced the amount and range of parking from the 300-475 approved by the First-Stage PUD to 310, plus or minus 10% and has committed to deliver this parking earlier than anticipated by the First-Stage PUD (i.e., with the North Building that had been anticipated to be built after the South Building).

Changes to Approved Development Flexibility – Relief from Zoning Requirements

29. The Application requested to withdraw the relief granted for a non-compliant closed court on the north side of the Project because the Application proposed to make that court compliant. (Ex. 2.)
30. The Application requested the Commission to approve relief from the loading requirements of the 1958 Zoning Regulations, under which the Commission reviewed and approved the First-Stage PUD, to provide:
 - Two 30-foot loading berths,
 - Two 100 square foot loading platforms; and
 - A trash compactor space.

Absent relief, the 1958 Zoning Regulations would require:

- A 55-foot loading berth,
- A 200 square foot loading platform, and
- A 20-foot delivery space.

The Application noted that this loading relief would not be required by the current Zoning Regulations and asserted that the First-Stage Order contemplated this relief because:

- The First-Stage PUD application for the North Parcel had stated that flexibility from the loading requirements likely would be requested as part of the second-stage PUD application for the North Parcel;

- The plans approved by the First-Stage Order that stated that loading was “TBD in North Building Phase [*sic* - Stage] 2 Application”; (Ex. 35A1, p. 10, reproducing Sheet Z1 of Ex. 2A6 of First-Stage Order.)
 - The First Stage Order specified that “[l]oading for the North Building will be approved as part of its Phase [*sic* - Stage] 2 approval”; and (First-Stage Order, Condition No. A.5.);
 - The Consolidated PUD approved by the First-Stage Order granted loading flexibility for the South Building and noted that “the Applicant will likely include a request for additional loading relief for its North Building as part of its Phase [*sic* - Stage] 2 PUD application.” (First-Stage Order Finding of Fact [“FF”] 37(a), Note 2.)
31. The Application proposed to retain the relief approved by the First-Stage PUD from providing penthouse screening walls of equal height in order to provide penthouse walls ranging from one foot to 20 feet in height. (Ex. 2.)

Additional Public Benefits

32. The Application did not propose to reduce or change any of the public benefits approved by the First-Stage PUD, and initially offered to add the following new public benefits: (Ex. 2.)
- Enhanced Housing and Affordable Housing:
 - Provide 8% of residential GFA for affordable housing; and
 - Provide deeper affordability level for 20% of this affordable housing, which shall be reserved for households earning up to 50% of the median family income (“MFI”), with 80% reserved for households earning up to 80% MFI; and
 - Enhanced Sustainable Design:
 - Increase the LEED commitment to LEED Silver v4 (the equivalent of LEED Gold 2009) from the LEED Silver 2009 required by the First-Stage PUD; and
 - Investigate possibility of roof solar panels; and
 - Maker Space:
 - Build out 50% of the 23,053 square feet of ground-floor non-residential space to specifications for PDR/Maker uses and devote five percent of this 23,053 square feet to such uses for five years.

APPLICANT’S JUSTIFICATION

The Project Is Not Inconsistent with the Comp

33. The Application asserted that the Project is consistent with the First-Stage PUD and therefore is not inconsistent with the Comprehensive Plan or other adopted and applicable public policies. (Ex. 2.)

Consistency with the First-Stage PUD

34. The Application before the Commission and factored into the Commission’s analysis that resulted in the First-Stage PUD. Nonetheless, the Applicant significantly increased the public benefits approved asserts that the Project’s requested zoning and design flexibility is minor and was generally by the First-Stage PUD.

The Project Has No Unacceptable Impacts Not Reviewed by the First-Stage PUD

35. The Applicant prepared a detailed analysis of the potential impacts of the Project, including a Comprehensive Transportation Review (“CTR”) and an Analysis of Potential Impact of the Development on Displacement, Rents, Property Values, and Gentrification. (Ex. 2, 18A, 27.)
36. The Project is expected to have favorable impacts in terms of land use and urban design. The Project will provide a mix of residential and retail uses, along with extensive improvements to the public realm in the form of the Plaza which will serve the overall planning objectives of the Union Market area and the First-Stage PUD.
37. The Application asserted that the Project would not result in potential adverse impacts in terms of displacement of current residents due to its location on a “underdeveloped predominantly vacant warehouse site.” The Project was also expected to help mitigate increasing prices and rents in the area by providing housing in a range of prices. The Project was also expected to have an overall positive impact on housing by providing 300 units, including IZ, close to mass transit and supporting commercial uses. (Ex. 27.)
38. The Project is not anticipated to have any adverse impacts with respect to transportation. The Application notes that the North Parcel is well served by transit and vehicular infrastructure. Further, the Applicant’s CTR concluded that the vehicular trips generated by the residential use will be significantly less than the maximum trips generated under the First-Stage PUD for the office use. As noted in the CTR, the Project is expected to decrease its morning peak hour trip generation by 115 vehicular trips versus the office uses approved by the First-Stage PUD, and its evening peak hour trip generation by 120 vehicular trips. (Ex. 18A at 6-7.) Nevertheless, the Applicant has committed to mitigate any such impacts through a comprehensive set of parking, loading, and transportation demand management (“TDM”) conditions as well as providing additional transportation demand management public benefits. (Ex. 2, 18A.)

Applicant’s Submissions

39. The Application as detailed above was the result of a total of six submissions to the record. In addition to the initial application, the Applicant provided the following submissions, as well as its testimony at the public hearing: (Ex. 1-2J11.)
 - A prehearing submission dated September 19, 2019, responding to OP’s requests from setdown (the “First Prehearing Submission”); (Ex.14-14E.)
 - A second prehearing submission dated November 5, 2019, further responding to OP and DDOT (the “Second Prehearing Submission”); (Ex. 20-20D5.)
 - A third prehearing submission dated November 22, 2019, providing additional responses to OP and DDOT (the “Third Prehearing Submission”); (Ex. 25.)
 - A post-hearing submission responding to specific requests made by the Commission at the public hearing (the “Post-Hearing Submission”); and (Ex. 32.)
 - A draft order and complete set of final plans. (Ex. 33, 35A.)

Responses to OP

40. The First Prehearing Submission mainly responded to the requests in the OP Setdown Report, including:
- Increasing affordable housing from 8% to 9% of residential GFA
 - Increasing the affordability of the affordable housing by reserving with 30% (instead of the initial proffer of 20%) at no more than 50% AMI and 70% at no more than 80% MFI;
 - Increasing the size of affordable units - reserving 10 units with two or more bedrooms, including four of five units with two-bedrooms-plus-a-den layout;
 - Providing fewer, but larger units to provide more family-sized units of two-bedrooms-plus-a den, even though the Project's configuration rendered it impossible to provide "true" three-bedroom units;
 - Providing additional information regarding the location, number, and unit type for the IZ units;
 - Providing between 1,300 and 2,300 square feet of solar panels;
 - Providing seven electric vehicle charging stations in the garage;
 - Identifying the location of the 50% of non-residential ground floor GFA to be built for PDR/Maker uses;
 - Providing additional details of the plans for the Plaza;
 - Committing to redesign the Project such that retail entrances can be located on 5th and 6th Streets, N.E.;
 - Retaining the residential lobby in its originally proposed location;
 - Redesigning the canopies and loggia as shown in the Approved Plans (as hereinafter defined);
 - Revising the lighting treatments and other design details as shown in the Approved Plans; and
 - Provide a knock-out panel in garage's first level on north side to allow an internal connection to a future garage on the JBGS-Gallaudet Property.
41. The Applicant provided a further response to the OP Setdown Report in the Second Prehearing Submission in which it responded to comments raised by DC Water, DOEE, Department of Parks and Recreation ("DPR"), Department of Housing and Community Development ("DHCD"), and DDOT at the October 24, 2019, interagency meeting hosted by OP, many of which were addressed by the First Prehearing Submission, as well as agreeing to OP's request to consider installing solar panels over green roofs over a portion of the penthouse above the green roof. (Ex. 20 at 3-10.)
42. The Applicant provided a further response to OP in its Third Prehearing Submission in which it:
- Explained its refusal to lower the 80% AMI threshold to 60% AMI;
 - Explained its refusal to extend the five-year period for which five percent of the non-residential ground floor GFA would be reserved for PDR/Maker uses;
 - Updated the plans to specify the 50% of the non-residential ground-floor GFA to be built for PDR/Maker uses;

- Provided a copy of its First Source Employment Agreement with the Department of Employment Services; and
- Noted that it had indicated in its first-stage application that it would likely seek loading flexibility as part of the second stage. (Ex. 25 at 9.)

Responses to DDOT

43. The Applicant provided its responses to the DDOT Report in its Third Hearing Submission in which it committed to:
- DDOT’s additional standard TDM measures, except for DDOT’s proposed three year bike share membership for each tenant, which it proposed to address instead by providing a \$14,000 for car share or bikeshare memberships for tenants of the North Building in addition to a similar fund for tenants of the South Building established by the First-Stage Building;
 - Provide an electronic transportation information screen;
 - Work to obtain a letter from the neighboring property owner confirming potential internal connection through knockout panel in garage to a future garage on the neighboring property;
 - Continue to work with DDOT during the building permit and construction phases of the Project; and
 - Further coordinate with DDOT regarding the Project’s projections.

Public Hearing of November 25, 2019

44. At the November 25, 2019, public hearing the Applicant presented two witnesses on behalf of the Applicant, and three experts: Mr. Frank Andre as an expert in architecture, Mr. Robert Schiesel as an expert in transportation analysis and engineering, and Mr. Matt Renaud as an expert in landscape architecture. The Commission had previously accepted Messrs. Andre and Schiesel as experts in their respective fields and newly elected to accept Mr. Renaud as an expert. (November 25, 2019, Public Hearing Transcript [“Nov. 25 Tr.”] at 6-7.) Thereafter, the Applicant’s representatives and the experts presented testimony about the Project. (Ex. 26A; Nov. 25 Tr. at 9-31.)

Post Hearing Submissions

45. Following the public hearing, the Applicant filed a statement responding to the questions and concerns of the Commission, OP, and DDOT by: (Nov. 25 Tr. at 31-71, 76-77.)
- Improving the LEED level of the Project to LEED Gold v 4 (from the initial proffer of LEED Silver v4);
 - Increasing the solar panel commitment to 2,000 square feet of solar panels (from the initial offer of 1,300 square feet of panels);
 - Enhancing the Project’s car share or bicycle share membership commitment to \$40,000 for the North Building (from the initial proffer of \$14,000) in addition to the \$14,000 required for the South Building by the First-Stage Order;
 - Providing electrical outlets in the long-term bicycle storage room to accommodate future e-bicycle usage;
 - Providing precedent examples of existing buildings using the same light brick materials proposed for the Project;

- Providing more information and alternative designs for the north façade of the Project;
- Providing more information about the controls and use of the Plaza;
- Providing a code compliant alternative design for the “surround” on the west façade of the Project;
- Revising and providing more information regarding the lighting program for the Project;
- Revising the design of the trellis on the Project’s rooftop;
- Providing more detail in the Project’s signage plans; (Ex. 32F.)
- Providing the letter of acknowledgement from the owner of the JBGS-Gallaudet Property regarding the knock-out panels in the Project’s garage as requested by DDOT’s public hearing testimony; and (Ex. 32, 32L.)
- Modifying the requested design flexibility to reflect the Commission’s request.

III. RESPONSES TO THE APPLICATION

OP REPORTS

46. OP submitted two reports to the record in addition to testimony at the public meeting for setdown and at the public hearing:
- A July 19, 2019, setdown report recommending that the Commission set down the Application for a public hearing and requesting additional information and changes to the Application (the “OP Setdown Report”); and (Ex. 12.)
 - A November 15, 2019, hearing report that requested additional information but did not make a final recommendation regarding approval (the “OP Hearing Report”). (Ex. 21.)

The OP Setdown Report

47. The OP Setdown Report noted the Commission had completed the Comprehensive Plan (“CP”) analysis in the First-Stage PUD and did not require revisiting as part of the Commission’s review of the Application.
48. The OP Setdown Report recommended that the Application be set down for a public hearing but with the suggested following changes to the Application:
- Increasing the amount of affordable housing in the proposal;
 - Providing three-bedroom units;
 - Providing permanent retail entrances on 5th and 6th Streets, N.E.;
 - Providing solar panels on the roof and locating solar panels on the green roof;
 - Identifying on the plans the 11,527 square feet (50%) proposed for PDR/Maker Space on the ground floor and dedicating that entire space to PDR/Maker use for the life of the Project;
 - Exploring moving the lobby to the southeast corner of the property along 6th Street, N.E. and the Plaza to free up additional retail space along 5th Street, N.E.;
 - Exploring redesigning the canopies and the loggia on 5th Street, N.E. to make such canopies a more visible and prominent feature of the façade and impose minimum dimensional standards; and
 - Reviewing lighting treatments for the underside of the canopies, and the addition of repeating horizontal support beams to punctuate a procession along the building frontage similar to the precedent image shown on the Applicant’s package.

49. The OP Setdown Report requested the following information:
- Affordable housing, including floor plans showing the location, number, and types of IZ units and depth of affordability;
 - The IZ requirement for the North Building;
 - The streetscape plans and the use of public space in compliance with the Union Market Streetscape Guidelines; the anticipated tenants of the ground floor and how the tenants would meet the goals of the Ward 5 Industrial Land Transformation Study;
 - How the street space can be enhanced with artwork, parklets, café seating adjacent to the street edge;
 - The sidewalk transition along the curbless 5th Street, N.E.;
 - The Plaza including identifying specific hardscape materials to be used, images of outdoor furniture, including benches, and any landscaping that would be incorporated into the space;
 - The types of materials to be used;
 - Window details illustrating window mullions and depth from the façade;
 - The use of bolder color and pattern on the building, particularly in the black metal clad portion;
 - Sign plan, including sign types, illumination, and building locations;
 - The rooftop, including proposed structures; and
 - The number and location of electric vehicle charging stations.
50. The Applicant responded to all of these requests in its subsequent filings. (Ex. 14, 20, 25, 26A, 32.)

The OP Hearing Report

51. The OP Hearing Report did not make a final written recommendation on the Application as a whole but:
- Reiterated OP's conclusion that the Application was generally consistent with the First-Stage PUD which the Commission had concluded that was not inconsistent with the CP; and
 - Recommended approval of the requested penthouse amenity space.
52. The OP Hearing Report noted that the Application was providing several public benefits in the area of affordable housing, environmental features, open space improvements, the inclusion of the maker-space, transportation benefits, and the provision of a First Source Employment Agreement, but nonetheless encouraged the further specific enhancement of the public benefits:
- Ensuring the rental IZ units (other than those proffered at 50% MFI) comply with the 60% MFI requirement for IZ rental units;
 - Extending the commitment for the PDR/Maker use from five years to 20 years; and
 - Recommending that the Commission impose as a condition of approval that the industrial specifications be included on the plans for the Second-Stage PUD approval.
53. The OP Hearing Report also requested the following information:

- Clarification regarding the required level of affordability (MFI) for affordable housing in the North Building, as Z.C. Order 14-12 did not specifically address the affordable housing requirement for the North Building and the Zoning Regulations have since been amended to require 60% MFI for rental buildings;
- Clarification regarding the loading flexibility that has been requested for the North Building, since it did not appear that relief was requested for the North Building as part of the First-Stage PUD; and
- An update on the status of the First Source Employment Agreement. (Ex. 12, 21.)

Public Hearing Testimony

54. At the public hearing, OP testified in support of the Project but encouraged the Applicant to:
- Include more affordable housing and at deeper levels of affordability in the Project; and
 - Commit to reserve the space dedicated to PDR/Maker uses for a period longer than five years. (Nov. 25 Tr. at 71-73.)
55. OP noted that the Applicant had already responded to a number of OP’s comments and had submitted additional materials to the record which appeared to further address OP’s outstanding questions but which OP could review further at the Commission’s discretion. (Nov. 25 Tr. at 73.)

DDOT REPORT AND TESTIMONY

56. DDOT filed a November 20, 2019, report (the “DDOT Report”) that stated DDOT had no objections to the Application based on the following findings: (Ex. 25.)
- There was no need to perform an additional traffic capacity analysis as part of the Project because the transportation analysis in the First-Stage PUD was performed on the basis of office use on the North Parcel, and office use generates more vehicle trips than the residential use proposed as part of the Application;
 - The vehicle parking supply is within the range of the First-Stage PUD;
 - The Project’s access is consistent with DDOT standards;
 - The Applicant’s loading management plan (“LMP”) sufficiently mitigates the request for loading relief;
 - The bicycle parking satisfies the Zoning Regulations;
 - The Project’s TDM plan is a strong basis for achieving the proposed transportation mode split identified in the CTR, but additional financial incentive for bikeshare membership was likely appropriate;
 - The Project’s public space improvements are consistent with the Union Market Streetscape Guidelines; and
 - The Applicant proposes to design into the Project the ability to construct knock-out panels along the north edge of the Project’s garage in order to facilitate access to the JBGS-Gallaudet Property to the extent necessary. (Ex. 23.)
57. The DDOT Report’s recommendation was conditioned on the inclusion of additional TDM measures and follow-up items including:

- Standard TDM measures such as provision of information and further coordination with DDOT;
- Provision of an electronic transportation information screen;
- Enhanced bicycle sharing memberships;
- A commitment to designing the Project to accommodate the aforementioned knock-out panel in the garage to the extent necessary;
- An acknowledgement letter from the owner of the JBGS-Gallaudet Property, which lot would be the beneficiary of such knock-out panels;
- Installation of electric vehicle charging stations;
- Continued coordination with DDOT on sequencing and construction-period matters; and
- Coordination with DDOT on the Project's projections into public space.

58. The Applicant responded to the items in DDOT's report in the Second and Third Prehearing Submissions. (Ex. 20, 25.)

Public Hearing Testimony

59. At the public hearing, DDOT stated that the Applicant's written filings and presentation responded to all of DDOT's concerns and requests for information, but requested an acknowledgement from the owner of the JBGS-Gallaudet Property regarding the Applicant's efforts to provide vehicular access to the JBGS-Gallaudet Property via knock-out panels in the Project's garage. (Nov. 25 Tr. at 73.)

ANC 5D Report

60. ANC 5D filed two letters in this proceeding:

- A June 21, 2019, letter stating its support for the Application with no issues or concerns; and (Ex. 11.)
- A December 10, 2019, letter stating that the ANC had reviewed and appreciated the Applicant's revised proffers and voted to support the Application with no issues or concerns. (Ex. 32A)

Other Agencies/Persons/Groups

61. No persons or organizations other than the Applicant, OP, and ANC 5D filed written comments in the record or testified at the public hearing. (Nov. 25 Tr. at 79.)

CONCLUSIONS OF LAW

1. The Applicant requested approval, pursuant to Subtitle X, Chapter 3 for a Second-Stage PUD. The Commission is authorized under the Zoning Act to approve a Second-Stage PUD consistent with the requirements set forth in Subtitle X §§ 302, 304 and 309.
2. Subtitle X § 300.1 establishes that:

The purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:

 - a. Results in a project superior to what would result from the matter-of-right standards;*
 - b. Offers a commendable number or quality of meaningful public benefits; and*

- c. *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
3. Subtitle X §§ 304.3 and 304.4 specify that:
“In deciding a PUD application, the Zoning Commission shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case” based on the Commission finding that the application:
 - a. *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - b. *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project;*
 - c. *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.”*

FIRST-STAGE PUD APPROVAL

4. Subtitle X § 302.2(a) establishes that for a two-stage PUD:
“The first-stage application involves general review of the site’s suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project...” (emphases added).
5. For a modification of an approved first-stage PUD, Subtitle Z § 704.4 establishes that:
“The scope of the hearing conducted pursuant to this section shall be limited to the impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision.” (emphasis added).
6. The Commission notes that it had approved the First-Stage PUD based on its conclusion, as elaborated in the First-Stage Order, that the First-Stage PUD met the PUD balancing tests of §§ 2400.2, 2400.3, and 2403.8 of the 1958 Zoning Regulations under which the Commission approved the First-Stage PUD (equivalent to Subtitle X §§ 300.1, 304.3, and 304.4 of the 2016 Zoning Regulations) including that the First-Stage PUD was not inconsistent with the CP and that the First-Stage PUD did not create unacceptable adverse impacts and provided sufficient public benefits to balance out the requested development flexibility and the potential adverse impacts for which the proposed mitigation was not sufficient. Therefore, unless the Commission determines that the Application materially changes the First-Stage Order’s conclusion that the First-Stage PUD met the PUD balancing tests and CP consistency, that analysis is complete and not part of the second-stage PUD review. If the Commission determines that the Application materially changes the First-Stage PUD’s analysis and its conclusion, then the Commission only reviews the impact of the proposed changes to this analysis and does not revisit the overall analysis.

7. The Commission concludes, as detailed below, that the Application does not materially change the First-Stage PUD's conclusion that it met the PUD balancing test including the CP consistency analysis.

Not Inconsistent with the Comprehensive Plan (Subtitle X §§ 304.3(a))

8. The Commission concludes that the Application does not materially change the conclusion of the First-Stage Order that the First-Stage PUD, including the related Zoning Map amendment, was not inconsistent with the CP because the Application does not propose to change the uses or building envelope from what was approved by the First-Stage PUD. The Commission therefore concludes that the First-Stage PUD's CP consistency analysis and conclusion remains unchanged and effective. The Commission credits OP's conclusion that the Commission completed the CP consistency analysis in approving the First-Stage PUD and does not require revalidation because the Application is generally consistent with the First-Stage PUD as regards consistency with the Comprehensive Plan and furthers several specific Comprehensive Plan principles and policies. (FF 47, 51.)

Requested Development Flexibility (Subtitle X § 304.3)

9. The Commission concludes that the Application does not require additional development flexibility beyond what was granted by the First-Stage PUD because the Application, to the extent it modifies the development parameters approved by the First-Stage PUD, is governed by the current Zoning Regulations pursuant to Subtitle A § 102.4 and so both the proposed penthouse habitable space and loading arrangement are evaluated against the current Zoning Regulations with which both comply.² The Commission also notes that the Application actually reduces the First-Stage PUD's development flexibility by withdrawing the approved closed court relief. (FF 29.)

Potential Adverse Impacts - How Mitigated or Outweighed (Subtitle X §§ 304.3 & 304.4(b))

10. The Commission concludes that the potential adverse impacts of the Project do not exceed those reviewed by the Commission in approving the First-Stage PUD because the proposed uses and building envelope remain within the First-Stage PUD's parameters. The Commission notes that the First-Stage Order (Condition No. A.5) specified that the North Building's loading would be reviewed as part of the Commission's evaluation of the second-stage PUD application for the North Building, which evaluation is detailed below. That evaluation also addresses changes to the First-Stage PUD's transportation impact analysis as Subtitle X § 302.2(b) specifies.

Public Benefits Sufficient to Balance the Requested Development Flexibility and Unmitigated Potential Adverse impacts (Subtitle X § 304.3)

² Pursuant to Subtitle A § 102.3(a), the First-Stage PUD is vested under the substantive provisions of the 1958 Zoning Regulations under which the Commission reviewed and approved it. Pursuant to Subtitle A § 102.4, an application to the Commission for a modification to a vested project, other than a minor modification, shall conform with the current Zoning Regulations to the extent that they apply to the modification. Thus the Application is subject to the current Zoning Regulations to the extent the proposed second-stage PUD differs from that approved by the First-Stage PUD.

11. The Commission concludes that the Application does not change or reduce the public benefits approved by the First-Stage PUD, but instead provides additional public benefits, including:
 - An additional one percent residential GFA for affordable housing beyond the eight percent required by IZ;
 - A deeper affordability level (50% MFI) for 30% of the affordable housing instead of the 60% AMI required by IZ;
 - Higher LEED standard (LEED Gold v4) than the LEED Silver 2009 approved by the First-Stage PUD;
 - Dedicating five percent of the non-residential GFA of the ground floor for PDR/Maker Uses for five years not required by the First-Stage PUD;
 - Providing 2,000 sf of rooftop solar panels not required by the First-Stage PUD;
 - Providing electric vehicle and bicycle charging facilities not included in the First-Stage PUD; and
 - Providing \$40,000 for car share or bicycle share memberships for Project tenants in addition to the \$14,000 contribution for care and bike share memberships for tenants of the South Building required by the First-Stage PUD.³

12. The Commission notes that the First-Stage Order concluded that the First-Stage PUD’s public benefits balanced out the requested development flexibility and the unmitigated potential adverse impacts. The Commission concludes that the Application does not diminish, but instead improves this conclusion, based on the Commission’s determination that the Application:
 - Does not increase, but instead decreases, the development flexibility granted in the First-Stage PUD;
 - Does not create potential adverse impacts beyond those reviewed in the First-Stage PUD other than transportation management impacts that are addressed in the second-stage PUD evaluation conducted below; and
 - Does not decrease or change, but instead increases, the public benefits approved by the First-Stage PUD.

SECOND-STAGE PUD APPROVAL

13. Subtitle X § 302.2(b) establishes that:
“The second-stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title.” (emphasis added).

14. Subtitle X § 309.2 further requires that:

³ Although the First-Stage Order classified the similar contribution for the South Building as a mitigation in the Consolidated PUD, the DDOT-reviewed and approved CTR concluded that the Application’s choice of residential use on the upper floors would have a reduced transportation impact than that approved by the First-Stage PUD and so DDOT did not require this contribution as a mitigation. The Commission therefore classifies this \$40,000 contribution as a public benefit.

“If the Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Zoning Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Zoning Commission's decision.” (emphasis added).

Accordance of Second-Stage Application with the First-Stage Approval

15. The Commission concludes that the Application is in accordance with the intent and purpose of the First-Stage PUD because the Project complies with the parameters, including proposed uses and building envelope, approved by the First-Stage PUD.
16. The Commission concludes that the Application includes multiple architectural and urban design benefits that make the Project a higher quality development that exceeds a project developed under the matter-of-right standards.
17. The Commission concludes that the Application accords with the PUD process based on the Commission's above determinations that the Application is a superior, high-quality development and that the Application's additional public benefits, decreased development flexibility, and no change to the potential adverse impacts strengthened the First-Stage PUD's conclusion that the PUD balancing test was satisfied.
18. The Commission therefore concludes that the Application is in accordance with the Zoning Regulations because the Application complies with the Zoning Regulations, including the PUD requirements and the First-Stage Order.

Transportation Management and Mitigation

19. The Commission concludes that the Application provides sufficient mitigation of the potential adverse transportation impacts, including parking and loading, based on DDOT's finding that the Applicant's proposed parking, loading, and TDM plans as detailed in the CTR are sufficient to mitigate any potential adverse impacts and the Applicant's agreement to all of DDOT's suggested conditions. The Commission particularly notes the CTR's findings, as confirmed by DDOT, that the Project's proposed residential use will result in considerably fewer vehicle trips than the office use that had been approved by the First-Stage PUD. The Commission credits the analyses of DDOT, OP, and the Applicant that the Project would not have unmitigated potential adverse effects. Nonetheless, the Commission concludes that any unmitigated potential adverse transportation impacts would be outweighed by the additional public benefits, particularly the additional vehicle and bicycling charging infrastructure and \$40,000 contribution for car and bike share memberships for residents of the Project.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

7. The Commission must give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

20. The Commission finds the recommendations of the OP Setdown and Hearing Reports and of OP’s public hearing testimony to improve the Project persuasive and concludes that the Application, as finalized, included many of OP’s suggested improvements. The Commission notes that OP recognized that not all of its suggested improvements could be accommodated but that OP still supported the Application in its public hearing testimony, and the Commission concurs in that judgement. (FF 46-55.)

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

21. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Reply); see Subtitle Z § 406.2.) To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
22. The Commission notes that ANC 5D’s reports supported the Application without any specific issues or concerns and concurs in the ANC’s recommendation of approval.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a second-stage PUD, subject to the following guidelines, conditions, and standards, with terms to be interpreted as defined in this Order or in the Zoning Regulations:

A. PROJECT DEVELOPMENT

1. The Project and the Plaza shall be constructed in accordance with the plans prepared by HCM and Mahan Rykiel, dated December 16, 2019, and included in the record at Ex. 35A1-35A6, except that the Project shall not include the plaza control bollard option shown on Ex. 32H2, and described as “Plaza Control Option E2” (the “Approved Plans”), subject to the following design flexibility from the Approved Plans (as modified by the guidelines, conditions, and standards herein):
 - a. To provide a range in the number of residential units in the Project of plus or minus 10% relative to the number depicted on the Approved Plans and accordingly adjust the type and location of affordable units to reflect the final unit mix of the Project, provided the location and proportionality of affordable units is consistent with Sheet A45 of the Approved Plans;

- b. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
- c. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details, dimensions and locations, including curtainwall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or to address the structural, mechanical, design, or operational needs of the building uses or systems;
- d. To vary the final design of retail frontages, including locations of doors, design of show windows, and size of retail units and signage, to accommodate the needs of specific retail tenants;
- e. To vary the selection of plantings in the landscape plan depending on seasonal availability within a range and quality as proposed in the Approved Plans or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DCRA, or other applicable regulatory bodies;
- f. To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Approved Plans do not change;
- g. To revise the design of the public space surrounding the North Parcel and the landscape and/or streetscape design of the Project, including, without limitation, the gate element(s) between the Plaza and the adjacent sidewalks (in accordance with the Approved Plans), to the extent necessary to obtain approvals from District agencies and/or service to the Property from utilities or as would otherwise be in accordance with the Streetscape Design Guidelines;
- h. To make refinements to the approved parking configuration, including layout and number of parking spaces plus or minus 10%;
- i. To vary the amount, location and type of green roof, solar panels, planted canopies (over the Plaza only), and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, provided that the Project achieves a minimum GAR of 0.2 based on the area of the North Parcel only and provides a minimum of 2,000 square feet of roof area containing solar panels and related equipment;

- j. To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, provided that such changes do not substantially alter the exterior dimensions shown on the Approved Plans and remain compliant with all applicable penthouse setback requirements;
 - k. To vary the final design and layout of the indoor and outdoor amenity and plaza spaces to reflect their final design and programming and to accommodate special events and programming needs of those areas from time to time;
 - l. To vary the final design of the ground-floor frontage, including the number, size, design, and location of windows and entrances, signage, awnings, canopies, and similar storefront design features, to accommodate the needs of the specific tenants within the parameters set forth in the Storefront and Signage Plans;
 - m. To vary the final condition of the north façade of the Project (including without limitation modifying or removing windows and/or masonry) in accordance with the alternative design as shown on Sheet A22 or A50 of the Approved Plans, or within the areas dashed in red on Sheet A22 of the Approved Plans in the event a structure is approved to be built to the JBGS-Gallaudet Property line where the portions of such adjacent structure exist;
 - n. To utilize the ground-floor space for any uses in the retail; service; eating and drinking establishment; PDR/Maker uses; arts, design, and creation; daycare; entertainment, assembly, and performing arts; office/research lab use categories; or any other lawful use in the C-3-C Zone District/MU-9 zone;
 - o. To change the location and dimensions of the knock-out panels in the garage in order to accommodate, on terms reasonably acceptable to the Applicant, an internal connection to a future building on the JBGS-Gallaudet Property; and
 - p. To vary the design of the window “surround” on the upper stories of the 5th Street, N.E., façade of the Project to allow construction of a projection-compliant design in accordance with the Alternative Option as shown on Sheet A49 of the Approved Plans;
2. The Project shall be constructed with:
- a. A maximum lot occupancy of 77%;

- b. A maximum FAR of 3.71; and
 - c. A maximum height of 120 feet as measured from 6th Street, N.E.
3. The Property shall be subject to the requirements of the C-3-C Zone District/MU-9 zone except as set forth or modified by the Approved Plans or by the conditions of this decision.

B. PUBLIC BENEFITS

1. **Prior to the issuance of a building permit for the Project**, the Applicant shall submit to the Zoning Administrator a copy of the executed First Source Agreement for the Project.
2. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with information showing that solar panel systems installed on the Project occupy no less than 2,000 square feet of roof area.
3. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with evidence that the Project has or will achieve the requisite number of prerequisites and points necessary to secure LEED Gold v4 certification or higher from the U.S. Green Building Council.
4. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall convert the intersection of 4th and Morse Streets, N.E., from two-way controlled stop to all-way controlled stop in accordance with DDOT standard requirements.
5. **For a minimum of five years after the date of issuance of the first certificate of occupancy for the Project**, the Applicant shall reserve a minimum of five percent of the non-residential gross floor area of the ground floor of the Project for one or more of the following PDR/Maker uses:
 - a. Production, sale, and/or distribution of food and beverages (provided that the onsite consumption of food and beverages shall only be permitted when associated with such production, sale, and/or distribution user);
 - b. Food incubators and food hubs;
 - c. Robotics and 3-D manufacturing;
 - d. Small-scale production, distribution or repair of goods and related accessory sales;

- e. Curation and sale of small-scale production goods;
 - f. New and locally-owned small businesses as certified with the Department of Small & Local Business Development;
 - g. “Creative economy” uses, including incubators, graphic design, product or industrial design, engineering and design, technology design and production, design and product curation, fashion design, horticultural design, green businesses and sustainable design, specialty sports and recreation uses, media/communications production and distribution; and
 - h. “Arts” uses including arts, design and creation uses, as defined in Subtitle B, Section 200.2(e), and entertainment, assembly and performing arts uses, as defined in Subtitle B § 200.2(n).
6. **For the life of the Project**, the Project shall provide housing in excess of a matter-of-right development of the Property, including affordable housing as set forth in the following chart and in accordance with the location and proportional mix of units (by bedroom count) as shown on Sheet A45 of the Approved Plans, subject to Condition A.1.a, and the Project’s total residential Gross Floor Area (“GFA”) shall not exceed the total residential GFA shown here; provided, however, that any reduction in the total amount of residential GFA (and/or number of units) in the Project shall be accompanied by a corresponding reduction in the amount of market rate GFA (and number of units) and affordable housing GFA (and number of units) in proportion to the percentages listed here:

Residential Unit Type	Total Residential GFA (Percentage of Total Residential GFA)	Units	Reserved for households earning equal to or less than:	Affordability Control Period	Tenure (rental or sale)
Total	287,530 sf (100%)	300	N/A	N/A	N/A
Market Rate	261,652 sf (91%)	276	N/A	N/A	N/A
Affordable Housing	18,113 sf (6.3%)	17	60% MFI	Life of Project	Rental
	7,763 sf (2.7%)	7	50% MFI		

The covenant required by D.C. Official Code §§ 6-1041.05(a)(2) (2012 Repl) shall include a provision or provisions requiring compliance with this Condition.

7. **For the life of the Project**, the Applicant shall install and maintain:
- a. Electric vehicle charging stations within the garage that can accommodate a minimum of six vehicles at any given time, and
 - b. At least five electrical outlets in each of the long-term bicycle storage rooms to supply power to electric bicycles.

C. MITIGATION

1. **Prior to the issuance of a building permit for the Project**, the Applicant shall demonstrate that the plans contained in the building permit application for the Project satisfy the PDR/Maker use construction specifications as follows:
 - a. A structural slab load (ground floor) live load of 125 pounds per square inch;
 - b. Clear height of approximately 16 feet from ground-floor slab to bottom of structure above;
 - c. An electrical supply of 50 watts per square foot;
 - d. A loading dock that includes a 48-inch raised loading dock and/or levelers;
 - e. An open floor plan layout;
 - f. A sound attenuation for mixed-use that satisfies NC-25 minimum noise criteria and includes seven-inch-thick minimum concrete podium slab; and
 - g. HVAC designed for one ton per 300 square feet; and (h) ventilation (Fresh Air/Make-Up Air) louvers at façade.

2. **During the period of construction of the Project**, the Applicant shall maintain access on and across the Property to loading facilities and operations for the South Building; provided, however, that the Applicant shall not be prohibited from loading the South Building from adjacent rights-of-way during the periods of paving, surfacing, and/or subsurface work on the Plaza subject to applicable public space permitting requirements.

3. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall incorporate into the parking garage design the ability to remove a portion of the garage demising wall as knock-out panels (“Knock-Out Panels”) connecting the adjacent property at 1331 5th Street, N.E. (Parcel 129/112) (the “Neighboring Property”) to its garage ramp and a related curb cut on 6th Street, N.E. as shown on Sheet A25 of the Approved Plans. The Applicant shall work cooperatively with the Neighboring Property owner and/or developer to enter into an agreement on terms reasonably acceptable to the Applicant to provide the Neighboring Property with the Knock-Out Panels no less than 22 feet wide which will provide vehicular access to the Neighboring Property’s garage through the Project’s garage; provided, however, that such vehicular access to the Neighboring Property’s garage shall be only a secondary entrance to the Neighboring Property, and such Neighboring Property garage shall have a primary entrance elsewhere, and it being understood that the Applicant shall have the right to insist that as part of any such agreement terms providing for, without limitation, commercially reasonable

insurance, indemnity, and cost-sharing obligations from the owner or developer of the Neighboring Property.

4. **For the life of the Project**, the Applicant shall implement the following measures with respect to the Project's loading management:
- a. The Project's property manager shall designate a loading facility manager ("Loading Manager"). The Loading Manager shall coordinate with tenants/residents to schedule deliveries and will be on duty during delivery hours;
 - b. The Loading Manager shall schedule deliveries so as to not exceed the Project's loading facility capacity and, in the event that an unscheduled delivery vehicle arrives while the Project's loading facility is full, the Loading Manager shall direct the driver of such vehicle to return at a later time when the loading facility has adequate capacity;
 - c. The Loading Manager shall require all loading activity to take place on private property and not in public right-of-way and shall provide notice to all retail and residential tenants of this requirement;
 - d. The Project's property manager shall provide all tenants and residents with information regarding loading dock restrictions, rules, and suggested truck routes at lease signing and shall encourage tenants and residents to utilize trucks 30 feet or shorter in length;
 - e. The Project's property manager shall require all residential tenants to schedule move ins/move outs in advance of the occurrence of same and in a manner that coordinates with the retail delivery schedule;
 - f. The Loading Manager shall not permit trucks using the loading facility to idle and shall require such trucks to follow all District guidelines for heavy vehicle operation including but not limited to 20 DCMR § 900 (Engine Idling), the requirements set forth in DDOT's "Freight Management and Commercial Vehicle Operations" document, and the primary access routes listed in DDOT's "Truck and Bus Route System" as applicable from time to time; and
 - g. The Loading Manager shall disseminate to drivers from delivery services that frequently utilize the loading facility: (1) suggested truck routing maps; and (2) other applicable materials as needed to encourage compliance with District law and DDOT's truck routes and shall post such documents in a prominent location within the service area.

5. **For the life of the Project**, the Applicant shall implement the following with respect to the Project's transportation demand management:
- a. The Applicant shall identify a "TDM Leader" (for planning, construction, and operations), who shall distribute and market to the residents and tenants of the building various transportation alternatives and options in existence from time to time, which materials shall include TDM materials to new residents and tenants in a welcome package;
 - b. The Applicant shall provide the TDM Leader's contact information to DDOT and report TDM efforts and amenities to goDCgo staff once per year;
 - c. The TDM Leader shall receive TDM training from goDCgo to learn about and implement the TDM conditions for this Project;
 - d. The Applicant shall post all TDM commitments online, publicize the availability of the same, and allow the public to see what commitments have been promised;
 - e. The Applicant shall provide website links to CommuterConnections.com and goDCgo.com on Project-related websites;
 - f. The Applicant shall offer for lease, at market rates and on market terms, at least two parking spaces in the Project to a car-sharing service in the Project's underground parking garage
 - g. The Applicant shall unbundle the fee it charges for parking from the base rent under a lease or the purchase price of a residential unit and shall set the minimum parking fee at the average market rate, where the market rate is determined by the average price in garages within one quarter mile of the Project;
 - h. The Applicant shall install a "Transportation Information Center Display" on an electronic screen within the residential lobby of the Project, which Display shall contain information related to local transportation alternatives;
 - i. The Applicant shall meet or exceed the Zoning Regulations' requirements for bicycle parking, including the requirement to provide secure interior bicycle parking and short-term exterior bicycle parking around the perimeter of the Property, and long-term bicycle storage rooms pursuant to the Approved Plans; and
 - j. The Applicant shall provide all new tenants of the North Building with a car share or bicycle share membership up to the maximum value of \$40,000 cumulative for the Project.

D. MISCELLANEOUS


1. No building permit shall be issued for the Project until the Applicant has recorded a covenant binding the North Parcel in the land records of the District of Columbia by the Applicant for the benefit of the District of Columbia that is satisfactory to the Office of the Attorney General and to the Zoning Administrator (the “PUD Covenant”). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the North Parcel in accordance with this Order, as may be amended by the Commission. The Applicant shall file a certified copy of the covenant with the Office of Zoning.
2. The change of zoning to the C-3-C Zone District (current MU-9 zone) with respect to the North Parcel shall be effective upon the recordation of the PUD Covenant.
3. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.

VOTE (Jan. 13, 2020): 5-0-0 (Michael G. Turnbull, Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on July 31, 2020.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION



SARA K. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN

VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

