

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 15-27A  
Z.C. Case No. 15-27A  
Grosvenor USA Ltd.  
(First-Stage PUD Modification & Second-Stage PUD @  
Square 3587, Lot 840 [340 Morse Street, N.E.]  
June 17, 2019

At the properly noticed public hearing on June 17, 2019, the Zoning Commission for the District of Columbia (the “Commission”) considered an application from Grosvenor USA Limited (“Applicant”) for a modification of the first-stage planned unit development (“PUD”) and second-stage PUD approval (collectively, the “Application”) in accordance with the first-stage PUD approved by Z.C. Order No. 15-27 (the “Original Order”) for the property located at Square 3587, Lot 840 (part of Record Lot 6) (the “Property”). The Commission reviewed 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**

**Notice**

1. On April 25, 2019, the Office of Zoning (“OZ”) sent notice of the public hearing to:
  - The affected Advisory Neighborhood Commission (“ANC”) 5D, the “affected ANC” pursuant to Subtitle Z § 101.8;
  - The affected ANC Single Member District (“SMD”) 5D01;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);
  - The Department of Energy and the Environment (“DOEE”);
  - The D.C. Housing Authority (“DCHA”);
  - The Council of the District of Columbia (“DC Council”); and
  - Property owners within 200 feet of the Property.(Exhibit [“Ex.”] 17.)
2. OZ also published notice of the June 17, 2019 public hearing in the *D.C. Register* on May 3, 2019 (66 DCR 5622) as well as through the calendar on OZ’s website. (Ex. 15.)

### **Parties**

3. The only parties to this case were the Applicant and ANC 5D.
4. 1250 4<sup>TH</sup> ST EDENS LLC and UNION MARKET APARTMENTS, LLC (“Parties in Support”) in the original case, did not participate in this case.
5. There were no additional requests for party status.

### **First-Stage Approval**

6. Pursuant to the Original Order, the Commission approved a consolidated PUD (the “Consolidated PUD”) and a first-stage PUD (the “First-Stage PUD,” and collectively with the Consolidated PUD, the “Overall PUD”), together with a related Zoning Map amendment from the C-M-1 Zone District to the C-3-C Zone District<sup>1</sup> (currently the PDR-1 and the MU-9 zones, respectively) for Lots 819, 833-835, and 838-840 in Square 3587 (the “Overall PUD Site”).
7. As approved in the Original Order, the Overall PUD contemplated the development of the Overall PUD Site with four buildings known as Buildings A through D containing a mix of residential, retail, office, and optional hotel uses.
8. The Original Order approved the Overall PUD to be constructed in two phases:
  - a. Phase I/Consolidated PUD - the southern portion of Building A (“Building A1”), Building B, and the southern portion of Building C (Building C1); and
  - b. Phase II/First-Stage PUD - the northern portion of Building A (“Building A2”), the northern portion of Building C (Building C2), and Building D. This Order concerns Building A2 only.
9. As part of the First-Stage PUD, the Commission approved Building A2 to be developed with:
  - a. A maximum building height of 130 feet;
  - b. Approximately 249,323 square feet of gross floor area (“GFA”) devoted to 198 residential units;
  - c. Approximately 4,570 square feet of GFA devoted to retail use;
  - d. A floor area ratio (“FAR”) of 7.13;
  - e. 63 on-site parking spaces; and

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<sup>1</sup> The C-M-1 and C-3-C Zone Districts were designations of the 1958 Zoning Regulations under which the Commission approved the Order.

- f. One 30-foot loading berth, one 100-square-foot loading platform, and one 20-foot service/delivery space.
10. The Original Order approved Building A2 with:
- a. 13,713 square feet of GFA (12 units) dedicated to Inclusionary Zoning (“IZ”) units at 50% AMI; and
  - b. 13,713 square feet of GFA (12 units) dedicated to IZ units at 80% AMI, except that if Building A2 was developed as for-sale housing, the affordable housing requirement would be redistributed between Buildings A1, A2, and B as follows:
    - Building A2 would be permitted to reduce its IZ set-aside requirement to 8% (19,946 square feet) of its residential GFA to households earning up to 80% of the AMI; and
    - The remaining 3% of the residential GFA (13,713 square feet of GFA) would be redistributed to Buildings A1 and B combined, all of which would be devoted to households earning up to 50% of the AMI.
- (Original Order, Finding of Fact (“FF”) No. 74, Decision Nos. B(1)(b), B(2), and Footnote 6.)
11. As part of the First-Stage PUD approval for Building A2, the Commission had granted the following flexibility as development incentives:
- a. Loading berth size requirements;
  - b. The rear yard depth requirements; and
  - c. The building lot control requirements.

Original Order – PUD Analysis

12. In approving the Overall PUD, the Commission concluded that the Overall PUD had satisfied the criteria of §§ 2403.3 through 2403.5 of the 1958 Zoning Regulations<sup>2</sup> as follows:
- a. The Overall PUD would not result in any adverse impacts that were not capable of being mitigated or outweighed by the proffered public benefits; (Z.C. Order No. 15-27, FF Nos. 149-151.)

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<sup>2</sup> Pursuant to Subtitle A §§ 102.1, 102.3(a), and 102.4, the Overall PUD has vested development rights under the 1958 Zoning Regulations under which the Commission approved it, but any modification other than a minor modification is subject to the Zoning Regulations of 2016.

- b. The Overall PUD was consistent with the Comprehensive Plan (Title 10 of the District of Columbia Municipal Regulations, the “CP”), including the Generalized Policy Map, Future Land Use Map, and Elements; and
- c. The Overall PUD proffered a commendable number of meaningful public benefits that were compatible with the CP. (Ex. 10.)

### **The Application**

- 13. On March 1, 2019, the Applicant filed the Application requesting a modification to the First-Stage PUD and a second-stage PUD approval (the “Second-Stage PUD”) for Building A2 with residential and retail uses in accordance with the Zoning Commission’s First-Stage PUD approval.<sup>3</sup> (Ex. 4.)

### **First-Stage Modifications**

- 14. The Application did not request any new development incentives for the Second-Stage PUD.
- 15. The Application sought to modify the plans approved by the Original Order<sup>4</sup> for Building A2, with no changes to the GFA, FAR, number of units, building height approved for the Overall PUD, to permit the following:
  - a. Increase the residential GFA by 10,608 square feet for a total of approximately 260,108 square feet by transferring residential density within the maximum allowed for the Overall PUD;<sup>5</sup>
  - b. Increase the number of residential units by 62 for a total 260 residential units by transferring units within the maximum allowed for the Overall PUD;<sup>6</sup>
  - c. Increase the retail GFA by 2,017 square feet to approximately 6,587 square feet by transferring retail density within the maximum allowed by the Overall PUD;<sup>7</sup>

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<sup>3</sup> On December 20, 2018, the Applicant had originally submitted a second-stage PUD application that included other buildings approved by the First-Stage PUD. (Ex. 2.)

<sup>4</sup> The increases proposed by the Application for GFA, residential units, on-site parking, and FAR are all within the totals approved, including applicable flexibility, for the Overall PUD in the Original Order. (Original Order Decision Nos. A.2 and A.8.a; Ex. 14B, 25.)

<sup>5</sup> The additional square footage is the result of a transfer of 8,740 square feet from Building A1 and 1,868 square feet from B to Building A2 and does not increase the approved GFA of the Overall PUD. (Ex. 14B, 25, and Ex. 61A1 of Z.C. Case No. 15-27)

<sup>6</sup> Of the additional 62 units in Building A2 two units were transferred from Building A1 and 60 were transferred from Building D. (Ex. 14B, Decision No. A.8.a., and Ex. 61A1 of Z.C. Case No. 15-27)

<sup>7</sup> Of the increased retail GFA 972 square feet were transferred from Building A1, and 1,045 square feet from Building C2.

- d. Increase the number of on-site parking spaces by 102 to a total 165 as allowed under the Original Order;<sup>8</sup> and
- e. Provide an additional 30-foot loading berth, and 100-square-foot loading platform, for a total of two berths and two platforms.

(Ex. 21A, 26A.)

16. The Application proposed to move the boundary line of the First-Stage PUD to the south to match the property line between Lot 839 and the Property. (A&T Book 3880-B; Ex. 26A1-26A4.)

17. Given that development of Neal Place Park is incorporated into the development of Building A2, the Application requested that the Commission modify the following conditions of the Original Order related to the timing for development of Neal Place Park as follows (deleted text in ~~bold and strikethrough~~; new text in **bold and underlined**):

- a. Amend Decision No. B.14 to state the following:

**Prior to the issuance of a Certificate of Occupancy for Building A2**, the Applicant shall demonstrate to the Zoning Administrator that it has completed ~~75%~~ **90%** of construction of the Neal Place Park in accordance with Sheets ~~20, L1.01-L1.02, and L1-20-L1.21 of the Plans A-2 502 and 507-533 in Exhibit 21A of Z.C. Case No. 15-27A, as supplemented by Sheets 31 and 34-52 in Exhibit 26A of Z.C. Case No. 15-27A~~, and as certified by the landscape architect. Neal Place Park shall be 100% completed within 120 days after issuance of the Certificate of Occupancy, as certified by the landscape architect. ~~(Ex. 61A) The Applicant shall submit detailed landscape design sheets as part of the Second-Stage PUD application that shall be consistent with the above-referenced sheets.~~

- b. Strike Decision No. B.15 as follows:

~~**Prior to the issuance of a Certificate of Occupancy for Building C2 or D (whichever is first), the Applicant shall demonstrate to the Zoning Administrator that Neal Place Park is 100% complete.**~~

18. In response to concerns raised by ANC 5D regarding the potential of birds flying into the building (FF 67), the Applicant agreed to add the following condition:

New Decision No. B.28:

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<sup>8</sup> Pursuant to the flexibility granted by Decision A.8.b of the Original Order.

**Materials - Prior to the issuance of a Certificate of Occupancy for Building A2, the Applicant shall demonstrate to the Zoning Administrator that it has installed low-reflective glass for the windows of Building A2 and incorporated a sound mitigation system to discourage birds from flying close to Building A2.**

Second-Stage Application

19. The Application stated that Building A2 is intended to be developed as for-sale housing and will therefore dedicate no less than 8% of its residential GFA to IZ units devoted to households earning up to 80% of the AMI, which is consistent with the Original Order, FF No. 74, Decision Nos. B(1)(b), B(2), and Footnote 6.
20. In the event that Building A2 is delivered as a rental residential project, then 11% of Building A2's residential GFA (approximately 28,612 square feet) will be devoted to IZ units with half at 80% of the AMI and half at 50% of the AMI, which is consistent with the affordable housing proffer approved in Decision No. B(1) of the Original Order.
21. Building A2 will also dedicate 8% of its penthouse habitable space to an IZ unit dedicated to households earning up to 50% of the AMI, which is consistent with the penthouse IZ set-aside requirements of Subtitle C §§ 1003.2 and 1003.7.<sup>9</sup> (FF 45.)
22. Building A2's penthouse will include communal amenity space for building residents and the second stories of up to six individual residential units. Outdoor terraces for the communal amenity space and private outdoor terraces for up to six units will also be provided.
23. Additional outdoor residential amenity space, private terraces for several individual residential units, and bioretention facilities to help meet stormwater management requirements will be provided in the courtyard terrace above the second level of the building.
24. One hundred sixty-five parking spaces will be located in three levels of parking, accessed from a single driveway on Building A1's lot. Two loading berths and one service/delivery space will be provided on Building A1's lot and accessed from the same driveway entrance.
25. Approximately 135 long-term bicycle parking spaces will be located in a bicycle room on the ground floor of Building A2 accessed directly from Neal Place Park and approximately 15 short-term bicycle parking spaces will be located on the streetscape adjacent to the entrances of Building A2.
26. The primary residential entrance to Building A2 is located in the center of Neal Place Park. Retail entrances are located along Neal Place Park and along 3<sup>rd</sup> Street. Direct access to the long-term bicycle parking for Building A2's residents is also located off of Neal Place Park at the opposite end of the retail and residential lobby entrances.

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<sup>9</sup> The penthouse habitable space generates an IZ requirement that was not contemplated in the First-Stage PUD for Building A2. The Applicant withdrew its initial request for flexibility from the requirements at the public hearing and stated that it would comply with the IZ requirements.

27. Solar panels will be located on the roof of the penthouse, and an intensive green roof system will be provided adjacent to the outdoor amenity spaces.
28. Consistent with the Original Order, Building A2 will achieve LEED-Gold certification under the LEED for New Construction v2009 rating standards.
29. Building A2's façade is divided into two distinct design elements that together create the concept of a "pearl-in-shell." The façade overlooking Neal Place Park consists mostly of low-reflective glass. The façade on the other three sides of Building A2 consists of masonry and glazing and is intended to speak to the industrial rail lines and heavily trafficked New York Avenue, N.E. to the west.
30. Various other design elements and creative use of materials will be implemented to reflect the neighborhood's rich history, including a long continuous retail canopy along the border of the building and Neal Place Park. The canopy will also serve to protect pedestrians from the elements and provide additional privacy for the residential units on the lowest residential floor above.
31. The defining feature of Building A2 is the design and implementation of Neal Place Park, which was approved in the First-Stage PUD but without a detailed design or program. As proposed by the Application, Neal Place Park will include approximately 11,575 square feet of land area, including the streetscape being improved by the Applicant adjacent to Neal Place Park and will be bounded on three sides by Building A2 and otherwise spill into the public realm to draw visitors from elsewhere within the PUD Site and overall neighborhood. Inspired by local topography and natural features, Neal Place Park allows for seasonal activation through immersive greenery, intimate gathering spaces, and a variety of outdoor seating options including garden boulders and movable café seating associated with the surrounding retail spaces. Neal Place Park also includes bioretention facilities, canopy trees, and a variety of landscaped garden areas. (Ex. 21A.)
32. The Applicant requested that the Commission approve the same design flexibility from the final plans that the Commission granted in Decision No. A(8) of the Original Order.

Application in Accordance with Intent of First-Stage PUD

33. As noted in the Application, the proposed modifications to the First-Stage PUD are all within what was approved for the Overall PUD by the Original Order (FF 15) and do not result in any material changes to the First-Stage Approval.
34. The Application asserts that the second-stage PUD application is in accordance with the intent of the First-Stage PUD approval and does not require a reevaluation of the PUD criteria pursuant to Subtitle X § 304.3 because:
  - a. The Application does not request any additional development incentives that would require a reevaluation of the consistency of the second stage with the CP;

- b. The Application does not result in any potential adverse impacts that are not capable of mitigation and that would affect the PUD balancing test used by the Commission in the Original Order; and
- c. The Application does not change any of the proffered public benefits in a way that would require the Commission to reevaluate the PUD balancing test.

(Ex. 25, Attachment 2.)

#### Applicant's Submissions

35. The Applicant submitted a total of four main submissions to the record in support of the Application:
- a. A submission dated April 12, 2019, responding to questions raised by OP and the Commission at setdown (the "Prehearing Statement"); (Ex. 14.)
  - b. A Comprehensive Transportation Review report, dated May 3, 2019 and prepared by Gorove/Slade Associates (the "CTR"); (Ex. 19-19A.)
  - c. A supplemental prehearing statement dated May 28, 2019 (the "Supplemental Prehearing Statement"); and (Ex. 21-21F.); and
  - d. A PowerPoint presentation and material boards dated June 17, 2019 containing the final set of plans and proposed materials for the Application (the "Hearing Presentation"). (Ex. 26A1-26A4, 27.)

#### **The Prehearing Statement**

36. The Prehearing Statement provided the following information in response to comments at setdown:
- a. Clarifying the IZ square foot calculation provided in Building A2;
  - b. Providing evidence that the aggregate FAR for the Overall PUD does not exceed 7.1 FAR, as approved in the Original Order;
  - c. Providing the approximate contribution that would be made to the affordable housing production trust fund generated by Building A2's habitable penthouse space if the Commission approved the Applicant's request for flexibility to provide a contribution rather than putting the IZ unit within Building A2;
  - d. Providing information about the proposed number of on-site parking spaces provided in Building A2;
  - e. Providing information about the use and design of Neal Place Park;
  - f. Providing additional information regarding the proposed building materials;



- g. Explaining the Applicant's coordination with DC Water;
- h. Confirming the location of the bicycle parking spaces; and
- i. Specifying how the Applicant would provide \$200 per residential unit for alternative transportation incentives.

**The CTR**

- 37. The CTR reviewed the transportation-related conditions in the Original Order related to Building A2, described the development program for Building A2 and provided trip generation projections, reviewed the transportation components of Building A2, and outlined the proposed transportation demand management ("TDM") measures for Building A2.
- 38. The CTR concluded that Building A2's proposed development program results in insignificant changes to the trip generation reviewed and approved in the CTR for the First-Stage PUD. The CTR also found that:
  - a. Building A2's access and circulation plan is consistent with the approved First-Stage PUD;
  - b. Building A2's loading facilities would sufficiently meet anticipated demand;
  - c. Building A2's proposed bicycle parking exceeds the requirements of the Zoning Regulations;
  - d. The pedestrian environment would be greatly improved as a result of Building A2; and
  - e. The TDM plan promotes non-automobile modes of travel.(Ex. 19A at 2.)
- 39. The CTR proposed the following TDM measures for Building A2:
  - a. The Applicant shall designate a TDM Coordinator, who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;
  - b. All parking on site will be priced at market rates at minimum, defined as the average cost for parking in a quarter-mile radius from the PUD Site;
  - c. All residential parking will be unbundled from the cost of purchase;
  - d. The Applicant will install a Transportation Information Screen (electronic screen) within Building A2's residential lobby containing information related to local transportation alternatives;

- e. The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials;
- f. The Applicant will exceed Zoning requirements for short-term and long-term bicycle parking, including 135 long-term bicycle parking spaces located in a secure room on the ground floor of the development and 16 short-term bicycle parking spaces in the form of eight bicycle racks along the perimeter of the A2 Site;
- g. The Applicant will provide a bicycle repair station within the long-term bicycle storage room;
- h. The Applicant will provide a bicycle repair station within a publicly accessible location along the perimeter of Building A2 or within the Neal Place Park;
- i. The Applicant will dedicate \$200 per residential unit in alternative transportation incentives that can be used as an annual Capital Bikeshare membership, an annual carshare membership, a carshare driving credit, or for bicycle repair/maintenance. These funds will be pooled during each phase of the Project into a fund that would make incentives available to residents until the fund is exhausted;
- j. The Applicant will purchase two cargo bicycles which will be kept within Building A2 and made available to residents of Building A2 for use;
- k. The Applicant will purchase three rolling shopping carts which will be kept within Building A2 and made available to residents of Building A2 for use; and
- l. The Applicant will fund the installation and one year of maintenance for a new Capital Bikeshare by Certificate of Occupancy of the first Phase 2 building completed.

**The Supplemental Prehearing Statement**

- 40. The Supplemental Prehearing Statement included revised Architectural Plans and Elevations and also provided the following additional information and materials:
  - a. New renderings of Neal Place Park and of the tree line and canopy adjacent to the PUD Site;
  - b. A description of the design, purposes, and intended uses of Neal Place Park, including the areas devoted to stormwater management and bioretention and additional information regarding the feature wall located within the building;
  - c. A lighting plan showing the variety of lighting types and locations proposed for Neal Place Park;

- d. Updated building signage sheets showing the approximate locations and dimensions of proposed signage;
- e. Updated IZ unit location plans;
- f. Building elevations with more detailed information regarding the types of building materials to be used and diagrams showing details of the window mullions;
- g. A detailed streetscape plan and descriptions of how the streetscape improvements and TDM measures are consistent with the Florida Avenue Market Study Small Area Plan (the “SAP”) and the Union Market Streetscape Guidelines;
- h. A description of the proposed solar and green roof components proposed for Building A2;
- i. A commitment, in response to DOEE comments, to install conduits and infrastructure needed to provide two electric vehicle (“EV”) charging stations in the garage of Building A2;
- j. Information about the number of parking spaces provided in the garage of Building A2; and
- k. An explanation of the Applicant’s work with DOEE and DC Water, including submission of the DOEE Declaration of Covenants for Stormwater Management applicable to the overall PUD Site, the DC Water Certificate of Approval for the overall PUD Site, and the Easement Agreement and Declaration of Covenants and Restrictions for the overall PUD Site. (Ex. 21D-21F.)

**The Hearing Presentation Materials**

- 41. The Hearing Presentation provided a complete set of final plans and a proposed materials board for the Application.
- 42. In response to earlier comments from OP and DPR to provide more interactive play areas within Neal Place Park, the Hearing Presentation included plans which incorporated a grassy area adjacent to the boulder seating.

Applicant’s Public Hearing Testimony

- 43. At the June 17, 2019 Public Hearing (the “Public Hearing”), the Applicant proffered Erwin Andres of Gorove/Slade Associates and Brad Lynch of Brininstool-Lynch as expert witnesses in transportation planning and architecture, respectively. The Commission granted expert status to both.
- 44. The Applicant rested on the existing case record and did not provide a formal presentation. However, the Applicant to responded questions posed by the Commission through testimony from Brad Lynch; Ryan Stewart, representing the Applicant; Bryan Werrell of Bohler DC; and Grace Dials of Scape Landscape Architecture.

45. The Applicant responded to the Commission's concerns with providing the one IZ unit at 50% AMI through a contribution to the trust fund, by agreeing to provide the 50% AMI IZ unit within Building A2. (FF 21; June 17, 2019 Public Hearing Transcript ["6/17/19 Tr."] at 21, 40.)
46. The Applicant responded to the ANC Report's request that the Applicant propose solutions to prevent birds from flying into the windows of Building A2 by confirming that it is using low-reflectivity glass for the windows and would incorporate a sound mitigation system to discourage birds from flying close to the building. (FF 67.) The Applicant agreed to make this a condition of this Order. (6/17/19 Tr. at 19-20.)
47. In response to comments in the DDOT Report, the Applicant agreed to modify the TDM condition regarding the \$200 alternative transportation incentive, and to add a condition regarding EV charging stations as follows: (FF 62.)
- a. The Applicant will purchase or otherwise provide \$200 for each residential unit, up to a maximum of \$52,000, for (i) a membership to Capital Bikeshare, (ii) a membership and/or driving credit to a carshare company, and/or (iii) a pre-loaded SmarTrip card, all to be provided at the initial sale of each unit; and (FF 39.i.)
  - b. The Applicant will install three EV charging stations within the parking garage of Building A2. (FF 40.i.)
- (6/17/19 Tr. at 8,13, 23.)
48. The Applicant addressed Casey Trees' concerns as follows: (FF 70.)
- a. The Applicant's civil engineer stated that the streets surrounding Building A2 and the associated street trees were designed in conjunction with DDOT's Urban Forestry Division to ensure that the trees along the curb have an extended soil volume panel to strengthen their root zone. The Applicant's civil engineer also stated that the bioretention areas in Neal Place Park have a 2.5-foot deep media section, which is 12 inches deeper than the minimum requirement and will allow for better plant viability and tree growth; and (6/17/19 Tr. at 38-39.)
  - b. The Applicant's landscape architect stated that although it has not yet selected the tree species for Neal Place Park and the surrounding streetscape, it will consider native species and the local ecology in doing so to ensure that the plantings benefit the regional biodiversity. The Applicant's landscape architect also indicated that it would also review the recommendations provided in Casey Trees' Urban Tree Selection Guide and the Union Market Streetscape Design Guidelines which include a list of urban street trees that are well suited for a street environment. (6/17/19 Tr. at 31, 39.)

49. The Applicant responded to Ms. Ball’s opposition testimony (FF 71) regarding construction impacts as follows:
- a. The Applicant stated that the construction related damage to which she referred was the result of projects currently under construction by other, unrelated developers. The Applicant noted that Building A2 has not yet begun construction; and (6/17/19 at 36.)
  - b. The Applicant also noted that her property is located more than 200 feet away from the PUD Site, approximately four blocks away from Building A2, and therefore will not be directly impacted by the Project. (6/17/19 Tr. at 37-38.)

**Responses to Application**

**Office of Planning**

50. OP submitted a total of three reports concerning the Application:
- a. A report dated March 29, 2019, recommending that the Commission setdown the Application for a public hearing (the “OP Setdown Report”); (Ex. 10.)
  - b. A pre-hearing report dated June 7, 2019 (the “OP Hearing Report”); and ( Ex. 23.)
  - c. A report dated June 13, 2019, recommending approval of the Application (the “Supplemental OP Report”). (Ex. 25.)

**OP Setdown Report**

51. The OP Setdown Report determined that the Application was consistent with the First-Stage PUD and therefore recommended that the Commission setdown the Application for a public hearing. The OP Setdown Report also identified items for which more information or clarification was needed from the Applicant prior to the public hearing. (Ex. 10.)
52. The OP Hearing Report concluded that the First-Stage PUD had been found not inconsistent with the CP, and it concluded that the proposed second-stage PUD for Building A2 was consistent with the First-Stage approval and therefore also not inconsistent with the CP, including the Future Land Use and Generalized Policy Maps, because the Application would further a number of the CP’s Guiding Principles and major polices from Plan Elements and that the Application was consistent with the SAP and Ward 5 Works. (Ex. 10 at 6-10; Ex. 15 of Z.C. Case No. 15-27.)
53. The OP Setdown Report provided an analysis on the public benefits and amenities approved in the Original Order and requested that the Applicant provide a benefits implementation chart demonstrating the status of completion of each public benefit.
54. The OP Setdown Report stated that OP referred the Application to other District agencies for review and comment, including:

- DOEE;
- the Department of Housing and Community Development (“DHCD”);
- DDOT, the Department of Parks and Recreation (“DPR”);
- D.C. Public Schools (“DCPS”);
- Department of Public Works (“DPW”);
- Department of Aging (“DOA”);
- Department of Employment Services (“DOES”);
- Fire and Emergency Medical Services Department (“FEMS”);
- Metropolitan Police Department (“MPD”);
- DC Water; and
- WMATA.

(Ex. 10 at 14-15.)

55. The Applicant provided the additional information requested by OP in its Prehearing Statement. (FF 36; Ex. 14.)

**OP Hearing Report**

56. The OP Hearing Report stated that an interagency meeting with the Applicant was held on May 28, 2019, with representatives from OP, DC Water, DOEE, DHCD, and DPR. The OP Report stated that it also contacted DCPS, DOES, FEMS, and MPD but received no responses and that the Applicant met separately with DDOT to address transportation concerns. (Ex. 23 at 1.) The OP Report included all of the comments raised by the various agencies at the interagency meeting and the Applicant’s written responses thereto. (Ex. 3-9; 23.)
57. The OP Hearing Report provided a further analysis of the Application but made no final recommendation regarding approval and instead requested that the Applicant provide five additional pieces of information prior to any approval or proposed action on the Application and stated that a final recommendation from OP would be provided after a complete analysis of the requested information. (Ex. 23.)
58. The Applicant responded to OP’s requests in its Supplemental Prehearing Statement and through submissions made directly to OP. (FF 40, 60; Ex. 25.)

**Supplemental OP Report**

59. The Supplemental OP Report stated that “[i]n light of the information provided, OP recommends approval of the Second Stage PUD for Building A2.”
60. The Supplemental OP Report included the following information submitted directly to OP from the Applicant:
- a. A table showing the affordable housing contribution for the PUD that OP agreed “demonstrates that the housing and affordable housing requirements are consistent with the total areas approved in the First Stage PUD.”;

- b. A matrix with status updates on the benefits and amenities of the PUD;
- c. A shade study demonstrating the condition of Neal Place Park throughout the day, which showed that at least a portion of Neal Place Park would be shaded throughout the course of the day, that the adjacent glazing would not render it unusable, and that the impact of the glazing would be offset by the landscaping which would include canopy trees; (Ex. 25 at 2.)
- d. A note that the Applicant would provide a detailed materials board at the public hearing; and
- e. A comprehensive site plan of the entire PUD Site showing the location of all green spaces, including Morse Plaza, the connection to Florida Avenue Park, and Neal Place Park. OP concluded that it “supports the design of Neal Place Park, particularly since the revised plan now includes more passive grass area around the boulder sculpture.”

**OP’s Public Hearing Testimony**

- 61. OP testified in support of the Application at the public hearing, stating that the Applicant had submitted everything requested in the OP Report. OP also stated its support for the proposed grassy area and the overall revised design for Neal Place Park as shown in the Hearing Presentation Materials. (6/17/19 Tr. at 21-22.)

Department of Transportation

- 62. On June 6, 2019, DDOT submitted a report (“DDOT Report”) stating it had no objection to the Application subject to the Applicant agreeing to implement the TDM plan proposed in the CTR with two revisions: (Ex. 22.)
  - a. Clarify how the \$200 per residential unit devoted to alternative transportation incentives would be allocated; and
  - b. Commit to providing three EV charging stations rather than just the supportive conduits and infrastructure in the garage of Building A2, which equates to approximately one EV charging station per 50 vehicle parking spaces.
- 63. The DDOT Report’s recommendation was based on the following conclusions:
  - a. Vehicle, loading, and trash access is provided via a curb cut on 3rd Street, NE that will be shared with Building A1 and is consistent with DDOT standards;
  - b. The loading berths and service delivery space will have head-in/head-out movements consistent with DDOT standards;
  - c. The vehicle parking supply for the entirety of Building A is proposed to rise from approximately 0.47 to 0.54;

- d. The building program for the Second-Stage PUD is generally consistent with the building program used to analyze the PUD's impacts in the First-Stage PUD, and accordingly the travel assumptions and analysis of the First-Stage PUD remain valid. The Applicant did not provide an updated capacity analysis, which was appropriate.

(Ex. 22 at 2.)

#### **DDOT's Public Hearing Testimony**

64. At the public hearing, DDOT testified that DDOT had no objection to approval of the Application because the Applicant had agreed to incorporate DDOT's recommendations into its TDM Plan and therefore satisfied DDOT's concerns. (FF 47.)
65. In response to a question from the Commission, DDOT confirmed the Applicant's commitment that the bicycle racks on the streetscape around Building A2 would be DDOT-standard inverted U-racks. (6/17/19 Tr. at 22-23.)

#### **ANC 5D**

66. By letter dated January 23, 2019, ANC 5D stated that at a duly noticed, regularly scheduled meeting of ANC 5D, with a quorum of commissioners and the public present, the ANC voted to support the Application (the "ANC Report"). (Ex. 3.) The ANC Report expressed its general support for the overall PUD and also stated its support for the proposal to develop Building A2 as a residential building with ground-floor retail, approximately 260 residential units, and a redesigned and greatly enhanced public park compared to the first-stage plans approved by the Original Order.
67. The ANC Report requested the Applicant study and propose solutions to prevent birds from flying into the glass windows of the proposed buildings. The Applicant responded to this concern at the public hearing. (FF 46.)
68. The ANC did not attend or testify at the public hearing.

#### **Other Responses**

69. The Parties in Support did not file a response to the Application or testify at the Public Hearing, and no other written responses were received.<sup>10</sup>
70. At the Public Hearing, Casey Trees, represented by Spenser Balog, testified neither in support of nor in opposition to the Application. (6/17/19 Tr. at 24-28.) Mr. Balog made two recommendations for the Applicant's consideration regarding development of the A2 Site:
  - a. The Applicant should incorporate advanced tree growth systems to maximize canopy benefits; and

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<sup>10</sup> Union Market Neighbors ("UMN") submitted a request to reopen the record to allow an untimely filing that UMN's representative had attempted to file at the Public Hearing. (Ex. 30.) UMN subsequently withdrew its request to reopen the record. (Ex. 31.)



- b. The Applicant should consult Casey Trees' Urban Tree Selection Guide in the selection of appropriate trees and bioretention systems for the A2 Site.

The Applicant's experts responded to Casey Trees as discussed above at FF 48.

71. At the Public Hearing, one individual, Ms. Shanifinne Ball, testified in opposition to the Application. Ms. Ball stated that she lives at 1224 5<sup>th</sup> Street, N.E, and that her property has been damaged as a result of recent construction projects in the immediate vicinity. Ms. Ball stated that as a result of construction in the neighborhood, her property has been impacted by significant dust, debris, and vermin, and that construction trucks have destroyed portions of her property, driveway, and vehicle. (6/17/19 Tr. at 32-37.) The Applicant addressed these concerns as discussed above at FF 49.

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, 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.*

(Subtitle X § 300.1.)

2. In evaluating a PUD, the Commission shall find that the proposed development:
  - a. *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
  - b. *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
  - c. *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*

(Subtitle X § 304.4.)

3. Pursuant to Subtitle X § 302.2, “[a] two-stage application has two (2) parts as follows:

- a. The first-stage application involves general review of the site’s suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project; and
- b. 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.)

**First-Stage PUD Modification**

3. *The scope of the hearing conducted pursuant to this section shall 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. (Subtitle Z § 704.4.)*
4. The Commission concludes that the Application’s proposed modifications to the First-Stage PUD, as approved by the Original Order, do not result in any material change to the First-Stage or the Overall PUD because the proposed modifications only shift density and units within the Overall PUD Site while remaining compliant with the applicable height, bulk, and density standards of the Overall PUD and the Zoning Regulations. (FF 15.) Specifically, the Commission concludes that the Application does not propose any changes that would:
  - a. Affect the CP analysis by changing the height or density of the Overall PUD;
  - b. Result in any potential adverse impacts other than the localized impacts that are capable of being mitigated as discussed below;
  - c. Require additional development incentives; or
  - d. Alter the proffered public benefits (the Commission notes that the IZ unit proffer will be achieved through the distribution condition with Buildings A1 and B provided for in the Original Order). (FF 19-21.)

**Second-Stage PUD Approval**

6. *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. (Subtitle X § 309.2.)*
7. *The scope of the hearing conducted pursuant to this section shall be limited to impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision. (Subtitle Z § 704.4.)*

In Accordance with the Zoning Regulations

8. The Commission concludes that the Application is in accordance with the intent and purpose of the Zoning Regulations applicable to the Property and the Overall PUD. (FF 14-15, 21.)

In Accordance with the PUD Process

**Not Inconsistent with the CP (Subtitle X § 304.4(a))**

9. Accordingly, consistent with Subtitle X §§ 302.2 and 309.2, the Commission concludes that the Application results in no changes to the Commission's determination in the Original Order that the Overall PUD is not inconsistent with the CP. (FF 15.)

**Potential Adverse Impacts of the Second Stage PUD - How Mitigated or Outweighed (Subtitle X §§ 304.3 & 304.4(b))**

10. The Commission concludes that the Application was distributed to all relevant District agencies, other than DDOT, who were given an opportunity to provide feedback and participate in an interagency meeting hosted by OP. As noted in the OP Reports and as testified to by OP at the Public Hearing, the Applicant fully addressed all issues raised by District Agencies. (FF 40, 54, 56, 60, 64, 65.)
11. The Commission notes that the only impacts that may result specifically from Building A2 are related to traffic. The Commission concludes that the Applicant's proposed TDM Plan, as amended and approved by DDOT, will sufficiently mitigate these potential impacts and will not result in a change to the potential adverse impacts of the Overall Project that the Commission considered in the Original Order. (FF 38-39, 47, 63-64.)
12. With regards to the ANC's concern of the potential for birds to fly into Building A2, the Commission concludes that the Applicant's proposal to provide low-reflective glass for the building windows, as well as sound mitigation, will adequately address the issue. (FF 46.)
13. With regard to Casey Trees' concerns, the Commission credits the testimony of the Applicant's experts at the public hearing, and therefore, the Commission finds that the Applicant fully responded to the comments and recommendations provided by Casey Trees at the public hearing and would make final selections based on DDOT-approved guidelines. (FF 48.)
14. With regards to Ms. Ball's stated concerns regarding construction, the Commission concludes that there is no nexus between Ms. Ball's concerns and Building A2 because the projects referenced in her testimony are already under construction and Building A2 is not. The Commission further concludes that, given the distance between the PUD Site and Ms. Ball's property, there is no basis to conclude that future construction of Building A2 will negatively impact Ms. Ball's property. Therefore, the Commission concludes that the concerns raised by Ms. Ball are unrelated to the present Application. (FF 49, 71.)

**Requested Flexibility Balanced by Public Benefits (Subtitle X § 304.3)**

15. The Commission concludes that the Application did not request any additional PUD flexibility for the Second-Stage PUD that would require the Commission to rebalance the flexibility against the public benefits, or require additional public benefits. (FF 14.)

### In Accordance with the First-Stage Approval

16. The Commission concludes that the Second-Stage PUD is consistent with the first-stage approval based on the Application, the OP and DDOT Reports, and the testimony provided at the Public Hearing as further discussed below.
17. The Application's proposed development of the Property carries out the purposes of Subtitle X, Chapter 3 to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development. The Application is in accordance with the purposes and goals of the Commission's approval in the First-Stage PUD – the Application proposes no change to the PUD development incentives, or public benefits, and potential adverse Second-Stage PUD impacts are addressed by specific mitigations. (FF 19-49.)
18. Based on its review of the revised design for Neal Place Park, the Commission finds that Neal Place Park furthers the intent of the first-stage approval and complements the other open spaces within the Overall PUD by providing immersive greenery, intimate gathering spaces, an interactive grassy area, boulderscapes, and retail engagement to attract members of the public and therefore enhances the important public benefit approved in the Original Order. (FF 31.)

### **“Great Weight” to the Recommendations of OP**

19. The Commission is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990. (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8.) (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
20. The Commission finds persuasive OP's analysis of the Application, as revised, and recommendation that the Commission approve the Application and therefore concurs in that judgment.

### **“Great Weight” to the Written Report of the ANC**

21. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2.) To satisfy the great weight requirement, the Commission must 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 finds that the only issue raised in the ANC Report was a concern about the potential for birds to fly into the proposed windows. The Commission concludes that the Applicant has addressed this issue by agreeing to use low-reflective glass in the building

design and to incorporate that provision as a condition in the order. The Commission also notes the ANC’s strong support for the Application and recommendation of approval and concurs in that judgement.

**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 for Building A2, subject to the applicable conditions of Z.C. Order No. 15-27, except as modified and supplemented by the following guidelines, conditions, and standards (whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

**A. First Stage Modifications**

The conditions of Z.C. Order No. 15-27, remain in force and effect, subject to the following changes:

1. Decision No. A.1. shall be modified to read as follows (text to be added in **bold and underline**; deleted in **bold and strike-out**):

A.14 The Project shall be developed in accordance with the Architectural Plans and Elevations dated December 23, 2016 (Ex. 61A1-61A15), as supplemented by the revised sheets dated January 26, 2017 (Ex. 72A1-72A3), ~~and~~ as revised and supplemented by the sheets dated March 12, 2017 (Ex. 75A1-75A2), ~~and~~ as revised by the sheets dated April 7, 2017 (Ex. 76A), **as revised by Ex. 14B of Z.C. Case No. 15-27A** (“Plans”), and as modified by the guidelines, conditions and standards of this Order.

2. Decision No. B.1.b. shall be modified as follows: The distribution of the affordable housing units shall be in accordance with:

- a. Sheets 122-130 of the Plans dated March 13, 2017; (Ex. 75A2 of Z.C. Case No. 15-27.)
- b. As modified by Sheet A-2\_310 of the Architectural Drawings approved for Building A2; and (Ex. 21A.)
- c. Subject to the chart set forth in Z.C. Order No. 15-27, Decision No. B.1.b, as modified by the following chart:

	<b>Building A2 For Sale</b>	<b>If Building A2 is Rental</b>
<b>Residential GFA in Base Building</b>	260,108 sf	260,108 sf
<b>Penthouse Habitable Space</b>	7,977 sf	7,977 sf
<b>80% AMI</b>	20,809 sf (8% of residential GFA)	14,306 (5.5% of residential GFA)

	Building A2 For Sale	If Building A2 is Rental
50% AMI	638 sf (8% of penthouse habitable space)	14,306 (5.5% of residential GFA) + 878 sf (11% of penthouse habitable space)

3. Decision No. B.14 shall be modified to read as follows (text to be added in **bold** and underscore; deleted in **bold** and ~~strike out~~):

**B.14. Prior to the issuance of a Certificate of Occupancy for Building A2, the Applicant shall demonstrate to the Zoning Administrator that it has completed ~~75%~~ **90%** of construction of the Neal Place Park in accordance with Sheets ~~20, L1.01-L1.02, and L1-20-L1.21 of the Plans A-2 502 and 507-533 in Exhibit 21A of Z.C. Case No. 15-27A, as supplemented by Sheets 31 and 34-52 in Exhibit 26A of Z.C. Case No. 15-27A,~~ and as certified by the landscape architect. Neal Place Park shall be 100% completed within 120 days after issuance of the Certificate of Occupancy, as certified by the landscape architect. ~~(Ex. 61A) The Applicant shall submit detailed landscape design sheets as part of the Second Stage PUD application that shall be consistent with the above-referenced sheets.~~**

4. Decision No. B.15. shall be deleted.

**B. PROJECT DEVELOPMENT**

1. Building A2 shall be developed in accordance with the approved plans contained in Decision No. A.1. of Z.C. Order No. 15-27 to the extent that they apply to Building A2, and as modified by:
  - Architectural Plans and Elevations included in the Applicant’s Supplemental Prehearing Submission (Ex. 21A) (“Architectural Drawings”); and
  - As supplemented and updated by the sheets included in the Applicant’s public hearing presentation (Ex. 26-26A) (“Hearing Presentation,” and collectively with the Architectural Drawings, the “Approved Building A2 Plans”)
 except as modified by the other conditions herein.
  
2. The Applicant shall have design flexibility from the Approved Building A2 Plans in the following areas:
  - a. To be able to provide a range in the number of residential units of plus or minus 10%;
  - b. To vary the number, location, and arrangement of parking spaces, provided that the total number is not reduced below the minimum number of parking spaces required by the Zoning Regulations;
  - c. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and

mechanical rooms, provided that the variations do not change the exterior configuration of the building;

- d. To vary the sustainable design features of Building A2, provided the total number of LEED points achievable for Building A2 is not below the total number of LEED points consistent with the USGBC LEED-Gold for New Construction v2009 rating standards;
  - e. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, such that the refinements do not substantially change the external configuration or appearance of the building;
  - f. In the retail and service areas, flexibility to vary the location and design of the ground-floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area; and
  - g. To vary the features, means, and methods of achieving the Green Area Ratio (“GAR”) of 0.20 required by the Zoning Regulations.
3. The range of material types and colors for Building A2 shall be within the ranges shown in the Hearing Presentation Materials. (Ex. 27.)
  4. In accordance with the Approved Building A2 Plans, Building A2 is intended to be a for-sale residential building and shall have:
    - a. A maximum building height of 130 feet;
    - b. Approximately 260,108 square feet of GFA devoted to residential use, approximately 6,587 square feet of GFA devoted to retail use, and additional GFA devoted to parking, loading, and building service areas (7.88 FAR total for the A2 Building Site);
    - c. Approximately 260 residential units;
    - d. Two 30-foot loading berths, two 100-square-foot loading platforms, and one 20-foot service and delivery bay; and
    - e. Approximately 165 on-site parking spaces.

**C. Transportation Mitigation Measures**

1. **Prior to the issuance of a Certificate of Occupancy for Building A2 and for the life of Building A2**, or as otherwise noted below, the Applicant shall implement the following TDM measures:
  - a. The Applicant shall designate a TDM Coordinator, who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;
  - b. All parking on site will be priced at market rates at minimum, defined as the average cost for parking in a quarter-mile radius from the PUD Site;
  - c. All residential parking will be unbundled from the cost of purchase;
  - d. The Applicant will install a Transportation Information Screen (electronic screen) within Building A2's residential lobby containing information related to local transportation alternatives;
  - e. The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials;
  - f. The Applicant will exceed the Zoning Regulations for short-term and long-term bicycle parking, including 135 long-term bicycle parking spaces located in a secure room on the ground floor of the development and 16 short-term bicycle parking spaces in the form of eight bicycle racks along the perimeter of the A2 Site;
  - g. The Applicant will provide a bicycle repair station within the long-term bicycle storage room;
  - h. The Applicant will provide a bicycle repair station within a publicly accessible location along the perimeter of Building A2 or within the Neal Place Park;
  - i. The Applicant will purchase or otherwise provide \$200 for each residential unit, up to a maximum of \$52,000, for (i) a membership to Capital Bikeshare, (ii) a membership and/or driving credit to a carshare company, and/or (iii) a pre-loaded SmarTrip card, all to be provided at the initial sale of each unit;
  - j. The Applicant will purchase two cargo bicycles which will be kept within Building A2 and made available to residents of Building A2 for use;
  - k. The Applicant will purchase three rolling shopping carts which will be kept within Building A2 and made available to residents of Building A2 for use;



- l. The Applicant will install three EV charging stations within the parking garage of Building A2; and
- m. The Phase 2 PUD building owners will fund the **installation and one year of maintenance for a new Capital Bikeshare by Certificate of Occupancy of the first Phase 2 building completed.**

**D. MISCELLANEOUS**

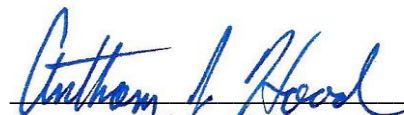
1. **Materials – Prior to the issuance of a Certificate of Occupancy for Building A2,** the Applicant shall demonstrate to the Zoning Administrator that it has installed low-reflective glass for the windows of Building A2 and incorporated a sound mitigation system to discourage birds from flying close to Building A2.
2. **No building permit shall be issued** for Building A2 until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use Building A2 in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
3. This Second-Stage PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within that time, the Applicant shall file for a building permit for Building A2 and shall begin construction of Building A2 within three years of the effective date of this Order.

**VOTE (June 17, 2019):**      **4-0-1**      (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to **APPROVE**; Peter A. Shapiro not present, not voting.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 15-27A shall become final and effective upon publication in the *D.C. Register*; that is, on March 20, 2020.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

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

  
 ANTHONY J. HOOD  
 CHAIRMAN  
 ZONING COMMISSION

  
 SARA A. BARDIN  
 DIRECTOR  
 OFFICE OF ZONING

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