

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION OF THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 15-27B(2)

Z.C. Case No. 15-27B

Carr Properties OC, LLC

(Modifications of Significance to Approved First-Stage PUD and Second-Stage PUD

@ Square 3587, Lots 833 & 834)

July 27, 2020

Pursuant to notice, at its July 6, 2020 virtual public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) from Carr Properties OC, LLC (the “Applicant”) requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified) for Lot 833 in Square 3587 (the “Building C1 Site”) and Lot 834 in Square 3587 (the “Building C2 Site”):

- A Modification of Significance to Z.C. Order No. 15-27 (the “Original Order”), as modified by Z.C. Order Nos. 15-27A, 15-27B(1), 15-27D, and 15-27F (the “Revised Order”), to revise the Consolidated Planned Unit Development (“PUD”) approved by the Original Order for property including the Building C1 Site, to:
  - Make minor design refinements to the penthouse of Building C1 (as defined below); and
  - Grant a special exception pursuant to Subtitles C § 1500.3(c) and X §§ 303.13 and 901 to permit nightclub, bar, cocktail lounge, and restaurant uses (“restaurant/bar uses”) in the penthouse of Building C1; and
- A Second-Stage PUD, with a related Modification of Significance of the Revised Order that granted First-Stage PUD for property including the Building C2 Site to authorize:
  - The construction of Building C2 (as defined below); and
  - A special exception pursuant to Subtitle C § 1500.3(c) to permit restaurant/bar uses in the penthouse of Building C2.

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z, of the Zoning Regulations. For the reasons stated below, the Commission **APPROVES** the Application as it relates to the second request stated above for the Modification of Significance of the First-Stage PUD and Second-Stage PUD for the Building C2 Site.<sup>1</sup>

**FINDINGS OF FACT**

**I. BACKGROUND**

**PARTIES**

1. The following were parties to the Original Order:

- The Applicant;

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<sup>1</sup> A separate order (Z.C. Order No. 15-27B(1), effective October 30, 2020) authorized the Modification of Significance to the approved Consolidated PUD for the Building C1 Site.

- Advisory Neighborhood Commission (“ANC”) 5D, in which district the Property is located and so automatically a party pursuant to Subtitle Z § 101.8; and
  - 1250 4<sup>th</sup> St Edens, LLC and Union Market Apartments, LLC (collectively, the “Parties in Support”).
2. The Applicant served a Notice of Intent to file the Application on ANC 5D and owners of property within 200 feet of the Building C2 Site, including the Parties in Support, on September 14, 2018, as evidenced by the Certificate of Service included with the Application (Exhibit [“Ex.”] 2G).
  3. The Commission received no requests for party status.

**NOTICE**

4. On May 13, 2020, the Office of Zoning (“OZ”) sent notice of the virtual<sup>2</sup> public hearing (Ex. 23) to:
  - ANC 5D;
  - ANC Single Member Commissioner 5D01, in which the Property is located;
  - 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 Ward 5 Councilmember, whose ward includes the Property;
  - The Chair and At-Large members of the District of Columbia council; and
  - The owners of property within 200 feet of the Building C1 and C2 Sites.
5. OZ also published notice of the July 6, 2020 public hearing, in the *D.C. Register* on May 22, 2020 (67 DCR 5331), as well as through the calendar on OZ’s website (Ex. 22).

**PRIOR APPROVALS**

6. Pursuant to the Original Order, the Commission approved:
  - A Consolidated PUD (the “Approved Consolidated PUD”); and
  - A First-Stage PUD (the “Approved First-Stage PUD,” and collectively with the Consolidated PUD, the “Approved Overall PUD”);
 together with a related Zoning Map amendment from the C-M-1 (current PDR-1) to the C-3-C (current MU-9) Zone District for property now known as Lots 833-835 and 838-840 in Square 3587 (the “Overall PUD Site”).<sup>3</sup>

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<sup>2</sup> The hearing was originally scheduled and noticed for April 23, 2020 (Ex. 17); however, because of the COVID-19 pandemic, OZ suspended all public hearings and the hearing did not occur as originally scheduled.

<sup>3</sup> At the time the Original Order was approved the Overall PUD Site was known as Lots 805, 814, and 817, which were Assessment and Taxation (“A&T”) lots located within Record Lot 6. The remaining portion of Record Lot 6 is known as A&T Lot 819 and is owned by the District. Lot 819 is not included within the Overall PUD Site. However, the Original Order approved significant improvements to Lot 819 that will be undertaken by the Applicant as part of development of the Overall PUD. *See* Original Order, footnote 3. Following approval of the Original Order, new A&T lots were created for the Overall PUD Site, such that the Overall PUD Site is now known as Lots 833-835 and 838-840. A new survey was also prepared and confirmed that the PUD Site area is 208,671 square feet, excluding Lot 819.

7. The Original Order authorized the Approved Overall PUD to develop the Overall PUD Site with four buildings known as Buildings A through D containing a range of residential, retail, office, and hotel uses, to be constructed in two phases:
  - **Phase I/Approved Consolidated PUD** – Including:
    - The southern portion of Building A (“Building A1”);
    - Building B; and
    - The southern portion of Building C (“Building C1”); and
  - **Phase II/Approved First-Stage PUD** – Including:
    - The northern portion of Building A (“Building A2”);
    - The northern portion of Building C (“Building C2”); and
    - Building D.
8. With respect to the Approved First-Stage PUD applicable to Building C2, the Original Order granted approval for a mixed use building with:
  - A maximum building height of 130 feet;
  - Approximately 211,784 square feet of GFA devoted to 232 residential units;
  - Approximately 9,200 square feet of GFA devoted to retail use; and
  - 90 on-site parking spaces.
9. The Original Order required Building C2 to dedicate 11% of its residential GFA to Inclusionary Zoning (“IZ”) units as follows:
  - 11,648 square feet of GFA (13 units) dedicated to households earning up to 50% of the Area Median Income (“AMI”); and
  - 11,648 square feet of GFA (13 units) dedicated to households earning up to 80% AMI (Original Order, Condition No. B(1)(b)).
10. Pursuant to the Original Order, the Commission granted the following PUD flexibility as development incentives for Buildings C1 and C2:
  - Loading berth size requirements;
  - The rear yard depth requirements; and
  - The building lot control requirements (Original Order, Condition No. A(7)).
11. Pursuant to Z.C. Order No. 15-27D<sup>4</sup>, effective February 21, 2020, the Commission approved a Modification of Consequence of the Original Order to revise the design and massing of Building C1’s penthouse.
12. Pursuant to Z.C. Order 15-27A, effective March 20, 2020, the Commission approved a Modification of Significance of the Original Order to make minor design refinements to the Building C1 penthouse and to approve a special exception pursuant to Subtitles C § 1500.3 and X §§ 303.13 and 901 to authorize restaurant/bar uses in Building C1’s penthouse.

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<sup>4</sup> The Applicant withdrew its application in Z.C. Case No. 15-27C.

13. Pursuant to Z.C. Order No. 15-27F, effective September 4, 2020, the Commission approved a Modification of Consequence to the Original Order to revise Building C1's loading and facilities.
14. Pursuant to Z.C. Order 15-27B(1), effective October 30, 2020, the Commission approved a Second-Stage PUD for Building A2.

## **II. THE APPLICATION**

15. As related to Building C2, the Application filed on March 22, 2019, requested:
  - A modification of the Approved First-Stage PUD to convert the primary use of Building C2 from residential to office use;
  - Second-Stage PUD approval for Building C2; and
  - A special exception pursuant to Subtitle C § 1500.3 and Subtitle X § 901.2 to authorize restaurant/bar uses for the penthouse of Building C2.

### **FIRST-STAGE PUD MODIFICATIONS**

16. The Application sought to modify the plans approved by the Original Order<sup>5</sup> for Building C2 to:
  - Convert 211,784 square feet of residential GFA to approximately 225,398 square feet of office GFA;
  - Decrease the retail GFA from 9,200 square feet of GFA to 6,532 square feet of GFA, which includes 1,125 square feet of "Maker Space" required by Condition Nos. B.23 and 24 of the Original Order; and
  - Increase the on-site parking spaces from 90 to 132 zoning-compliant spaces (Ex. 2, as revised by the final Architectural Plans and Elevations at Ex. 26A (the "Architectural Plans")).
17. The Application did not propose to increase or decrease to the range of total GFA, FAR, or number of units approved for the Approved Overall PUD in the Original Order.
18. The Application requested that the Commission modify two conditions of the Original Order related to the timing for development of Neal Place Park, which modifications were already approved in the Approved Second-Stage PUD for Building A2 (Z.C. Order No. 15-27A, Condition No. A.3 and A.4).

### **PUD Zoning Flexibility**

19. The Application continued to request the same zoning flexibility (loading, rear yard, and building lot control) approved for Building C in the Original Order but requested no additional flexibility.

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<sup>5</sup> The increases proposed in the Application for FAR, GFA, and number of residential units are all within the totals approved, including the applicable design flexibility, for the Overall PUD in the Original Order (Original Order Condition Nos. A.2 and A.8.a).

### **Public Benefits - Additional**

20. The Applicant proffered the following contributions to the Housing Production Trust Fund (“Trust Fund”) prior to the issuance of the first above-ground Certificate of Occupancy for Building C2 as additional benefits to the Approved Overall PUD:
- \$1,500,000 based on the modification of Building C2’s use from residential to office; and
  - \$200,000 based on the construction of habitable penthouse space in Building C2, pursuant to Subtitle C § 1505, which was not contemplated in the Approved First-Stage PUD as it applied to Building C2.

### **SECOND-STAGE PUD APPLICATION**

21. The Application proposed to develop Building C2 with:
- A maximum building height of 130 feet;
  - A site density of 10.9 FAR computed for its individual A&T lot;<sup>6</sup>
  - Approximately 225,398 square feet of GFA devoted to office use;
  - Approximately 6,532 square feet of GFA devoted to retail use (including 1,125 square feet devoted to Maker Space);
  - Approximately 7,049 square feet devoted to penthouse habitable space;
  - 132 zoning-compliant parking spaces in a below-grade garage plus additional tandem parking spaces;
  - One 30-foot loading berth and one 20-foot service-delivery space; and
  - 77 long-term bicycle parking spaces, and 16 short-term bicycle parking spaces.
22. The Application stated that the office use proposed for Building C2 would provide unique amenity spaces, including a two-story office lobby with an open retail concept that would activate the public space and draw a variety of patrons into the building.
23. The façade showcases floor to ceiling glass ribbon windows with textured masonry spandrels and a two-story concrete truss at the base to evoke the industrial history of the Union Market neighborhood. Abundant plantings are used on the exterior and interior of the building to provide a soft, biophilic approach to design and to foster a sense of nature and serenity.
24. The primary office lobby entrance is located on 3<sup>rd</sup> Street, with retail entrances on 3<sup>rd</sup> Street and Neal Place, N.E. The adjacent streetscape design will encourage pedestrian activity and enhance safety in the immediate neighborhood. The base of Building C2 will be highlighted by a large canopy that will be accessed through the building’s main lobby; the canopy will provide an additional gathering space above the sidewalk to further activate the streetscape.
25. Entrances to the parking garage and loading facilities will be located along the private alley to the east of Building C2. As requested in the DDOT Report (Ex. 27), the streetscape

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<sup>6</sup> The total density for the Approved Overall PUD remains 7.11 FAR, which was the overall density approved in the Original Order (Ex. 26A2, Sheet 203).

design for the alley will include a 10-foot wide cycle track adjacent to Building C2 with an uninterrupted pedestrian path across the alley at the intersection of the alley and Neal Place, N.E.. The cycle track will include special striping at the parking and loading entrances. The curb between the Building C2 Site and the alley will be flush to allow for handicap access from Building C2 eastward across the alley (Ex. 31A2, Sheets 502 and 505).

26. The Building C2 penthouse will include a variety of informal gathering spaces, communal co-working rooms, and small and large conference rooms where building tenants will be able to work and socialize. As approved in Z.C. Order No. 15-27B(1), the penthouse will also include 7,049 square feet of nightclub, bar, cocktail lounge, and restaurant uses. The penthouse has a maximum height of 20 feet and meets all penthouse setback requirements.
27. Building C2 will achieve LEED Gold certification under LEED v4 Building Design and Construction. It will also include solar panels on the roof within the 20-foot height limit and setback requirements.

### **Design Flexibility**

28. The Applicant requested the same design flexibility from the Application's final plans that the Commission had granted in Condition No. A(8) of the Original Order, together with the following additional design flexibility for Building C2:
  - To move the maker space to an alternate location, so long as a minimum of 1,125 square feet is maintained and so long as the maker space remains on the ground floor of Building C2 with visible frontage on Neal Place or 3<sup>rd</sup> Street, N.E.;
  - On the exact location, design, and materials of the exterior penthouse terrace, so long as the overall design meets the intent of the landscape drawings shown at Sheets C-2\_307 and C-2\_501 of Exhibit 26A of Z.C. Case No. 15-27B; and
  - To increase or decrease the exact square footage of solar panels by approximately 10% so long as the solar panels are located in the same general location as shown on Sheets C-2\_308 and C-2\_501 of Exhibit 26A of Z.C. Case No. 15-27B.

### **SPECIAL EXCEPTION – PENTHOUSE RESTAURANT/BAR USE**

29. The Application requested special exception relief pursuant to Subtitle C § 1500.3 and Subtitle X § 901.2, and not as PUD zoning flexibility, to permit restaurant/bar uses in the penthouse of Building C2.

### **APPLICANT'S SUBMISSIONS**

#### **The Prehearing Statement**

30. The Prehearing Statement (Ex. 14-15) provided the following information in response to comments at setdown:
  - Explaining how the total housing and affordable housing proposed for the Approved Overall PUD is within the range of total housing and affordable housing approved by the Original Order for the Approved Overall PUD;
  - Confirming the location of the Maker Space and that it would be constructed to the industrial specifications stated in Attachment III to the OP Setdown Report, as stated below (Ex. 10), except for the clear ceiling height;



- Providing evidence that the aggregate density for the Approved Overall PUD does not exceed 7.1 FAR, as approved in the Original Order;
- Providing the approximate contribution that would be made to the Trust Fund generated by Building C1's and Building C2's habitable penthouse spaces;
- Providing a rationale for the number of on-site parking spaces provided in Building C2;
- Providing additional information on the proposed building materials and demonstrating that the materials would be of high quality, and providing additional details on the windows, including the window mullion depth from the building façade;
- Providing a detailed streetscape plan and corresponding sections to demonstrate compliance with the Union Market Streetscape Guidelines;
- Explaining the planting and maintenance details of the greenery accents on the ground floor of Building C2;
- Providing an updated signage plan;
- Providing perspectives of the proposed roof and penthouse;
- Providing a chart identifying the conditions of the Approved First-Stage PUD related to Building C2 and an update as to whether each condition was being amended to facilitate the Application for Building C2; and
- Submitting draft language regarding the Applicant's proffer to contribute \$1,500,000 to the Trust Fund.

### **The Comprehensive Transportation Review**

31. The Application submitted a March 9, 2020, Comprehensive Transportation Review (Ex. 20-20A, the "CTR"), which concluded that:
- The Application would not have a detrimental impact on the surrounding transportation network assuming implementation of the proposed site design elements and Transportation Demand Management ("TDM") plan (Ex. 20A, p. I)
  - Building C2's loading facilities are consistent with the flexibility granted in the Original Order;
  - Building C2's proposed bicycle parking exceeds the requirements of the Zoning Regulations;
  - The pedestrian environment would be greatly improved as a result of Building C2;
  - Three intersections would require mitigation as a result of the minor impacts to delay created by Building C2, and appropriate mitigation measures will be implemented; and
  - An enhanced-tier TDM plan is proposed to address the on-site parking supply and the minor intersection impacts. The TDM commitments made in the Approved First-stage PUD would also be honored and included in the TDM plan for Building C2.

### **The Supplemental Prehearing Statement**

32. The Supplemental Prehearing Statement (Ex. 26) included:
- Revised Architectural Plans and Elevations including updated renderings, elevations, landscape plans, signage and parking plans;
  - Updated zoning diagram showing the accurate land areas for the individual lots within the Overall PUD Site and how density has been reallocated within the Overall PUD Site since the Original Order;

- A commitment to provide a minimum of 600 square feet of solar panels on the roof of Building C2 and a request for flexibility to increase or decrease the exact square footage of solar panels provided by approximately 10%;
- Additional justification for the request to convert the primary use of Building C2 from residential to office; and
- A May 20, 2020, memorandum (Ex. 26C) prepared by Gorove/Slade, the Applicant's traffic consultant, that set forth the final TDM and Loading Demand Management ("LDM") plans agreed to by the Applicant.

### **Applicant's Public Hearing Presentation**

33. At the July 6, 2020, virtual public hearing, the Applicant proffered and was granted expert status for:
- John Crump of Smithgroup in architecture;
  - Erwin Andres of Gorove/Slade Associates in transportation planning;
  - Lauren Brandes of Oculus in landscape architecture; and
  - Shane Dettman of Holland & Knight in land use planning (Ex. 15B).
34. The Applicant rested on the existing case record and did not provide a formal presentation but did provide the following information in response to questions from the Commission:
- Clarifications about the Overall PUD's housing and affordable housing proffer;
  - An explanation of the PUD standards applicable to a Second-Stage PUD regarding the rebalancing of public benefits and amenities to development incentives and potential adverse effects, and the consistency of the Application with flexibility granted in the Original Order;
  - Confirmation of the Applicant's agreement to the three conditions in the DDOT Report; and
  - A discussion of the inconsistencies of the Original Order regarding the total housing and affordable housing proffer, which is addressed in the Decision herein (July 6 Tr. at 25-28, 31).

### **The Post-Hearing Submission**

35. The Post-Hearing Submission (Ex. 32-32E) provided the following additional information requested by the Commission at the public hearing:
- The Applicant's response regarding the Application's compliance with the PUD standards; and
  - The Applicant's draft Findings of Fact and Conclusions of Law.

### **APPLICANT'S JUSTIFICATION FOR RELIEF**

#### **First Stage Modification**

36. The Application asserted that the proposed modifications to the Approved First-Stage PUD for Building C2 do not exceed the range of uses, GFA, FAR, or building height approved for the Approved Overall PUD by the Original Order and do not result in any material changes to the Approved Overall PUD. Rather, the Application reallocates uses, GFA, and FAR among buildings on the PUD Site within the ranges approved in the Original Order .



37. The conversion of Building C2 from residential use to office use maintains the range of total housing and affordable housing that was approved in the Overall PUD for the following reasons:
- The Approved Overall PUD’s range of housing and affordable housing was granted through the flexibility provided in the Original Order for Buildings A2 and D to have either residential or non-residential uses. *See* Original Order, Condition No. A.8(c); the plans approved by the Approved First-Stage PUD (Z.C. Case No. 15-27, Exhibit 61A, Sheet 11); and Ex. 26A2, Sheet 203;
  - The upper range of residential square footage and unit number (assuming Buildings A2 and D were both developed as residential buildings) was 1,091,201 square feet of residential GFA, 120,036 square feet of affordable housing GFA, and 1,103 residential units;
  - The lower range of residential square footage and unit number (assuming Buildings A2 and D were both developed as non-residential buildings) was 720,394 square feet of residential GFA, 79,246 square feet of affordable housing GFA, and 790 residential units;
  - Z.C. Order No. 15-27A approved a Second-Stage PUD for Building A2 as a residential building with approximately 260,108 square feet of residential GFA and approximately 260 residential units;
  - Z.C. Order No. 15-27E approved a Second-Stage PUD for Building D as a residential building with approximately 144,399 square feet of residential GFA and 159 residential units; and
  - Therefore, the Approved Overall PUD will have a total of approximately 897,127 square feet of residential GFA; approximately 98,684 square feet of affordable housing GFA (11%), and approximately 970 residential units, which is well within the range of housing, affordable housing, and number of units approved by the Original Order for the Approved Overall PUD.<sup>7</sup>
38. The Application also stated the following in support of the change to office use:
- The surrounding area has more than seven times the square footage of multifamily housing compared to office;
  - There is limited office use in the development pipeline;
  - That a mix of uses, including office and retail, is critical to ensure the success of the overall development as a “multi-use location”; and
  - That the \$1.5 million contribution to the Trust Fund was to compensate for the loss of 23,000 square feet (26 units) of affordable housing that would have been provided by the residential building.

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<sup>7</sup> Total numbers are based on the approved building permit plans for Buildings A1, B, and C1, and the approved second-stage PUD plans for Buildings A2, C2, and D. (Ex. 26A2, Sheet 203). The total affordable housing GFA assumes that Building A2 is developed as a rental residential building. If Building A2 is developed as a for-sale residential building, then a minimum of 90,881 square feet of total IZ GFA for the Overall PUD and a corresponding reduction in the number of IZ units would be required to be set aside for IZ units in the Overall PUD. (Z.C. Order No. 15-27A, FF 19, Condition No. A.2.c). Additional IZ at 50% of the MFI would be provided within Buildings A2 and D generated by penthouse habitable space in those buildings. *See* Z.C. Order Nos. 15-27A and 15-27E, respectively.

## **Second Stage PUD**

39. The Application asserts that it is in compliance with the intent and purpose of the Approved First-Stage PUD and does not require a reevaluation of the PUD criteria pursuant to Subtitle X § 304.3 because:
- The Application does not request any additional development incentives that would require a reevaluation of the consistency of the second-stage PUD with the CP;
  - 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;
  - The Application does not change any of the requested flexibility or proffered public benefits in a way that would require the Commission to reevaluate the PUD balancing test; and
  - The \$1,500,000 contribution to the Trust Fund as part of its proposal to convert the use of Building C2 from residential to office represents a new proffered benefit. The Applicant noted that to the extent any rebalancing of benefits was necessary, the additional benefit of contributing a \$1,500,000 contribution to the Trust Fund addressed that issue (July 6, 2020 Public Hearing Transcript [“July 6 Tr.”] at 26-27).

## **Special Exception – Restaurant/Bar Uses in Penthouse**

40. The Application asserted that the proposed uses for the penthouse will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property, in compliance with the special exception standards of Subtitle C § 1500.3 and Subtitle X § 901.2 as follows.
41. The Application provided evidence that restaurant/bar uses proposed for the penthouse would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map because:
- The relief would permit office tenants to take advantage of the penthouse space for informal gatherings for the majority of the week, and give the Applicant the ability to host outside, third-party events on the evenings and weekends;
  - The penthouse would create a unique and enjoyable space at the top of the Union Market neighborhood, overlooking the city;
  - The nightclub, bar, cocktail lounge, and restaurant uses are consistent with the goals of the penthouse regulations to generate an affordable housing contribution; and
  - The penthouse structures will comply with all height, bulk, and setback standards set forth in Subtitle C § 1500.
42. The Application also provided evidence that the proposed restaurant/bar uses would not tend to affect adversely the use of neighboring property because:
- Although the Overall PUD Site and much of its surroundings are presently vacant or under construction, the Building C site will eventually be surrounded on all sides by streets or alleys, with no portion of Building C directly abutting any residential properties;
  - Building C2 would be an office building without any residential tenants;

- The majority of the patrons visiting the proposed penthouse nightclub, bar, cocktail lounge, and restaurant uses would be residents or visitors of the Overall PUD and/or the Union Market neighborhood, such that no impacts would be created by additional vehicular trips driving to the Building C2 Site to access the rooftop; and
- Building C2 exceeds the minimum number of required on-site vehicle parking spaces, such that it will be able to accommodate the proposed bar/restaurant use.

### III. RESPONSES TO THE APPLICATION

#### OP

43. OP filed a November 27, 2019, report (Ex. 10, the “OP Setdown Report”) that:
- Concluded that:
    - The Commission previously determined that the Approved Overall PUD would be not inconsistent with the CP and would further the objectives of the Florida Avenue Market Small Area Plan and the Ward 5 Industrial Land Transformation Study;
    - The Application for Building C2 is generally consistent with the Approved First-Stage PUD, and the CP designations and elements; and
    - The Original Order approved “a total of 1,091,201 square feet of residential use, 52,968 square feet of retail use, and 217,558 square feet of office use. However, flexibility for use was permitted for Buildings A2 and D, which could have resulted in a total of 720,394 square feet of residential use. *The proposed modification to change the use from residential to office, along with the certainty of Building D providing residential uses (ZC Case No. 15-27E), results in the overall residential use remaining within the range approved for the overall PUD by providing 912,303<sup>8</sup> square feet of residential use*”(emphasis added)); and
  - Therefore recommended the Commission set down the Application for a public hearing with a request that the Application provide more information or clarification on specific items prior to the public hearing.
44. OP filed a June 26, 2020, report (Ex. 28, the “OP Hearing Report”) that:
- Stated that OP had solicited comments from DHCD and DOEE on the Application;
  - Concluded that:
    - The Application was generally consistent with the Approved First-Stage PUD and did not affect the Approved Overall PUD’s consistency with the CP;
    - The Applicant had demonstrated that the PUD’s housing obligation would continue to be met because the Original Order had approved a range of housing and since both Buildings A2 and D would be developed for residential, the Approved Overall PUD would provide 896,313 square feet of residential use, above the minimum of 720,394 square feet;
    - The proposed development of Building C2 for office use would result in:
      - A total of 98,594<sup>9</sup> square feet of affordable housing in the Approved Overall PUD, which is consistent with the Original Order; and

<sup>8</sup> The total residential GFA for the Approved Overall PUD is approximately 897,127 square feet due to revised GFA numbers submitted to the record that had not yet been updated prior to OP’s review.

<sup>9</sup> The upper range of affordable housing approved for the overall PUD is 120,036 square feet, and the lower range is

- A \$1.5 million contribution to the HPTF due to the 23,296 square feet of affordable housing that would no longer be provided in Building C2; and
  - The office use proposed for Building C2 would diversify the Market area, allowing more people to work close to housing, retail, and public transportation;
  - The proposed bar/restaurant penthouse uses:
    - Are permitted within the underlying zone and “would be in harmony with the intent of the approved PUD to create an active, mixed use development that would attract residents and tourists and bring greater vitality to Florida Avenue Market”; and
    - Would not adversely affect the use of neighboring property; and
- Therefore, OP recommended approval of the Application.

45. At the July 6, 2020 public hearing, OP testified in support of the Application and otherwise rested on the record of its reports previously submitted to the case record.

### DDOT

46. DDOT filed a June 22, 2020 report (Ex. 27, “DDOT Report”) that:
- Concluded that:
    - The proposed change from residential to office use would generate approximately 35 more morning peak hour vehicle trips and 20 more evening peak hour vehicle trips;
    - The Applicant’s CTR indicated that three of the study intersections would unacceptably degrade in level of service and would require signal timing adjustments and a new exclusive right-turn lane. In lieu of these changes, DDOT requested a \$25,000 contribution to the Transportation Mitigation Fund to which the Applicant committed;
    - Requested that the Applicant coordinate the design of the cycle track to include special striping and markings at the parking garage and loading dock entrances, and noted that DDOT had no objection to the Applicant widening the cycle track adjacent to Building C2 from 8 to 10 feet;
    - The Applicant’s TDM plan was sufficiently robust to encourage non-auto travel and offset the impacts of the parking supply and identified traffic impacts; and
    - The Applicant’s LDM plan was sufficiently robust to manage conflicts with bicycles and pedestrians in the private alley, address the needs of the retail units, and to accommodate the potential for spillover loading activity to Building C1; and
  - DDOT therefore had no objection to the Application with the following conditions:
    - The Applicant implement the LDM plan as proposed in the Applicant’s May 20, 2020, transportation memorandum (Ex. 26C) for the life of the project, unless otherwise noted;

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79,246 square feet. The total affordable housing for the Overall PUD is approximately 98,684 square feet, equivalent to 11% of the residential GFA due to revised GFA numbers submitted to the record that had not yet been updated prior to OP’s review. (Ex. 26A2, Sheet 203). Additional IZ at 50% of the MFI would be provided within Buildings A2 and D generated by penthouse habitable space in those buildings. *See* Z.C. Order Nos. 15-27A and 15-27E, respectively.

- The Applicant implement the TDM plan as proposed in the Applicant’s May 20, 2020, transportation memorandum (Ex. 26C) for the life of the project, unless otherwise noted; and
  - The Applicant revise the cycletrack design to pull back the concrete barrier on the south side of the intersection of the private alley and Neal Place, N.E. to allow for a clear and accessible pedestrian path across the alley, with flexposts to be installed at the end of the concrete barrier.
47. At the July 6, 2020 public hearing, DDOT testified in support of the Application and otherwise rested on the record and acknowledged that the Applicant had agreed to the three conditions stated in the DDOT Report.

**ANC 5D**

48. ANC 5D filed a January 23, 2019 report (Ex. 2F, the “Original ANC Report”) stating that at its duly noticed, regularly scheduled November 13, 2018 meeting, with a quorum of commissioners present, the ANC considered a different, earlier application for Buildings A2, C2, and D combined and voted to:
- Express its general support for the Approved Overall PUD;
  - Support the proposal to develop Building C2 as an office building with ground floor retail and a first class design; and
  - Support this earlier combined application for Buildings A2, C2, and D.
- However, this vote was not on the Application, which was filed subsequently on March 22, 2019.
49. ANC 5D filed an August 12, 2019 letter (Ex. 18, the “ANC Report”) in which the ANC stated that at its duly-notice, regularly scheduled June 11, 2019, meeting, with a quorum of commissioners present, the ANC voted to:
- Express the following issues and concerns:
    - The office use would provide for greater diversity of uses in the Union Market neighborhood as there are already several approved residential buildings;
    - The office use will help generate activity at neighboring retail and service establishments during the day; and
    - The proposed restaurant/bar use in the Building C2 penthouse would not create any adverse impacts to the neighborhood; and
  - Therefore support the Application.
50. The ANC did not attend or testify at the July 6, 2020 public hearing.

**OTHER RESPONSES**

51. The Parties in Support did not file a response to the Application or testify at the Public Hearing.
52. No individuals or organizations filed a response to the Application or testified at the public hearing.

## CONCLUSIONS OF LAW

### AUTHORITY

1. Pursuant to the authority granted by the Zoning Act (June 20, 1938, 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), the Commission may approve a PUD and modifications to an approved PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z, Chapter 7.
2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
  - (a) *Results in a project superior to what would result from the matter-of-right standards;*
  - (b) *Offers a commendable number or quality of meaningful public benefits; and*
  - (c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
3. Pursuant to Subtitle X § 304.3, in evaluating a proposed PUD, the Commission shall:  
*Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.*
4. Pursuant to Subtitle X § 304.4, to approve a proposed PUD, the Commission must determine that the proposed development:
  - (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
  - (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
  - (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
5. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as:
  - (1) *to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
  - (2) *to guide executive and legislative decisions on matters affecting the District and its citizens;*
  - (3) *to promote economic growth and jobs for District residents;*
  - (4) *to guide private and public development in order to achieve District and community goals;*
  - (5) *to maintain and enhance the natural and architectural assets of the District; and*
  - (6) *to assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*



6. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)):
- “The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ‘[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.’ *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous ‘occasionally competing policies and goals,’ and, ‘[e]xcept where specifically provided, the Plan is not binding.’ *Id.* at 1167, 1168 (internal quotation marks omitted). Thus ‘the Commission may balance competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ *D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013). ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.’” *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016) (internal quotation marks and references omitted)
7. Pursuant to Subtitle X § 302.2, “[a] two-stage application has two (2) parts as follows:
- The **first-stage application** involves general review of the site’s suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the *compatibility of the proposed development with the Comprehensive Plan*, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project; and
  - The **second-stage application** is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and *compliance with the intent and purposes of the first-stage approval*, and this title” (emphasis added).
8. Pursuant to Subtitle X § 309.2, 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.
9. Pursuant to Subtitle Z § 704.4, the scope of a public hearing on a Modification of Significance “shall be limited to the impact of the proposed modification on the subject of the original application and shall not permit the Commission to revisit its original decision.”

### **FIRST-STAGE PUD MODIFICATION**

10. Based on the case record, and the Findings of Fact above, the Commission concludes that the Application's proposed modifications of the PUD approved by the Original Order do not change the intent and purpose of that PUD as discussed below.
11. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the Original Order, in this case ANC 5D and the Parties in Support.
12. The Commission concludes that the Application's proposed modifications to the Original Order to revise the Approved First-Stage PUD as it applies to Building C2 do not result in any material changes to the Approved First-Stage PUD or Approved Overall PUD because:
  - The proposed modifications only shift density and uses within the Approved Overall PUD Site while remaining compliant with the applicable height, bulk, and density standards of the Approved Overall PUD and the Zoning Regulations;
  - Even with the change to office use, the Approved Overall PUD will remain within the approved range of residential GFA and affordable GFA approved in the Original Order;
  - The modifications do not affect the Approved Overall PUD's consistency with the CP because the height or density will not change;
  - The proposed modifications do not result in any potential adverse impacts other than the localized impacts that are capable of being mitigated pursuant to the Second-Stage PUD review analyzed below, except that if the conversion of Building C2's primary use from residential to office were considered an adverse impact, the Commission concludes that the Applicant's proffered additional \$1.5 million contribution to the Trust Fund would compensate for the amount of affordable housing lost by the conversion and so would fully satisfy Subtitle X § 304.3's balancing test;
  - The proposed modifications do not require additional development incentives; and
  - The proposed modifications do not alter the proffered public benefits except to add the public benefit of the \$1.5 million contribution to the Trust Fund.

### **SECOND-STAGE PUD APPROVAL**

13. Based on the case record, and the Findings of Fact above, the Commission concludes that the Application's proposed Second-Stage PUD pursuant to the Approved First-Stage Order, as modified, complies with the applicable standards as discussed below, as confirmed by OP's findings and analysis in the OP Hearing Report.

### **In Accordance with the Zoning Regulations**

14. The Commission concludes that the Application is in accordance with the intent and purpose of the Zoning Regulations applicable to the Building C2 Site and the Approved Overall PUD.

### **In Accordance with the PUD Process**

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

15. 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 Approved Overall PUD is not inconsistent with the CP because the proposed Second-Stage PUD complies with the standards of the Approved First-Stage PUD, as modified above.

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

16. The Commission concludes that the Application will not result in any potential adverse impacts that cannot be mitigated or outweighed because:
- The Application was distributed to all relevant District agencies, which were given an opportunity to provide feedback on the Application and, as noted in the OP Reports and testimony at the Public Hearing, the Applicant fully addressed all issues raised by District Agencies;
  - In terms of the potential traffic impacts that may result specifically from Building C2, the Commission concludes that the Applicant's proposed TDM plan, as amended and approved by DDOT, will sufficiently mitigate these potential impacts; and
  - The Commission therefore finds that the Application will not result in a change to the potential adverse impacts of the Overall Project that the Commission considered in the Original Order

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

17. The Commission concludes that the Application did not request any additional PUD flexibility that would require the Commission to rebalance the flexibility against the public benefits, or require additional public benefits, since the special exception for the penthouse restaurant/bar uses is analyzed separately below.

***In Accordance with the First-Stage Approval***

18. The Commission concludes that the proposed Second-Stage PUD for Building C2 is consistent with the Approved First-Stage PUD as applicable to Building C2, as modified, based on the materials submitted by the Applicant in the case record, the OP and DDOT Reports, and the testimony provided at the public hearing because:
- The Application's proposed development of the Building C2 Site 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 Commission's purposes and goals in granting the Approved First-Stage PUD;
  - The potential adverse impacts created by the proposed Second-Stage PUD for Building C2 are limited to transportation impacts that the Commission concludes will be sufficiently mitigated by the TDM and LDM plans approved by DDOT; and
  - The Application does not propose to change the Approved Overall PUD development incentives or public benefits other than to add a new public benefit of a \$1.5 million contribution to the Trust Fund.

**SPECIAL EXCEPTION – PENTHOUSE RESTAURANT/BAR USE (SUBTITLES C § 1500.3(C) & X §§ 303.13 & 901.2)**

19. Subtitle X § 303.13 authorizes the Commission to grant special exception relief as part of a PUD, upon demonstration of compliance with the general special exception standards of Subtitle X § 901.2 that the proposed relief:
  - Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
  - Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
  - Will meet such special conditions as may be specified in this title.
20. For the Application’s requested special exception relief pursuant to Subtitle C § 1500.3(c), there are no special conditions specified elsewhere in the Zoning Regulations.
21. The Commission concludes that the Application demonstrated compliance with the general special exception criteria that the proposed penthouse bar/restaurant uses will not tend to adversely affect the use of neighboring property and will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map because the penthouse bar/restaurant uses:
  - Would create a unique and enjoyable space at the top of the Union Market neighborhood and would not create any adverse effects;
  - Are consistent with the goals of the penthouse regulations to generate an affordable housing contribution;
  - Will be located in a penthouse that complies with all height, bulk, and setback standards set forth in Subtitle C § 1500;
  - Will be located in an office building without any residential tenants and will be surrounded on all sides by streets or alleys, with no portion of the building directly abutting any residential properties; and
  - Will not likely cause transportation impacts because most patrons of the penthouse bar/restaurant uses will likely be residents or visitors of the Overall Approved PUD and/or the Union Market neighborhood that will not use vehicles to access the penthouse bar/restaurant uses and any additional vehicular trips to Building C2’s penthouse bar/restaurant uses could be accommodated in the Building’s parking facilities that exceed the number of parking spaces required by the Zoning Regulations.

**“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP**

22. 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)).
23. The Commission finds persuasive OP’s analysis of the Application and recommendation that the Commission approve the Application and therefore concurs in that judgment.

**“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC**

24. 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)).
25. The Commission finds the ANC Report persuasive in its support of the Application, in particular the ANC’s support for the change from residential to office use, and recommendation for 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 Modification of the First-Stage PUD approved by Z.C. Order No. 15-27, as modified by Z.C. Order Nos. 15-27A, 15-27B(1), 15-27D, and 15-27F (collectively, the “Revised Order”); by revising Conditions Nos. A.1, A.2, A.8, B.1, B.2, B.14, and B.15 of the Revised Order; and
- A Second-Stage PUD for Building C2 on Lot 834 in Square 3587 in accordance with the First-Stage PUD approved by the Revised Order; and
- Special exception pursuant to Subtitles C § 1500.3(c) and X §§ 303.13 and 901 to permit nightclub, bar, cocktail lounge, and restaurant uses in Building C1’s penthouse;

subject to the applicable conditions of the Revised Order, except as modified and supplemented by the following guidelines, conditions, and standards.

**I. MODIFICATIONS OF THE REVISED ORDER<sup>10</sup>**

The conditions of Z.C. Order No. 15-27, as modified by Z.C. Order Nos. 15-27A, 15-27B(1), 15-27D, and 15-27F, remain in force and effect, except that Condition Nos. A.1, A.2, A.8, B.1, B.2, B.14, and B.15 shall be modified to read as follows (text to be added in **bold and underscore**; deleted in ~~**bold and strikethrough**~~):

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

- ~~(a)~~ The Architectural Plans and Elevations dated December 23, 2016 (Ex. 61A1-61A15), as supplemented by the revised sheets dated January 26, 2017 (Ex. 72A1-72A3), as revised and supplemented by the sheets dated March 13, 2017 (Ex. 75A1-75A2), as revised by the sheets dated April 7, 2017 (Ex. 76A), As ~~revised by Ex. 14B of Z.C. Case No. 15-27A (“Plans”)~~, all in the record of Z.C. Case No. 15-27);

<sup>10</sup> The following modifications to the Revised Order precede those shown in Z.C. Order No. 15-27E, which reflects these changes but which was inadvertently published prior to this Order No. 15-27B(2).



- **As revised by Ex. 14B of Z.C. Case No. 15-27A;**
- ~~(b)~~ As modified for the penthouse of Building C1, which shall be developed in accordance with the architectural drawings at Exhibit 1E of Z.C. Case No. 15-27D, dated October 1, 2019 (“Modified Building C1 Penthouse Plans”), as modified by the architectural drawings at Exhibit 2C of Z.C. Case No. 15-27B, dated March 15, 2019;
- **As revised by the Architectural Plans and Elevations included in Ex. 26A of Z.C. Case No. 15-27B, as revised by Sheets C-2 206, C-2 502, and C-2 505 of the Applicant’s Hearing Presentation (Ex. 31A of Z.C. Case No. 15-27B) (collectively, the “Plans”);** and
- As modified by the guidelines, conditions, and standards of this Order, as may be further modified by the Commission.

A.2 In accordance with the Plans, the PUD shall be a mixed-use project comprised of four buildings (“Building A,” “Building B,” “Building C,” and “Building D”) constructed in two phases. Phase I (consolidated PUD) shall include the southern portion of Building A (“Building A1”), Building B, and the southern portion of Building C (“Building C1”). Phase II (first-stage PUD) shall include the northern portion of Building A (“Building A2”), the northern portion of Building C (“Building C2”), and Building D. Upon completion of all buildings, the Project shall have an aggregate density of approximately 7.1 FAR. Approximately ~~1,091,201~~ **897,127** square feet of total gross floor area will be devoted to residential use, approximately ~~52,968~~ **54,151** square feet of total gross floor area will be devoted to retail use (**including Maker Space**), and approximately ~~217,558~~ **444,008** square feet of total gross floor area will be devoted to office use. Building heights shall range from approximately 78 feet to approximately 130 feet. The Project will include a total of approximately ~~682~~ **719** off-street parking spaces.

- A.8 The Applicant shall also have flexibility with the design of the PUD 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. ~~[DELETED] To develop Building A2 with hotel use above the proposed ground-floor retail and to develop Building D with hotel or office use above the proposed ground-floor retail, should the market demand be more appropriately satisfied with hotel and/or office use;~~
  - d. 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;
  - e. To vary the sustainable design features of the Project, provided;



- (i) The total number of LEED points achievable for Buildings A1 and B are not below LEED-Gold under the USGBC’s LEED for New Construction v2009 rating standards,
  - (ii) The total number of LEED points achievable for Building C1 is not below LEED-Gold under the USGBC’s LEED for Core and Shell v2009 rating standards, and
  - (iii) The total number of LEED points achievable for each building within the first-stage PUD is not below the total number of LEED points consistent with the USGBC LEED-Gold for New Construction v2009 rating standards;
- f. 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;
- g. ~~[DELETED] To use either tonal masonry or warm-tone terracotta cementitious panels for Building C1’s exterior building material, as shown on Sheet 80 of the Plans dated January 26, 2017; (Ex. 72A1.)~~
- h. 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
- i. To vary the features, means and methods of achieving the code-required Green Area Ratio (“GAR”) of 0.20.
- B.1 Prior to the issuance of a Certificate of Occupancy for each residential building and for the life of the Project, the Applicant shall demonstrate to the Zoning Administrator the following:
- a. For the life of the Project, the Applicant shall:
    - (i) Provide a total of ~~1,091,201~~ **approximately 897,127** square feet of residential Gross Floor Area (“GFA”) of housing;
    - (ii) Set aside no less than 11% of the residential GFA, equaling not less than ~~120,036~~ **98,684** square feet, as inclusionary units **as follows: pursuant to version of 11 DCMR Chapter 26 in effect as of September 5, 2016;**
      - ~~iii. Set aside no less than 62 units (50% of the inclusionary units) comprising at least 60,018~~ **49,342** square feet of GFA as inclusionary units for households earning equal to or less than 50% of the Area Median Income (“AMI”) (50% AMI Units”); **and**
      - ~~iv. Set aside no less than 62 units (50% of the inclusionary units) comprising at least 60,018~~ **49,342** square feet of GFA as inclusionary units for households earning equal to or less than 80% of the AMI (“80% AMI Units”); **and**

- **Additional GFA devoted to 50% AMI Units in Building A2 generated by habitable penthouse space, as required by Z.C. Order No. 15-27A;**<sup>11</sup>

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

- Sheets 122-130 of the Plans dated March 13, 2017 (Ex. 75A2 **of Z.C. Case No. 15-27**); and **in accordance with the following**<sup>12</sup>

	Building A1	Building A2 <sup>6</sup>	Building B	Building C	Building D (resid. option)	Affordable Control Period	Affordable Unit Type	Total
<b>Total</b>	422,605 sf GFA (453 units) (100%)	249,323 sf GFA (198 units) (100%)	86,005 sf GFA (105 units) (100%)	211,784 sf GFA (232 units) (100%)	121,484 sf GFA (115 units) (100%)	NA	NA	1,091,201 sf GFA (1,103 units) (100%)
<b>Market Rate</b>	376,117 sf GFA (89%)	221,897 sf GFA (89%)	76,543 sf GFA (89%)	188,488 sf GFA (89%)	108,120 sf GFA (89%)	NA	NA	971,165 sf GFA (977 units)
<b>50% AMI</b>	23,244 sf GFA (26 units) (5.5%)	13,713 sf GFA (12 units) (5.5%)	4,731 sf GFA (5 units) (5.5%)	11,648 sf GFA (13 units) (5.5%)	6,682 sf GFA (6 units) (5.5%)	Life of the Project	Rental (optional for sale in Building A2)	60,018 sf GFA (62 units)
<b>80% AMI</b>	23,244 sf GFA (26 units) (5.5%)	13,713 sf GFA (12 units) (5.5%)	4,731 sf GFA (5 units) (5.5%)	11,648 sf GFA (13 units) (5.5%)	6,682 sf GFA (6 units) (5.5%)	Life of the Project	Rental (optional for sale in Building A2)	60,018 sf GFA (62 units)

<sup>11</sup> Total GFA numbers are based on the approved building permit plans for Buildings A1, B, and C1, together with the approved Second-Stage PUD plans for Buildings A2, C2, and D (Ex. 26A2, Sheet 203). The total affordable housing proffer assumes that Building A2 is developed as a rental residential building requiring 11% of the residential GFA to be set aside for IZ units, with half at 50% of the MFI and half at 80% of the MFI (Z.C. Order No. 15-27A, Condition No. A.2.c).

If Building A2 is developed as a for-sale residential building, then a minimum of 90,881 square feet of total IZ GFA and a corresponding reduction in the number of IZ units would be provided in the Approved Overall PUD. (Z.C. Order No. 15-27A, FF 19, Condition No. A.2.c, requiring 8% of residential GFA to be set aside for 80% AMI Units in Building A2 as a for-sale product). Additional IZ at 50% of the MFI will be provided within Building A2 generated by penthouse habitable space in that building. See Z.C. Order No. 15-27A.

<sup>12</sup> Footnote 6 in the table of the Original Order's Condition No. B.1.b and the corresponding footnote 6 to be deleted in their entirety:

~~**<sup>6</sup> If Building A2 is developed as for-sale housing, then the proffered affordable housing will be redistributed as follows: (i) 19,946 square feet of Building A2's residential gross floor area will be dedicated to households earning up to 80% of the AMI; (ii) a total of 30,100 square feet of Building A1's residential gross floor area will be dedicated to households earning up to 50% of the AMI, and a total of 17,011 square feet of Building A1's residential gross floor area will be dedicated to households earning up to 80% of the AMI; and (iii) a total of 11,587 square feet of Building B's residential gross floor area will be dedicated to households earning up to 50% of the AMI, and a total of 4,731 square feet of Building B's residential gross floor area will be dedicated to households earning up to 80% of the AMI. If Building A2 is to be developed as for-sale housing and Buildings A1 and B are constructed prior to Building A2, then the condition enforcing this commitment will be based on the timing of issuance of the certificate of occupancy for Building A1 and Building B, respectively (see Condition No. B2).**~~

- As modified by Sheet A-2\_310 of the Architectural Drawings approved for Building A2; **and** (Ex. 21A of Z.C. Case No. 15-27A);
- ~~Subject to the chart set forth in Z.C. Oder 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>	<b>260,108 sf</b>	<b>260,108 sf</b>
<b>Penthouse Habitable Space</b>	<b>7,977 sf</b>	<b>7,977 sf</b>
<b>80% AMI</b>	<b>20,809 sf (8% of residential GFA)</b>	<b>14,306 (5% of residential GFA)</b>
<b>50% AMI</b>	<b>638 sf (8% of penthouse habitable space)</b>	<b>14,306 (5% of residential GFA) + 878 sf (11% of penthouse habitable space)</b>

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

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

B.2 ~~[DELETED] If Building A2 is developed as for sale housing, then the Applicant shall reduce the total affordable housing proposed for Building A2 from 11% to eight percent of Building A2's residential gross floor area, all of which shall be dedicated to households earning up to 80% of the AMI, and shall transfer an additional 13,713 square feet of affordable housing dedicated to households earning up to 50% of the AMI in Buildings A1 and B, to then result in the following allocations:~~

~~a. Prior to the issuance of a Certificate of Occupancy for Building A1 and for the life of the Project, the Applicant shall demonstrate to the Zoning Administrator that it has dedicated the following affordable housing in Building A1:~~

- ~~i. 30,100 square feet of Building A1's residential gross floor area to households earning up to 50% of the AMI; and~~
- ~~ii. 17,011 square feet of Building A1's residential gross floor area to households earning up to 80% of the AMI;~~

~~b. Prior to the issuance of a Certificate of Occupancy for Building B and for the life of the Project, the Applicant shall demonstrate to the Zoning Administrator that it has dedicated the following affordable housing in Building B:~~

- ~~i. 11,587 square feet Building B's residential gross floor area to households earning up to 50% of the AMI; and~~
- ~~ii. 4,731 square feet of Building B's residential gross floor area to households earning up to 80% of the AMI;~~

~~c. The requirement to dedicate the additional affordable housing totaling~~

- ~~13,713 square feet in Buildings A1 and B as set forth above is only triggered if Building A2 is developed as for-sale housing and dedicates eight percent of its residential gross floor area to households earning up to 80% of the AMI;~~  
~~d. In no event shall any building include less than eight percent of its residential gross floor area devoted to inclusionary units; and~~  
~~e. All IZ units shall maintain affordability in accordance with all applicable requirements of the Zoning Regulations in effect as of September 5, 2016.~~

## II. APPLICABLE CONDITIONS OF Z.C. ORDER NO. 15-27 TO BUILDING C2

The Applicant will also honor the following TDM commitments of the Original Order applicable to Building C2 (whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

- C.3. **Prior to the issuance of a Certificate of Occupancy for each building**, the building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has constructed the interior bicycle parking within the relevant buildings, as shown on Sheets 37-39, 44, 69, and 82 of the Plans (Ex. 61A, 75A).
- C.7. **Prior to the issuance of a Certificate of Occupancy for the first building completed within the second-stage PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has paid DDOT for the installation and first year's operation expenses of a new Capital Bikeshare station to be located on Morse Street, south of Building C1.
- C.12 **Prior to the issuance of a Certificate of Occupancy for each building**, the Applicant shall demonstrate to the Zoning Administrator that it has exceeded the zoning requirements for bicycle parking for the applicable building.
- C.14 **Prior to the issuance of a Certificate of Occupancy for each building**, the building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has installed a transit information screen in each of the residential and office lobbies.

## III. SECOND-STAGE PUD - BUILDING C2 PROJECT DEVELOPMENT

### A. PROJECT DEVELOPMENT

1. Building C2 shall be developed in accordance with the approved plans described in Condition No. A.1. of Z.C. Order No. 15-27 to the extent that they apply to Building C2, and as modified by:
  - The Architectural Plans included in the Applicant's Supplemental Prehearing Submission (Ex. 26A) ("Building C2 Architectural Plans");
  - As supplemented and updated by the Applicant's Hearing Presentation (Ex. 31A, Sheets C-2\_206, C-2\_502 and C-2\_505 of the record of Z.C. Case No. 15-27) showing additional information on building materials and updates to the landscape plan and alley section, respectively (collectively with the Building C2 Architectural Plans, the "Approved Building C2 Plans"),

- As modified by the following guidelines, conditions, and standards.
2. In accordance with the Approved Building C2 Plans, Building C2 shall have:
    - A maximum building height of 130 feet;
    - Approximately 225,398 square feet of GFA devoted to office use and approximately 6,532 square feet of GFA devoted to retail use, of which a minimum of 1,125 square feet shall be devoted to Maker Space (10.89 FAR total for the Building C2 Site);
    - 132 zoning-compliant parking spaces; and
    - One 30-foot loading berth, one 200 square foot loading platform, and one 20-foot service/delivery space.
  3. The Applicant shall also have flexibility with the design of the PUD in the following areas:
    - For Building C2, flexibility to move the maker space to an alternate location, so long as a minimum of 1,125 square feet is maintained and so long as the maker space remains on the ground floor of Building C2 with visible frontage on Neal Place or 3rd Street;
    - For Building C2, flexibility on the exact location, design, and materials of the exterior penthouse terrace, so long as the overall design meets the intent of the landscape drawings shown at Sheets C-2\_307 and C-2\_501 of Exhibit 26A of Z.C. Case No. 15-27B; and
    - For Building C2, flexibility to increase or decrease the square footage of solar panels on Building C2 by approximately 10% so long as the solar panels are located in the same general location as shown on Sheets C-2\_308 and C-2\_501 of Exhibit 26A of Z.C. Case No. 15-27B.

**B. TRANSPORTATION MITIGATION MEASURES**

1. **Prior to the issuance of the first above-grade Certificate of Occupancy for Building C2 and for the life of Building C2, or as otherwise noted below,** the Applicant shall implement the following TDM measures:
  - Unbundle the cost of parking from the cost to lease an office unit and only hourly, daily, or weekly rates will be charged. Free parking, validation, or discounted rates will not be offered;
  - Identify Transportation Coordinators for the planning, construction, and operations phases of development. There will be a Transportation Coordinator for each tenant and the entire site. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement;
  - Will provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year. All employer tenants must survey their employees and report back to the Transportation Coordinator;
  - Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the employees and customers, including

promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;

- Transportation Coordinators will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;
- Will notify goDCgo each time a new office tenant moves in and provide TDM information to each tenant as they move in;
- Will post “getting here” information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for discouraging parking on-street in Residential Permit Parking (RPP) zones;
- Transportation Coordinator will implement a carpooling system such that individuals working in the building who wish to carpool can easily locate other employees who live nearby;
- Distribute information on the Commuter Connections Guaranteed Ride Home (GRH) program, which provides commuters who regularly carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency;
- Transportation Coordinator will demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law and participate in at least one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future;
- Provide employees who wish to carpool with detailed carpooling information and refer to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or other comparable service if MWCOC does not offer this in the future;
- Designate a minimum of two (2) preferential carpooling spaces and one (1) vanpooling spaces in a convenient location within the parking garage for employee use;
- Offer a free SmarTrip card and one (1) complimentary Capital Bikeshare coupon good for a free ride to each new employee for the first year;
- Will meet the requirements of the Zoning Regulations for showers and lockers for use by employees. The Applicant will provide shower and locker facilities that meet Zoning Regulations (6 showers and 42 lockers);
- Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo and tandem bikes;
- Provide a minimum of six (6) electric vehicle parking spaces in the garage;
- Install a Transportation Information Center Display (electronic screen) within the office lobby containing information related to local transportation alternative;
- Offer an annual Capital Bikeshare membership to each employee for three (3) years after the building opens;



- Employers will participate in the Capital Bikeshare Corporate membership program and offer discounted annual memberships to employees;
- Provide a free parking space for all vehicles that employees use to vanpool to work;
- Additional short and long-term bicycle parking spaces above requirements of the Zoning Regulations;
- Will not lease unused surplus parking spaces to anyone aside from tenants of the building or Market Terminal PUD unless the other building is under parked or provides zero (0) on-site parking;
- Provide a bicycle repair station in each long-term bicycle storage room;
- Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator shall submit documentation from DCRA summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case;
- Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order; and
- Contribute \$25,000 to the DDOT Transportation Mitigation Fund in lieu of installing the turn lane and making traffic signal adjustments. This money will be used by DDOT within ANC 5D (the ANC of Union Market) to fund these roadway geometric changes, other traffic flow improvements, traffic calming, bike/ped improvements, and/or improved transit connections.

2. **Prior to the issuance of a Certificate of Occupancy for Building C2 and for the life of Building C2, or as otherwise noted below**, the Applicant shall implement the following Loading Management measures:

- A loading dock manager will be designated by the building management who will be on duty during delivery hours. The dock manager will be responsible for coordinating with vendors and tenants to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise;
- The dock manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along the private alley except during those times when a truck is actively entering or exiting a loading berth;
- All tenants will be required to schedule deliveries that utilize the loading area (any loading operation conducted using a truck 20-feet in length or larger);
- Delivery trucks for the retail tenants will be prohibited from serving the site between the commuter peak hour times of 8:00 to 10:00 AM and 4:00 to 6:00 PM;

- Retail loading in the 30-foot berth will be restricted to times before 8:00 AM and after 6:00 PM to allow for deliveries to be accessed through the building lobby from the loading berth to the retail space;
- Outside of these hours, retail tenants may access the loading dock via the sidewalk along the private alley. This is projected to occur no more than five (5) times in a week;
- The dock manager will schedule deliveries using the berths such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to use the C1 loading facility or return at a later time when a berth will be available so as to not compromise safety or impede the private alley functionality;
- When needed, the dock manager will coordinate usage of Building C1's loading facilities with the Building C1 dock manager. Building C2 loading and delivery schedules will be coordinated to lessen the need of this overflow option;
- Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight); and
- The dock manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading dock as well as notifying all drivers of any access or egress restrictions (ex. No left turn onto Neal Place Extension). The dock manager will also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The dock manager will also post these materials and other relevant notices in a prominent location within the loading area.

### **C. SECOND-STAGE PUD - VALIDITY**

1. No building permit shall be issued for Building C2 until the Applicant has recorded a covenant in the land records of the District of Columbia, for the benefit of the District of Columbia, that is satisfactory to the General Counsel of the Office of Zoning and the Zoning Administrator, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use Building C2 in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. This Second-Stage PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within that time, the Applicant shall file for a building permit for Building C2 and shall begin construction of Building C2 within three years of the effective date of this Order No. 15-27(B)(2).

**VOTE (July 27, 2020):**    **5-0-0**    (Robert E. Miller, Anthony J. Hood, Peter G. May, Peter A. Shapiro, and Michael G. Turnbull to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 15-27B(2) shall become final and effective upon publication in the *D.C. Register*; that is, on October 22, 2021.



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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**



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**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.