

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-10
Z.C. Case No. 16-10
EAJ 400 Florida Avenue, LLC
(Consolidated PUD and Related Map Amendment @ Square 3588)
January 30, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on October 27, 2016, to consider application for a consolidated planned unit development (“PUD”) and a related zoning map amendment filed by EAJ 400 Florida Avenue, LLC (“Applicant”). The Commission considered the application pursuant to Chapters 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”).¹ For the reasons stated below, the Commission **HEREBY APPROVES** the application.

FINDINGS OF FACT

The Application, Parties, Hearings, and Post-Hearing Filings

1. On May 10, 2016, the Applicant filed an application with the Commission for consolidated review and approval of a PUD and a related zoning map amendment from the C-M-1 Zone District to the C-3-C Zone District for property located at 400 Florida Avenue, N.E. (Lots 4, 25, and 803 in Square 3588) (“PUD Site”).
2. The PUD Site has a land area of approximately 20,455 square feet and is rectangular in shape, bounded by a 25-foot-wide public alley to the north, 5th Street, N.E. to the east, Florida Avenue, N.E. to the south, and 4th Street, N.E. to the west. The PUD Site is presently improved with two two-story structures and is otherwise unimproved.
3. The PUD Site is surrounded by a variety of uses, including warehouses and commercial uses to the northwest, residential and commercial uses to north and south, Gallaudet University to the east, and major large-scale mixed-use developments to the west in NoMa. The PUD Site is located one block south of Union Market and approximately two blocks to the northeast of the Uline Arena.

¹ Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016, and replaced with a Chapter 3 of Subtitle 11-X. However, because this application was set down for hearing prior to that date, the Commission’s approval was based upon the standards set forth in Chapter 24. Since the hearing was scheduled and held on October 27, 2016, the pre-hearing and hearing procedures of Title 11-Z, Chapter 4 applied.

4. The Applicant proposes to raze the existing buildings on the PUD Site and construct a new mixed-use building composed of residential, hotel, and ground-floor retail uses (“Project”). The Project will have approximately 164,288 square feet of gross floor area (a density of 8.0 floor area ratio (“FAR”)) and a maximum building height of 120 feet, not including penthouses. Approximately 94,632 square feet of gross floor area will be devoted to residential use (110 units, plus or minus 10%); approximately 66,924 square feet of gross floor area will be devoted to hotel use (155 rooms, plus or minus 10%); and approximately 2,732 square feet of gross floor area will be devoted to ground-floor retail use. The Project will provide three off-street parking spaces (two car-share spaces and one electric vehicle charging space) and convenient off-street loading facilities, all accessed from the alley.
5. Pursuant to 11 DCMR § 2403.2, the Project is required to devote eight percent of the residential gross floor area to inclusionary zoning (“IZ”) units, set aside for households earning up to 80% of the area median income (“AMI”). The Applicant proposes to exceed that requirement by dedicating 12% of the residential gross floor area (approximately 11,356 square feet) as IZ units, with six percent set aside for households earning up to 50% of the AMI (approximately 5,678 square feet) and six percent set aside for households earning up to 80% of the AMI (approximately 5,678 square feet).
6. By report dated June 17, 2016 (Exhibit [“Ex.”] 14), the District of Columbia Office of Planning (“OP”) recommended that the application be set down for a public hearing. At its public meeting on June 27, 2016, the Commission voted to schedule a public hearing on the application.
7. The Applicant submitted a prehearing statement on July 8, 2016 and a public hearing was timely scheduled for the matter. (Ex. 17-17H.) On July 22, 2016, the notice of public hearing was mailed to all owners of property located within 200 feet of the PUD Site; Advisory Neighborhood Commission (“ANC”) 5D, the ANC in which the PUD Site is located; Commissioner Peta-Gay Lewis, the Single Member District representative for the PUD Site (5D01); ANC 6C, the ANC located across Florida Avenue from the PUD Site; and to Councilmembers Kenyan McDuffie and Charles Allen, of Wards 5 and 6, respectively. A description of the proposed development was included in the notice of the public hearing in this matter, which was published in the *D.C. Register* on July 29, 2016.
8. On October 7, 2016, the Applicant submitted a supplemental prehearing statement in response to comments raised by the Commission and OP at the setdown meeting. (Ex. 27-27D.) The supplemental submission included revised architectural plans and elevations, information on the proposed hotel brand/operator, an updated list of proposed public benefits and amenities, and a comprehensive transportation review (“CTR”) report prepared by Gorove/Slade Associates and submitted to the District Department of Transportation (“DDOT”) on September 12, 2016.

9. On October 17, 2016, OP and DDOT each submitted a report on the application. The OP report stated its general support for the Project, particularly since the “design ha[d] greatly improved since the initial submission.” (Ex. 29.) OP also asserted that “[t]he proposed height and density would be consistent with the maximum guidelines contemplated by the Comprehensive Plan and the Florida Avenue Market Study.” (Ex. 29, p. 1.) However, OP noted a number of outstanding items that needed resolution before it was willing to recommend approval of the Project.
10. On October 17, 2016, DDOT submitted a report indicating that it had no objection to the application with the following conditions: (i) implement the proposed TDM plan outlined in the Applicant’s CTR; (ii) revise the site plan to include one additional 30-foot loading berth; (iii) provide interior connections from the long-term bicycle parking rooms to the hotel and residential lobbies; (iv) strengthen the loading management plan to include a contingency for trucks larger than 30 feet in length; (v) replace the proposed lay bys with a valet zone on 4th Street; and (vi) reconstruct the curb ramps and stripe highly visible crosswalks on Morse Street, N.E. at the intersections with 4th and 5th Streets, N.E., to provide pedestrian connections to the off-site parking, if not already constructed by others. (Ex. 30, p. 3.) The DDOT report also requested that the Applicant commit to providing a 240-volt charging station in the proposed EV-charging parking space. (Ex. 30, p. 7.)
11. On October 24, 2016, the Applicant submitted a motion to accept the late filing of the CTR, which was submitted to the record less than 30 days prior to the public hearing and thus inconsistent with the requirements of Subtitle Z §§ 401.7 and 401.8 of the 2016 Zoning Regulations. (Ex. 33.) On October 25, 2016, the Applicant submitted additional materials to the record, which responded to the issues raised in the OP and DDOT reports. (Ex. 34-36.)
12. On September 13, 2016, at a duly noticed, regularly scheduled monthly meeting of ANC 5D, with a quorum of commissioners and the public present, ANC 5D voted 6:0 to support the Project. (Ex. 26.) The ANC requested that the Applicant continue to work with Single Member District Commissioner Lewis (ANC 5D01) on the following issues prior to the public hearing: (i) confirming the public benefits and amenities; (ii) updating the building’s massing, design, and materials, and (iii) finalizing the off-site parking provided for the Project.
13. On October 26, 2016, Commissioner Lewis submitted a letter that addressed each of the three outstanding issues and concluded that “as a result of the Applicant’s continued work and coordination with the community, I am supportive of this project moving forward and urge the Commission to approve the application.” (Ex. 37.)
14. On October 14, 2016, ANC 6C submitted a report stating that at a duly noticed, regularly scheduled monthly meeting of ANC 6C, with a quorum of commissioners and the public

present, ANC 6C voted 4:0 to oppose the project because it “suffers from a large number of defects. These include:

- a. Inferior, unattractive architecture, especially for the western half of the project;
- b. A minimum amount of ground-floor retail offered on this 20,000 square feet (“sf”) site on a major commercial corridor;
- c. The needless request to provide no onsite parking, when the floor area is more than adequate to allow at least one underground level with easy access from the 25-foot alley to the north;
- d. Poor land use and transportation planning aspects, as described in (c) above; and
- e. Insufficient truck loading facilities (one 30-foot dock that is not positioned to adequately serve the hotel use on the west side of the site).

(Ex. 28.)

15. ANC 6C’s report also noted that the Project is located in ANC 5D and is adjacent to the boundaries of ANC 6C. (Ex. 28.)
16. The parties to the case were the Applicant, ANC 5D, and ANC 6C.
17. The Commission convened a public hearing on October 27, 2016, which was concluded that same evening. At the hearing, the Applicant presented four witnesses in support of the applications: Sheldon Stein on behalf of the Applicant; Cyril Aouizerate on behalf of the hotel owner/operator; Marius Radulescu of SK+I Architects, architect for the Project; and Erwin Andres of Gorove/Slade Associates, transportation consultant for the Project. Based upon their professional experience and qualifications, the Commission qualified Mr. Radulescu as an expert in architecture and Mr. Andres as an expert in transportation planning and engineering.
18. At the public hearing, the Applicant submitted a copy of its PowerPoint presentation, which included photographs of the materials that were presented at the public hearing. (Ex. 38.) As a preliminary matter, the Commission granted the Applicant’s request to accept the CTR less than 30 days prior to the public hearing.
19. Joel Lawson and Matt Jesick testified on behalf of OP at the public hearing. Aaron Zimmerman testified on behalf of DDOT at the public hearing.
20. Commissioner Goodman, Single Member District Commissioner for ANC 6D06, testified at the public hearing regarding ANC 6C’s continued concerns with the Project. (Ex. 39.)

21. The record was closed at the conclusion of the hearing except to receive additional submissions from the Applicant and responses thereto by OP, DDOT, ANC 5D, and ANC 6C.
22. On November 18, 2016, the Applicant filed a post-hearing submission. (Ex. 42-42E.) The post-hearing submission included the following materials and information: (i) a memorandum committing to provide 50 off-site parking spaces for the life of the Project; (ii) a conceptual site plan showing the infeasibility of providing an on-site parking garage and a memorandum describing the extremely high cost of constructing an on-site parking garage; (iii) condition language committing to restrict residents from obtaining Residential Parking Permits (“RPPs”); (iv) a request for flexibility to provide a bar or restaurant in the hotel’s penthouse; (v) revised architectural plans and elevations responding to specific requests raised by the Commission at the public hearing and incorporating design changes to the building; (vi) responses to outstanding items from OP, including details on the business incubator space and the Applicant’s commitment to replace the previously proposed art gallery with a proffer to rebuild the sidewalks and curbs and install trees on the east side of 4th Street and the west side of 5th Street, N.E., from the alley to Morse Street, N.E.; and (vii) responses to outstanding items from ANC 6C, including parking, ground floor activation, bicycle parking, benefits and amenities, and building design.
23. On November 28, 2016, OP submitted a supplemental report. (Ex. 43.) The report included a table that identified the requests for information sought by the Commission, the Applicant’s response, and OP’s analysis. The report indicated that although the table “raises a few points that require some additional clarification prior to final action, OP can now recommend approval of the application. The applicant is also expected to provide a final outline of benefits and amenities, for the Commission to assess whether they are commensurate with the level of flexibility gained through the PUD.”
24. At the public meeting of December 12, 2016, the Commission reviewed the additional materials submitted by the Applicant, and OP, and took proposed action to approve the application while noting that it still had concerns about the parking arrangements, the design of the building’s bay projections, the justification for the requested rooftop setback relief, and the building’s signage, and requested that the Applicant address these concerns. The Commission invited additional input from ANC 6C before final action.
25. The proposed action was referred to the National Capital Planning Commission (“NCPC”) on December 15, 2016, pursuant to § 492 of the Home Rule Act.
26. On January 13, 2017, the Applicant filed its response to the concerns expressed by Commission at proposed action. (Ex. 47-47B.) The submission included updated architectural drawings that eliminated the need for penthouse setback relief, revised the bay projections so that they appear as separate structures, and provided details on the height of the letters for the hotel’s vertical signage.

The letter also provided an update on the Applicant's outreach to ANC 6C by attaching a letter dated January 4, 2017 from Tony Goodman, the Single Member District representative for ANC 6C06 at the time the application was heard and whose area is located adjacent to the PUD Site. In his letter, Mr. Goodman stated that although he is "pleased with the improvements in retail, street presence, and amenities provided by the development team (though the overall amenities package is still extremely low compared with other similar nearby PUD[s].)" Mr. Goodman also expressed his disappointment with the bulk of the building, which he considered to be "too high and rectangular." (Ex. 47-47B.)

27. The Applicant noted that it increased the public benefits package following the public hearing by committing to rebuild the sidewalks and curbs and install trees on the east side of 4th Street and the west side of 5th Street, N.E., from the alley to Morse Street, N.E. Also, the Applicant asserted that the bulk of the building is consistent with: (i) the Comprehensive Plan's designations for the PUD Site as mixed-use High-Density Commercial, Medium-Density Residential, and Production, Distribution and Repair; and (ii) the Florida Avenue Market Study, which is the small area plan for land encompassing the PUD Site, citing the OP Report (Ex. 14, pp. 1, 12.)
28. The Executive Director of NCPC, by delegated action dated December 29, 2016 found that the PUD and related map amendment not be inconsistent with the Comprehensive Plan for the National Capital or other federal interests. (Ex. 48.)
29. At the public meeting of January 30, 2017, the Commission considered the issues and concerns expressed in ANC 6C's October 14th report. The report and the Commission's responses thereto are discussed in detail below. The Commission also discussed the Applicant's proposed signage plan. In response to the Commission's comments, the Applicant agreed to amend its signage plan to remove one of the proposed signage locations. The Commission then took final action to approve the Project, with the condition that the Applicant would submit the revised signage plan as stated at the meeting.
30. On February 1, 2017, the Applicant submitted its revised signage plan. (Ex. 50.)

The PUD Site and Surrounding Area

31. The PUD Site is located at 400 Florida Avenue, N.E. (Square 3588, Lots 4, 25, and 803) and has a land area of approximately 20,455 square feet. The PUD Site is rectangular in shape and is bounded by a 25-foot-wide public alley to the north, 5th Street, N.E. to the east, Florida Avenue, N.E. to the south, and 4th Street, N.E. to the west. The PUD Site is presently improved with two two-story structures and is otherwise unimproved.

32. The PUD Site is surrounded by a variety of uses, including warehouses and commercial uses to the northwest, residential and commercial uses to north and south, Gallaudet University to the east, and major large-scale mixed-use developments to the west in NoMa. The PUD Site is located one block south of Union Market and approximately two blocks to the northeast of the Uline Arena.

Existing and Proposed Zoning

33. The PUD Site is presently zoned C-M-1. The Applicant proposes to rezone the PUD Site to the C-3-C Zone District. The requested zoning map amendment is consistent with the Comprehensive Plan's Future Land Use Map designation of the PUD Site as mixed-use: High-Density Commercial, Medium-Density Residential, and Production, Distribution and Repair. The requested map amendment is also consistent with the Comprehensive Plan's Generalized Policy Map designation of the PUD Site as a Multi-Neighborhood Center, and with the Florida Avenue Market Study ("FAMS") recommendations for medium-high density development for the PUD Site and the immediate area. (FAMS, p. 57.)
34. The C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) The Zoning Regulations note that "heavy truck traffic and loading and unloading operations are expected to be characteristic of C-M Districts." (11 DCMR § 800.2.) The C-M-1 Zone District prohibits residential development except as otherwise specifically provided. (11 DCMR § 800.4.) As a matter of right, property in the C-M-1 Zone District can be developed with a maximum density of 3.0 FAR. (11 DCMR § 841.1.) The maximum permitted building height in the C-M-1 Zone District is 40 feet and three stories. (11 DCMR § 840.1.)
35. The Applicant proposes to rezone the PUD Site to the C-3-C Zone District in connection with this application. The C-3-C Zone District permits medium-high density development, including office, retail, housing, and mixed-use development. (11 DCMR § 740.8.) As a matter of right, the C-3-C Zone District permits a maximum building height of 90 feet with no limit on the number of stories and a maximum density of 6.5 FAR for any permitted use, but a density of 7.8 FAR for projects subject to the IZ regulations. (11 DCMR §§ 770.71, 771.2, and 2604.1.) The maximum percentage of lot occupancy in the C-3-C Zone District for all uses is 100%. (11 DCMR § 772.1.) Rear yards in the C-3-C Zone District must have a minimum depth of two and one-half inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet. (11 DCMR § 774.1.) Buildings that front on three streets such as the PUD Site may measure the rear yard to the centerline of an abutting street. (11 DCMR § 774.11.) A side yard is generally not required in the C-3-C Zone District; however, when a side yard is

provided, it must have a minimum width of two inches per foot of height of building, but not less than six feet. (11 DCMR § 775.5.)

36. The maximum permitted penthouse height in the C-3-C Zone District is 20 feet and one story plus a mezzanine, with a second story permitted for penthouse mechanical space. (11 DCMR § 770.6.) Enclosing walls of the penthouse shall be of equal, uniform height as measured from roof level, except that: (i) enclosing walls of penthouse habitable space may be of a single different height than walls enclosing penthouse mechanical space; (ii) for a penthouse containing no habitable space, enclosing walls of penthouse mechanical space shall be of a single uniform height except walls enclosing an elevator override may be of a separate uniform height; and (iii) required screening walls around uncovered mechanical equipment may be of a single, different uniform height. (11 DCMR § 411.9.) A penthouse must be set back a distance equal to its height from: (i) front building walls; (ii) rear building walls; (iii) side building walls if it is on a building that is located adjacent to a property that has a lower permitted matter-of-right building height; and (iv) walls that border any court other than closed courts. (11 DCMR § 411.18.) A penthouse may house mechanical equipment or any use permitted within the zone, except that a nightclub, bar, cocktail lounge, or restaurant use shall only be permitted as a special exception if approved by the Board of Zoning Adjustment under 11 DCMR § 3104.
37. Consistent with the C-3-C development parameters, the Applicant will develop the PUD Site with a mix of residential, hotel, and retail uses. A tabulation of the PUD's development data is included on Sheet A006 of the Architectural Plans and Elevations dated January 11, 2017, and included in the record at Ex. 47A, with Sheet A221 modified as shown on the revised plan sheet dated January 31, 2017 and submitted as Ex. 50 (together, the "Plans").

Description of the PUD Project

38. As shown on the Plans, the Applicant proposes to raze the existing buildings on the PUD Site to construct the Project. The Project will have approximately 164,288 square feet of gross floor area (8.0 FAR) and a maximum building height of 120 feet, not including penthouses. Approximately 94,632 square feet of gross floor area will be devoted to residential use (110 units, plus or minus 10%); approximately 66,924 square feet of gross floor area will be devoted to hotel use (155 rooms, plus or minus 10%); and approximately 2,732 square feet of gross floor area will be devoted to ground floor retail uses. The Project will provide three on-site parking spaces (two car-share spaces and one electric vehicle charging space) and convenient off-street loading facilities, all accessed from the public alley at the rear of the PUD Site.
39. Pursuant to 11 DCMR § 2403.2, the Project is required to devote eight percent the residential gross floor area to IZ units, set aside for households earning up to 80% of the AMI. The Applicant proposes to exceed that requirement by dedicating 12% of the

residential gross floor area (approximately 11,476 square feet) as IZ units, with six percent set aside for households earning up to 50% of the AMI (approximately 5,678 square feet) and six percent set aside for households earning up to 80% of the AMI (approximately 5,678 square feet).

40. The Project is sensitive to its varied context and responds in size, form, and in its use of materials. The Project consists of two distinctive architectural expressions that correspond to its two different programs: residential use on the east side and hotel use on the west side. Both expressions relate to the Union Market vernacular of industrial warehouse style and address the street with welcoming, pedestrian-friendly storefronts.
41. The residential portion of the building presents a modern style metal façade that plays on the former warehouse and industrial backdrop reinterpreted with modernist elements. The residential portion is defined by the intersection of two masses rising from Florida Avenue and 5th Street. The building facades have a post-industrial/loft expression with large windows and metal and composite panels. The intersection of the two façades at the building's southeast corner is emphasized by bay projections that mirror the expressions from the adjoining street, such that each façade expresses itself as a bay projection on the adjacent side.
42. The hotel portion of the building has a more rigorous approach that follows the Union Market vernacular more closely, with dark, unrefined brick walls and tighter windows patterned by repetitive small panes of glass. This rigor forms the backdrop for the hotel's signature piece: a two-story high loggia facing Florida Avenue that is enlivened by landscaping and an active terrace program. This space is designed as both a window into the Project and a venue for the public to experience the changing neighborhood. Programmatically, the loggia offers a generous outdoor space at the front of the hotel that is sheltered from the traffic on Florida Avenue.
43. The street presence for both the residential and hotel programs is enhanced by a metal and glass storefront on Florida Avenue, 4th Street, and 5th Street. Residential and hotel amenities will be visible to pedestrian traffic, and individual retail space will line the Florida Avenue and 5th Street frontages, thus creating a vibrant streetscape and walkable pedestrian environment.
44. The entrances to both the residential and hotel uses are recessed from the surrounding storefronts to create an inviting space that is offset from the surrounding elevation. The residential entrance is located at the corner of Florida Avenue and 5th Street, which location will anchor Florida Avenue and provide a buzz of activity to improve pedestrian safety and comfort 24 hours a day. The entrance to an oversized bicycle storage room for the residential portion of the building is located on the alley near the corner of 5th Street, and a separate bicycle storage room for hotel use is located adjacent to the hotel loading facilities on the west side of the PUD Site. Also along the alley is a large landscaped courtyard.

45. The hotel portion of the Project will be occupied by MOB Hotels, which is a Paris-based hotel brand founded by Cyril Aouizerate. MOB Hotels is an affordable, social, and intellectually stimulating hotel brand that attracts an artistic and cultural network of individuals oriented in and around a dynamic casual bar and restaurant in a fun, eclectic atmosphere. The brand serves to connect the local community, neighbors, and international travelers, including innovative startups. The hotel's ground floor will feature a variety of street-activating uses, including a 200-square-foot "business incubator" space that will be dedicated to start-up businesses. A restaurant will be located on the second floor (inside the building and outside on the loggia), on the rear patio, and on the roof of the hotel portion of the building. The restaurant will be open to the public and will stimulate additional community interaction.
46. The Project will incorporate a number of sustainable and environmentally friendly elements, such as new landscaping and street tree planting, green roofs, solar panels, energy efficient LED lighting, irrigation of landscaping from stormwater collection, daylight control with automatic shades and lighting controls, locally sourced products, an electric car charging station, car-sharing spaces, and significant bicycle facilities. Based on these features, the residential portion of the building will achieve LEED-Gold certification and the hotel portion of the building will achieve LEED-Silver certification. Moreover, the PUD Site is also located in a walkable, transit-oriented, and infill location, such that many residents, guests, retail patrons, and employees of the Project will not need to rely on a private vehicle to access the PUD Site.

Zoning Flexibility

47. The Applicant requested the areas of flexibility from the Zoning Regulations discussed below:
48. ***Flexibility from the Off-street Parking Requirements.*** Pursuant to 11 DCMR § 2101.1, the Project is required to provide a total of 67 on-site parking spaces. The Applicant proposes to provide three off-street parking spaces at the rear of the PUD Site, with one space dedicated to an electric charging station and two spaces dedicated to a car-share company. Based on the Applicant's submissions, the Commission finds that an on-site parking garage would be highly inefficient on the narrow site, and would result in a maximum of 22 parking spaces per level. (Ex. 42.) The cost of constructing a single parking level would result in approximately \$145,485.00 per space, which is well beyond the typical cost budgeted for a single parking space, which is approximately \$48,888.00. The unusually high cost is a result of a variety of factors including the following:
 - a. The PUD Site's long and narrow shape is inefficient for sheeting and shoring, resulting in approximately \$23.46 per square foot, compared to approximately \$12.92 per square foot for a more regularly shaped site. This represents an 82% premium;

- b. The size of the garage also carries a premium for the structure. The typical structure is approximately \$40 per square foot, compared to the PUD Site, which carries approximately \$62 per square foot; and
- c. The inefficient garage layout requires the ramp to run along the long side of the PUD Site, thus only allowing for one parking space per 931 square feet of garage area, instead of the average parking space per 444 square feet of garage area.

The Commission notes that other factors affecting the cost of adding a parking garage include the PUD Site's history as a former gas station, the need for dewatering, and significant additional fixed costs including elevator stops, a driveway ramp, and drainage systems. Therefore, the Commission credits the evidence in the record and concludes that that it would be practically difficult for the Applicant to provide on-site parking in a below-grade parking garage.

- 49. Moreover, the Commission finds that the parking flexibility is appropriate in this case because: (i) the residential portion of the Project is designed and will be marketed to a young demographic, which has little interest in owning a private vehicle in such an urban, walkable, and transit-rich area; (ii) the Applicant will restrict residents from obtaining RPPs through penalty of lease termination; and (iii) the hotel portion of the Project will attract guests who are unlikely to utilize an automobile during their stay. Additionally, the PUD Site's close proximity to the NoMa-Gallaudet Metrorail station, multiple Metrobus routes, and nearby employment opportunities makes walking to work more practical than commuting by car. An abundance of retail and grocery options, including Union Market, are also located in the surrounding blocks, such that vehicles will not be needed for daily errands.
- 50. In addition, the Applicant entered into an agreement with EDENS, the developer and owner of the approved PUD at Square 3587, Lots 827, 828, 7012, and 7013 (the "EDENS Site") for use of 50 parking spaces within in the parking garage at the EDENS Site.² (Ex. 42A.) The EDENS Site was "approved with the understanding that the excess parking would be used for other nearby projects." (*See* OP Report, p. 11.) The Applicant will provide 50 spaces at the EDENS Site for the life of the Project.
- 51. Based on the difficulty of constructing on-site parking, the anticipated low demand for on-site parking, the Applicant's commitment to restrict residents from obtaining RPP permits, and the Applicant's commitment to reserve 50 off-site parking spaces at the EDENS Site for the life of the Project, the Commission finds that flexibility to provide only three on-site parking spaces where 67 spaces are required is appropriate in this case. The lack of on-site parking will not result in adverse impacts, particularly since the PUD Site is located in a walkable, mixed-use neighborhood with convenient access to multiple

² The EDENS Site was reviewed and approved in Z.C. Case No. 14-07.

public transportation options, bicycle lanes, car- and bike-share facilities, and an extensive pedestrian network. Moreover, the Commission finds that the Project's lack of parking is consistent with the Comprehensive Plan's goals of investing in transit-oriented development, improving pedestrian facilities, and transforming key District arterials into multi-modal corridors that incorporate and balance a variety of mode choices, including public transportation, bicycle, pedestrian, and automobile. The Project will provide on-site bicycle parking and a variety of extensive TDM measures. Together, these measures and the ample nearby public transportation options will help further the Comprehensive Plan's goals of connecting District neighborhoods by creating more direct links between the various transit modes and managing the automobile capacity of principal arterials. Therefore, the Commission hereby approves the parking flexibility requested.

52. The Commission also notes that OP indicated at the public hearing that it had no concerns with the parking flexibility, given the ample parking already being developed in other PUDs in the immediately surrounding neighborhood.
53. ***Flexibility from the Loading Requirements.*** The Applicant requested flexibility from the loading requirements of 11 DCMR § 2201.1, which require the following loading facilities: one berth at 30 feet deep and one berth at 55 feet deep; one platform at 100 square feet and one platform at 200 square feet; and two service/delivery spaces at 20 feet deep each. The Applicant proposed to provide two loading berths at 30 feet deep, one platform at 100 square feet, and one platform at 200 square feet. Thus, the Applicant requests flexibility to provide a 30-foot berth instead of the 55-foot berth, and to eliminate the required service/delivery spaces.
54. The Commission notes that the Applicant originally proposed to provide a single, shared loading berth for the Project, plus a single service/delivery space. In response to a request from DDOT, the Applicant added a second berth and removed the service/delivery space. Doing so allows the residential and hotel components of the Project to have separate loading facilities, which will eliminate potential conflicts and allow for a streamlined loading process from the rear alley. The Commission is supportive of the flexibility to provide a 30-foot berth instead of a 55-foot berth for the residential use, since it is unlikely that building residents will need to use a tractor-trailer sized truck to move in and out of the building. In the event that a 55-foot truck is needed, the Applicant will load directly from 4th or 5th Streets. The Commission is also supportive of the flexibility to not provide the two required service/delivery spaces, since there is no need for the additional spaces given the addition of the second loading berth. Therefore, based on the above findings, including the Applicant's acquiescence to agree to DDOT's request to add a second loading berth, the Commission approves the Applicant's request for relief from the loading requirements of 11 DCMR § 2201.1.
55. ***Flexibility from the Penthouse Height Requirements.*** Pursuant to 11 DCMR § 411.9, enclosing walls of a penthouse shall be of an equal height, except that: (a) enclosing walls of penthouse habitable space may be of a single different height than walls enclosing penthouse mechanical space, and (c) required screening walls around uncovered

mechanical equipment may be of a single, different uniform height. In addition, pursuant to 11 DCMR § 770.6, penthouses in the C-3-C Zone District may have a maximum height of 20 feet, with one story plus a mezzanine permitted, and a second story permitted for penthouse mechanical space. In this case, the Applicant proposes to provide four heights for the penthouses on the residential and hotel portions of the building as follows: For the residential portion, the Applicant proposes to provide (i) 20 feet for the mechanical space; (ii) 18 feet for the elevator overrun; (iii) 12 feet for the habitable space; and (iv) 10 feet for the stair enclosure. For the hotel portion, the Applicant proposes to provide (i) 20 feet for the mechanical space and elevator overrun; (ii) 13 feet for the habitable space; (iii) 9 feet, four inches for the separate stair enclosure; and (iv) eight feet, 11 inches for the second elevator overrun.

56. The Commission finds that the multiple penthouse heights are acceptable in this case. The multiple heights are provided in order to meet the required 1:1 setback from the edges of the roof, thus minimizing visibility of the penthouses. Moreover, the Applicant could hypothetically provide a single 20-foot penthouse roof over each penthouse component in order to meet the strict letter of the regulations regarding penthouse height. However, to do so would add unnecessary massing to the roof, would increase visibility from the street, and would result in numerous locations where the penthouses would not be set back 1:1. Therefore, the Commission finds that flexibility from 11 DCMR § 411.9 is appropriate in this case.

Special Exception Use

57. ***Bar/Restaurant in the Penthouse.*** Pursuant to 11 DCMR § 411.1(c), a “nightclub, bar, cocktail lounge, or restaurant use shall only be permitted as a special exception if approved by the Board of Zoning Adjustment.” The Board of Zoning Adjustment (“BZA”) is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) to grant special exceptions where the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Pursuant to 11 DCMR § 2405.7, the Commission may approve uses that are permitted as special exceptions and would otherwise require the approval of the BZA. Although an applicant may request flexibility from the special exception standards, in this case, such flexibility was not requested or needed.
58. The Commission finds that the proposed use complies with the special exception standard, since the proposed bar/restaurant use is consistent with the goals of the penthouse regulations to provide habitable space in penthouses and to provide contributions to the Housing Production Trust Fund (“HPTF”) for the production of affordable housing. In this case, the Applicant would be required to make a total contribution of over \$31,000 to the HPTF, with no less than half of the contribution made prior to the issuance of a building permit for construction of the penthouse habitable

space, and the balance of the contribution made prior to the issuance of a certificate of occupancy for any or all of the penthouse habitable space. (*See* 11 DCMR § 1505.16.)

59. Moreover, given that the PUD Site will be located in the C-3-C Zone District, commercial uses are anticipated, and will otherwise be provided in the ground and second-floor levels of the hotel. Establishing a bar/restaurant in the penthouse will create a unique and enjoyable dining experience for hotel guests, visitors, and members of the public. Further, the bar/restaurant will simply incorporate a “warm-up” kitchen, and will not include installation of any stoves, air vents, or other large cooking equipment. The Applicant will also ensure that the bar/restaurant does not create any objectionable noise or light impacts on surrounding properties. Thus, the Commission finds that the requested use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, and will not tend to adversely affect the use of neighboring property. Therefore, the Commission approves the use.

Development Flexibility

60. The Applicant also requests flexibility in the following additional areas:
- a. 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;
 - b. To be able to provide a range in the number of residential units and hotel rooms of plus or minus 10%;
 - c. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the residential portion of the Project is not below the LEED-Gold rating standards and that the total number of LEED points achievable for the hotel portion of the Project is not below the LEED-Silver rating standards;
 - d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of 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; and any other changes in order to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;
 - e. To vary the features, means and methods of achieving (i) the code-required Green Area Ratio (“GAR”) of 0.2, and (ii) stormwater retention volume and other

requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control; and

- 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.

Project Benefits and Amenities

61. Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a)). The Project will have a positive impact on the visual and aesthetic character of the neighborhood and will therefore further the goals of urban design while enhancing the streetscape. The Project has a superior international design with a unique sensitivity to the Union Market aesthetic. The building includes a large open loggia fronting Florida Avenue, N.E., which will have the effect of introducing greenery and contrast in a highly visible location. Moreover, replacing the two existing buildings and associated vacant lots that currently lack any green or sustainable features with a new mixed-use infill development constitutes a significant urban design benefit. The Project includes new landscape, garden, and open space features. The streetscape will include permeable pavers and tree amenity panels, bio-retention planters and new trees, scored concrete pavers, and ADA-compliant sidewalks, consistent with DDOT standards and with the public space improvements being implemented for surrounding projects along Florida Avenue, N.E. New street furnishings will include benches, trash receptacles, LED lighting, bicycle racks, and a cell phone charging kiosk. Moreover, the ground floor of the building will be programmed with active retail uses, amenity spaces, and an engaged lobby design, and will employ a minimum of 50% transparent material, which together will further enliven the streetscape. Throughout the Project, open spaces are used to create programmed amenity areas, including the landscaped garden, hotel terrace, loggia, green roof, roof terrace, and roof dining/bar. Overall, the excitement of the Project will draw the public in from afar with an unusual and exciting venue and public events.
62. In response to ANC 6C's request, and in order to ensure active retail space at the ground level, the Applicant will also implement the following design techniques:
 - a. Devote not less than 50% of the surface area of the streetwall(s) at the ground level to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to the building;
 - b. Design the building so as not to preclude an entrance every 40 feet, on average, for the linear frontage of the building on Florida Avenue, including entrances to ground floor uses and the main lobby; and

c. At the ground-floor level of the building, provide a uniform minimum clear floor-to-ceiling height of at least 10 feet.

63. Housing and Affordable Housing (11 DCMR § 2403.9(f)). The Project will create new housing and affordable housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The PUD Site is presently zoned C-M-1; such that new residential uses are not permitted to be developed. Thus, the Applicant's proposal to develop the Project as a PUD under the C-3-C zone requirements, and to construct approximately 94,632 square feet of gross floor area dedicated to residential uses, including affordable units, is significant.

64. Pursuant to 11 DCMR § 2403.2, the Project is required to devote a minimum of eight percent of the residential gross floor area to IZ units. However, the Applicant proposes to devote a minimum of 12% of the residential gross floor area to affordable housing, with six percent set aside for households earning up to 50% of the AMI and six percent set aside for households earning up to 80% of the AMI. In contrast, under the existing zoning, there would be no housing or affordable housing at the PUD Site at all. The Applicant's affordable housing proffer includes significantly more square footage and a deeper subsidy than is required by the IZ regulations. The breakdown of affordable housing by gross floor area and level of affordability is set forth below:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	94,632 sf of GFA (100%)	110	NA	NA	NA
Market Rate	83,276 sf of GFA (88%)	96	Market Rate	NA	NA
IZ	5,678 sf of GFA (6%)	7	Up to 50% AMI	Life of the project	Rental
IZ	5,678 sf of GFA (6%)	7	Up to 80% AMI	Life of the project	Rental

65. Environmental Benefits (11 DCMR § 2403.9(h)). The Applicant will ensure environmental sustainability by implementing a variety of sustainable design features, materials, and systems that are consistent with the recommendations of 11 DCMR § 2403.9(h). These include landscaping, street tree planting and maintenance, use of energy efficient and alternative energy sources, implementing methods to reduce stormwater runoff, and establishing green engineering practices. The building will register to be certified as LEED-Gold for the residential portion of the Project and LEED-Silver for the hotel portion of the Project. The LEED features will include a green roof,

solar panels, energy efficient LED lighting, irrigation of landscaping from stormwater collection, daylight control with automatic shades and lighting controls, use of locally sourced products, an electric charging station, car-sharing spaces, and bicycle parking facilities for the residential and hotel portions of the building.

66. Employment Benefits (11 DCMR § 403.9(j)). Development of the hotel portion of the Project will generate significant new employment opportunities, and the Applicant is committed to hiring locally. Accordingly, the Applicant will partner with the Goodwill Hospitality Training Program for the recruitment, screening, training, and referral of hotel employees, with a minimum of 51% of hotel employees being District residents.
67. In addition, the Applicant will submit to the Department of Consumer and Regulatory Affairs (“DCRA”) a First Source Employment Agreement executed by the Applicant, consistent with the First Source Employment Agreement Act of 1984.
68. Transportation Benefits (11 DCMR § 2403.9(c)). The Project includes a number of elements designed to promote effective and safe vehicular and pedestrian movement, transportation management measures, and connections to public transit services. For example, for the life of the Project, the Applicant will contract with EDENS to secure 50 parking spaces at the EDENS Site for the life of the Project. The Applicant will also contribute up to \$80,000 to DDOT for the purchase and one year of operation costs for a new Capital Bikeshare station, and will provide secure, long-term bicycle parking facilities on the ground level for the hotel and residential portions of the project. In addition, the Applicant will close existing curb cuts onto the PUD Site and replace them with a single entry point at the rear alley, with all access to the on-site parking and loading facilities located in the alley so as to reduce the impact on pedestrian travel. The Applicant will also improve the sidewalk connections by reconstructing the curb ramps and striping the crosswalks on Morse Street at the intersections of 4th and 5th Streets.
69. The Applicant will implement the following transportation demand management (“TDM”) strategies for the residential portion of the Project to reduce travel demand:
 - a. Dedicate two parking spaces along the alley for car-sharing services and one parking space along the alley as an EV-charging space (240 volt);
 - b. Install a Transportation Information Center display within the residential lobby containing information related to local transportation alternatives;
 - c. Prepare materials for residents that provide carpooling information and refers them to other carpool matching services;
 - d. Designate TDM leaders to work with residents to market transportation alternatives and options;

- e. Prepare TDM materials to give to new residents in the Resident Welcome Package;
 - f. Exceed zoning requirements for the provision of secure indoor and outdoor bicycle parking facilities;
 - g. Install a bicycle repair station within the long-term bicycle storage room;
 - h. Include in the residential leases a provision that the cost of residential parking is unbundled from the cost of lease or purchase of each residential unit. Parking shall be available on a monthly basis at market rate;
 - i. Record a covenant among the Land Records of the District of Columbia prohibiting any tenant of the residential portion of the Project from obtaining an RPP for so long as the PUD Site is used as an apartment building. The Applicant will also: (i) not seek or support any change to designate the PUD Site as becoming eligible for RPP; (ii) include in its residential leases a provision that prohibits tenants from obtaining an RPP for the PUD Site from the Department of Motor Vehicles (“DMV”), under penalty of lease termination and eviction; and (iii) obtain written authorization from each tenant through a required lease provision that allows the DMV to release to the Applicant every six months any and all records of that tenant requesting or receiving an RPP for the PUD Site; and
 - j. Offer either a one-year membership to Capital Bikeshare or a one-year membership to a car-sharing service to each residential unit for the initial lease up of each unit.
70. The Applicant will implement the following TDM strategies for the hotel portion of the Project to reduce travel demand:
- a. Install a Transportation Information Center display within the hotel lobby containing information related to local transportation alternatives;
 - b. Establish a TDM marketing program that provides detailed transportation information to hotel guests regarding parking and transportation options;
 - c. Prepare materials for hotel employees that provide carpooling information and refers them to other carpool matching services;
 - d. Designate TDM leaders to work with hotel employees and guests to market transportation alternatives and options;
 - e. Install shower and changing facilities for bicycle commuters;

- f. Install a bicycle repair station within the long-term bicycle storage room;
 - g. Provide free daily Capital Bikeshare passes to provide to hotel guests, available upon request; and
 - h. Offer either a one-year membership to Capital Bikeshare or a one-year membership to a car-sharing service to all hotel employees during the first year of hotel operation.
71. The Applicant will establish a hotel parking plan that includes valet services and provides information to hotel guests that no on-site parking is available. The Applicant will do the following to implement the hotel parking plan:
- a. Work with DDOT to establish a hotel valet zone in the public space on 4th Street, N.E.;
 - b. Hire a third-party valet service or designate a hotel staff member to manage valet operations, greet incoming hotel guests, and direct vehicles to the valet zone or a nearby local garage;
 - c. Install signage at the valet zone stating that there is no parking at the PUD Site and that valet service is offered upon request. If guests choose to valet their vehicles, the valet will transport the vehicles between the valet zone and the designated parking facility. The valet will provide tickets that will instruct guests on how to retrieve their vehicle. This may include contacting the valet stand directly, contacting the hotel front desk, and/or the ability to request the vehicle via text and/or smartphone app. The number of valets may be adjusted in order to achieve the most efficient and cost effective valet parking system; and
 - d. Establish the following system to inform hotel guests about parking and alternate modes of transportation at every step of the reservation process, through check-in, so that guests know what to expect when booking a reservation:
 - i. Display transportation and parking information on the hotel website, Online Travel Agency websites, other online booking and informational websites with which the hotel partners (including rating review websites), email booking confirmations and reminders, printed brochures, and verbally via reservationists. All information will emphasize and encourage alternate modes of travel and will indicate off-site parking locations; and
 - ii. Ensure that all hotel confirmations contain notice to guests that no parking is available on-site and that the hotel encourages and emphasizes alternative modes. The reservation email will provide the alternative

transportation options and the locations of off-site parking facilities, in the event guests decide to drive, and the Applicant will assist guests in planning ahead to use alternative methods of transportation.

72. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403.9(i)). The Applicant will provide the following additional public benefits as part of the Project:

- a. Contribute \$25,000 annually to Edens Realty, Inc. an entity formed by EDENS, to provide security and street cleaning services in the surrounding neighborhood. If an official Business Improvement District (“BID”) is created for the Florida Avenue Market area, then the Applicant will contribute \$25,000 annually to the BID instead;
- b. Dedicate a minimum of 200 square feet of professional office space on the ground floor of the hotel portion of the building to support start-up companies. The office space will include desks, chairs, printers, free wi-fi, and will be free of charge for one year, after which a new group of start-ups will be selected;
- c. Rebuild the sidewalks and curbs and install trees on the east side of 4th Street and the west side of 5th Street, N.E., to the immediate north of the PUD Site, from the alley to Morse Street, N.E. These improvements will be designed and constructed to match the sidewalks adjacent to the PUD Site and will be consistent with DDOT standards; and
- d. Incorporate deaf-space principles into the design of the building’s ground floor and adjacent public spaces by implementing multiple design strategies. These include: (i) establishing wide pedestrian sidewalks free of barriers; (ii) providing good sightlines and space for signers to maintain full view of visual language while comfortably circulating the site; (iii) incorporating additional pedestrian streetlights to enable clear visual communication and a safer space for travel at night; (iv) planting street trees that provide shaded relief and reduced glare and understory plantings with bold color palettes, textures, and fragrance for seasonal interest and heightened sensory; and (v) providing fixed casual seating areas with conversation tables to enable signers to rest carried objects and face each other while communicating.

Comprehensive Plan

73. The Commission finds that the PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map and Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. The Project significantly advances these purposes by promoting the social, physical, and economic development of the District through the

provision of a high-quality mixed-use development on the PUD Site without generating any adverse impacts. The Project will create new neighborhood-serving retail opportunities to meet the demand for basic goods and services, and will promote the vitality, diversity, and economic development of the surrounding area.

74. The District of Columbia Comprehensive Plan Future Land Use Map designates the PUD as mixed-use: High-Density Commercial, Medium-Density Residential, and Production, Distribution and Repair (“PDR”).
75. The High-Density Commercial designation is used to define the central employment district of the city and other major office employment centers on the downtown perimeter. It is characterized by office, mixed residential/retail, and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings, including historic buildings, are interspersed. The corresponding zone districts are generally C-2-C, C-3-C, C-4, and C-5, although other districts may apply. (10A DCMR § 225.11.)
76. The Medium-Density Residential designation is used to define neighborhoods or areas where mid-rise (four-seven stories) apartment buildings are the predominant use. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone Districts are generally consistent with the Medium-Density designation, although other zones may apply. (10A DCMR § 225.5.)
77. The PDR category is used to define areas characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services, food services, printers and publishers, tourism support services, and commercial, municipal, and utility activities which may require substantial buffering from noise, air pollution, and light-sensitive uses such as housing. The PDR designation is not associated with any industrial zone and therefore permits a building height of up to 90 feet with 6.0 FAR. (10A DCMR § 225.12.)
78. The Applicant's proposal to rezone the PUD Site to the C-3-C Zone District to construct the major new mixed-use Project is consistent with the Comprehensive Plan's designations. The proposed C-3-C zoning classification is specifically identified to accommodate major business and employment areas and to provide substantial amounts of employment, housing, and mixed uses. (11 DCMR §§ 740.1-2.) The C-3-C Zone District permits medium and high-density development, including retail, housing, and mixed-use development. (11 DCMR §§ 740.8.) The Project incorporates all of these elements into a single, high-density building with a mix of residential and hotel uses and significant new employment opportunities.
79. Moreover, in evaluating a proposed map amendment, the Commission views a subject property within its context and not as an isolated parcel. When taken in context with the surrounding neighborhood, the Applicant's proposal to rezone the PUD Site from the

C-M-1 Zone District to the C-3-C Zone District is consistent with the Comprehensive Plan designation of the PUD Site. The proposed C-3-C zoning classification and associated PUD designation will enable the PUD Site to be developed as with a mixed-use building constructed to a maximum density of 8.0 FAR, which is consistent with the amount of density permitted in high-density commercial zones. For example, the C-3-C Zone District permits 6.0 FAR as a base density and up to 8.0 FAR as a PUD. The Project will be constructed to a maximum height of 120 feet, which is consistent with the medium-high density classifications and the PDR designation, and is appropriate given the location of the PUD Site along a major corridor. Furthermore, the PUD Site is surrounded by other recently approved PUDs, many of which received a rezoning from the C-M-1 Zone District to the C-3-C Zone District. (*See* Z.C. Case Nos. 15-01, 14-19, 14-07, 06-40, and 06-14).

80. The District of Columbia Comprehensive Plan Generalized Policy Map designates the PUD Site as a Multi-Neighborhood Center. Multi-Neighborhood Centers contain many of the same activities as Neighborhood Commercial Centers³ but in greater depth and variety. Multi-Neighborhood Centers' service areas are typically one to three miles. These centers are generally found at major intersections and along key transit routes, and they might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers may also include office space for small businesses, although their primary function remains retail trade. Mixed-use infill development should be encouraged to provide new retail and service uses, and additional housing and job opportunities. (10A DCMR § 223.18.)
81. The Commission finds that the proposed rezoning and PUD designation of the PUD Site is consistent with the policies indicated for Multi-Neighborhood Centers. The existing C-M-1 Zone District is inconsistent with the Policy Map's designation of the PUD Site, since C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) In contrast, the proposed mix of new residential and hotel uses at the PUD Site will help to improve the overall neighborhood fabric and bring new residents and retail uses to the area, in compliance with the goals and objectives of Multi-Neighborhood Centers.
82. The Commission finds that the PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to education and employment, and building green and healthy communities, as discussed in the findings below.

³ Neighborhood Commercial Centers meet the day-to-day needs of residents and workers in the adjacent neighborhoods. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and child care. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. (10A DCMR § 223.15.)

83. ***Managing Growth and Change.*** In order to manage growth and change in the District, the Comprehensive Plan encourages, among other goals, the growth of both residential and non-residential uses. Non-residential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income. (10A DCMR § 217.4.) The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods.
84. The Project is fully consistent with these goals. Redeveloping the PUD Site as a vibrant new mixed-use development with residential and hotel uses will further the revitalization of the surrounding neighborhood. The proposed hotel will create overnight lodging opportunities for visitors to the District in an area where overnight accommodations are not readily available. The Project will also create significant new jobs for District residents, further increase the city's tax base, and help to reinvigorate the existing neighborhood fabric.
85. ***Creating Successful Neighborhoods.*** One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development – from development of the Comprehensive Plan to implementation of the Plan's elements. The Project furthers this goal since, as part of the PUD process, the Applicant worked closely with ANC 5D and the abutting ANC 6C to ensure that the Project provides a positive impact on the immediate neighborhood and is consistent with the community's goals.
86. ***Increasing Access to Education and Employment.*** Increasing access to jobs and education by District residents is fundamental to improving the lives and economic well-being of District residents. (10A DCMR § 219.1.) Land development policies should be focused to create job opportunities for District residents, and a mix of employment opportunities to meet the needs of residents with varied job skills should be provided. (*Id.* at § 219.6.) Moreover, providing more efficient, convenient, and affordable transportation for residents to access jobs in the District is critical. (*Id.* at § 219.7.) The Project is consistent with these goals since the new hotel use will create significant new jobs in the hospitality industry for District residents. The Applicant will partner with the Goodwill Hospitality Training Program for the recruitment, screening, training, and referral of hotel employees, and will ensure that a minimum of 51% of hotel employees are District residents. Moreover, given the PUD Site's location in close proximity to a variety of public transportation options, the proposed hotel use also provides an employment setting that can be conveniently accessed by affordable public transportation options.
87. ***Building Green and Healthy Communities.*** A major objective for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. In this case, the PUD will include a

substantial number of sustainable design features and the building will be designed to achieve LEED-Gold for the residential portion and LEED-Silver for the hotel portion.

88. The Commission also finds that the PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements, as set forth in the Applicant's Statement in Support and in the OP setdown and hearing reports. (Ex. 3, 14, 29.)

Office of Planning Reports

89. On June 17, 2016, OP submitted a report recommending setdown of the application. (Ex. 14.) The OP report stated that the "proposed height and density would not be inconsistent with the Comprehensive Plan and the small area plan known as the Florida Avenue Market Study subject to a determination that the requested flexibility to permit the PUD is balanced by the public benefits" and that the PUD and map amendment are "not inconsistent with the Comprehensive Plan, to allow approximately 70 and 80' of additional building height above the C-M-1 limits, as well as a density increase of 5.0 FAR or 103,011 sf." (Ex. 14, pp. 1, 12.)
90. On October 17, 2016, OP submitted a second report, which stated its general support for the project, particularly since the "design ha[d] greatly improved since the initial submission." OP also asserted that "[t]he proposed height and density would be consistent with the maximum guidelines contemplated by the Comprehensive Plan and the Florida Avenue Market Study." (Ex. 29, p. 1.) However, OP made the following requests regarding several outstanding items that needed resolution before it was willing to recommend approval of the Project: (i) update the plans to more clearly show the meaningful connection between the portions of the building; (ii) remove the "retail" label from the art gallery space and provide more detail about the operations of the gallery; (iii) provide more detail on how the ground floor is used and configured; (iv) clarify how residential loading occurs; (v) clarify whether the alley is intended to be repaved and where lighting fixtures would be located in the alley; (vi) revise the floor plans to be consistent with renderings of the loggia; (vii) ensure that the design fully complies with Construction Code regulations that would limit the width of bays; (viii) provide more detail about the jobs program discussed in the list of amenities, and examine a more robust jobs commitment for District residents; (ix) specify that the parking agreement is for the life of the project and that it would survive a change of ownership, should either building be sold; (x) redesign the penthouse to ensure that the mechanical penthouse space conforms to the 1:1 required setback; (xi) provide more detail about the proffered office space; (xii) clarify if streetscape elements above and beyond DDOT standards are proposed; (xiii) clarify who would have access to the public bike storage area and how it would be managed; (xiv) propose conditions that would clearly spell out the project's minimum sustainability levels; and (xv) clarify who administers the Life Quality Enhancement Fund. The OP report also noted that the proposed cell phone charging station would not be considered a benefit or amenity, and that the Applicant should

committee to a First Source Employment or LSDBE Agreement, or else present a rationale for a lack of commitment.

91. On October 25, 2016, the Applicant submitted materials that responded to each of OP's concerns set forth in the hearing report. (Ex. 34-36). The Applicant's response included updated architectural drawings that provided more details on the meaningful building connection; ground floor uses and layout; use of the loading facilities; proposed alley improvements; loggia design; compliance with the Construction Code regarding bay projections; a revised penthouse plan showing compliance with the 1:1 setback requirement in all but one location; and a revised bicycle parking layout that eliminated the public bicycle room and added a separate bicycle room in the hotel portion of the building. (Ex. 36.)
92. The Applicant's response also provided more detailed information on the art gallery space; the Applicant's commitment to partner with the Goodwill Hospitality Training Program to hire District residents; the off-site parking agreement; the business incubator space; the extent of proposed streetscape improvements; the Applicant's commitment to LEED and GAR for the Project; and a description of the Life Quality Enhancement Fund. The Applicant also acknowledged that the cell phone charging station would not be considered a benefit or amenity, and also agreed to enter into a First Source Employment Agreement for the PUD.
93. The Commission finds that the Applicant's post-hearing submission adequately addressed and responded to each of the concerns raised by OP in their hearing report.
94. On November 28, 2016, OP submitted a supplemental report. (Ex. 43.) The report included a table that identified the requests for information sought by the Commission, the Applicant's response, and OP's analysis. The report indicated that although the table "raises a few points that require some additional clarification prior to final action, OP can now recommend approval of the application. The applicant is also expected to provide a final outline of benefits and amenities, for the Commission to assess whether they are commensurate with the level of flexibility gained through the PUD."

DDOT Report

95. On October 17, 2016, DDOT submitted a report indicating that it had no objection to the application with the following conditions: (i) implement the proposed TDM plan outlined in the Applicant's CTR; (ii) revise the site plan to include one additional 30 foot loading berth; (iii) provide interior connections from the long-term bicycle parking rooms to the hotel and residential lobbies; (iv) strengthen the loading management plan to include a contingency for trucks larger than 30 feet in length; (v) replace the proposed lay bys with a valet zone on 4th Street; and (vi) reconstruct the curb ramps and stripe highly visible crosswalks on Morse Street, N.E. at the intersections with 4th and 5th Streets, N.E., to provide pedestrian connections to the off-site parking, if not already constructed by

others. (Ex. 30.) The DDOT report also requested that the Applicant commit to providing a 240-volt charging station in the proposed EV-charging parking space. (Ex. 30, p. 7.) The Applicant responded to each of these items in its response to the DDOT report and agreed to each of DDOT's conditions at the public hearing. (Ex. 34.) Therefore, the Commission finds that the Applicant adequately consented to and addressed each of DDOT's requests.

ANC Reports

96. On September 13, 2016, at a duly noticed, regularly scheduled monthly meeting of ANC 5D, with a quorum of commissioners and the public present, ANC 5D voted 6:0 to support the Project. (Ex. 26.) The ANC requested that the Applicant should continue to work with Single Member District Commissioner Lewis (ANC 5D01) on the following issues prior to the public hearing: (i) confirming the public benefits and amenities; (ii) updating the building's massing, design, and materials, and (iii) finalizing the off-site parking provided for the Project.
97. On October 26, 2016, Commissioner Lewis submitted a letter that addressed each of the three outstanding issues and concluded that "as a result of the Applicant's continued work and coordination with the community, I am supportive of this project moving forward and urge the Commission to approve the application." (Ex. 37.)
98. On October 14, 2016, ANC 6C submitted a report stating that at a duly noticed, regularly scheduled monthly meeting of ANC 6C, with a quorum of commissioners and the public present, ANC 6C voted 4:0 to oppose the project because it "suffers from a large number of defects. These include:
 - a. Inferior, unattractive architecture, especially for the western half of the project;
 - b. A minimum amount of ground-floor retail offered on this 20,000 sf site on a major commercial corridor;
 - c. The needless request to provide no onsite parking, when the floor area is more than adequate to allow at least one underground level with easy access from the 25-foot alley to the north;
 - d. Poor land use and transportation planning aspects, as described in (c) above; and
 - e. Insufficient truck loading facilities (one 30-foot dock that is not positioned to adequately serve the hotel use on the west side of the site). (Ex. 28.)
99. ANC 6C's report also noted that the Project is located in ANC 5D and is adjacent to the boundaries of ANC 6C. (Ex. 28.)

100. The report further indicated the vote included designation of Commissioner Tony Goodman, Single Member District Commissioner for ANC 6D06, to work with the developer and continue the dialog with the community.
101. Commissioner Goodman testified at the public hearing regarding ANC 6C's continued concerns with the Project. (Ex. 39.) The primary concerns related to insufficient on-site parking, including bicycle parking, and the need for clear valet zones if on-site parking is not provided; inadequate ground floor activation; the building's architectural design and lack of historical character; and the benefits and amenities package as it relates to the flexibility requested.
102. In a letter dated January 4, 2017, Mr. Goodman, whose term as Commissioner had since expired, indicated he was "pleased with the improvements in retail, street presence, and amenities provided by the development team though the overall amenities package is still extremely low compared with other similar nearby PUD[s]." Mr. Goodman also expressed his disappointment with the bulk of the building, which he considered to be "too high and rectangular." (Ex. 47B.)
103. On November 18, 2016, the Applicant submitted a post-hearing submission, which included the following materials and information: (i) a memorandum committing to provide 50 off-site parking spaces for the life of the Project; (ii) a conceptual site plan showing the infeasibility of providing an on-site parking garage and a memorandum describing the extremely high cost of constructing an on-site parking garage; (iii) condition language for the PUD order committing to restrict residents from obtaining RPPs; (iv) a request for flexibility to provide a bar or restaurant in the hotel's penthouse; (v) revised architectural plans and elevations responding to specific requests raised by the Commission at the public hearing and incorporating design changes to the building; (vi) responses to outstanding items from OP, including details on the business incubator space and the Applicant's commitment to replace the previously proposed art gallery with a proffer to rebuild the sidewalks north of the PUD Site on east side of 4th Street and the west side of 5th Street, N.E., from the alley to Morse Street, N.E.; and (vii) responses to outstanding concerns raised by ANC 6C, including vehicle and bicycle parking, ground floor activation, building design, and the benefits and amenities proffer. (Ex. 42-42E.)
104. On January 13, 2017, the Applicant submitted its post proposed action submission. (Ex. 47-47B.) The submission included updated architectural drawings that eliminated the need for penthouse setback relief, revised the bay projections so that they appear as separate structures, and provided details on the height of the letters for the hotel's vertical signage. The Applicant also noted that it increased the public benefits package following the public hearing by committing to rebuild the sidewalks and curbs and install trees on the east side of 4th Street and the west side of 5th Street, N.E., from the alley to Morse Street, N.E.

105. The Commission finds that the Applicant adequately responded to the concerns raised by ANC 5D and 6C, including Commissioner Goodman’s testimony at the public hearing and his subsequent letter. With respect to the issues and concerns expressed in ANC 6C’s written report, the Commission finds as follows.

a. Inferior, unattractive architecture, especially for the western half of the project;

The Commission finds that the Applicant made significant changes and improvements to the building’s design, layout, and materials in direct response to specific comments from ANCs 5D and 6C, and also replaced the white metal panel with grey metal panel in response to comments from the Commission. Thus, the Commission finds that the Applicant fully addressed all stated concerns with the building’s design;

b. A minimum amount of ground-floor retail offered on this 20,000 sf site on a major commercial corridor;

The Commission finds the amount of retail included in this project is adequate. The surrounding area will be developed with an abundance of retail. In addition, the Applicant revised the ground floor plan after the hearing, and added additional information about its efforts to achieve a vibrant pedestrian environment on hotel’s ground floor, and this Order includes a condition requiring the Applicant to take certain steps to ensure an active retail space at the ground level of the building;

The Commission finds that this is adequate to address the ANC’s concern;

c. A needless request to provide no onsite parking, when the floor area is more than adequate to allow at least one underground level with easy access from the 25-foot alley to the north;

The Commission finds that the Applicant presented a compelling case for parking relief due to limitations of the site’s long narrow shape, and the resulting difficulty in providing underground parking;

The Commission finds that the Applicant’s proposal to provide 50 off-site parking spaces at the EDENS site for the life of the Project will adequately accommodate all parking needs for the PUD Site, and that the Applicant is committed to working with DDOT to establish appropriate valet zones for drop-off and pick-up. In response to ANC 6C’s concern with the lack of adequate bicycle parking, the Applicant more than doubled the number of spaces provided, which the Commission finds is appropriate;

The Commission, therefore, finds that the Applicant has adequately addressed this concern. The request of parking relief is justified, and the Applicant has adequately addressed any potential adverse effects of the Project related to parking;

- d. Poor land use and transportation planning aspects, as described in c. above;

As noted above, the Commission finds that the Applicant adequately justified its request for parking relief, and put in place adequate measures to mitigate any adverse effects of the Project related to parking; and

- e. Insufficient truck loading facilities (one 30-foot dock that is not positioned to adequately serve the hotel use on the west side of the site);

The Commission finds that while the Applicant originally proposed to provide a single, shared loading berth for the Project, plus a single service/delivery space, the Applicant added a second berth and removed the service/delivery space, in response to a request from DDOT. The Commission finds that this revised loading design is adequate to address the ANC's concern.

Finally, with respect to the public benefits and amenities package, the Applicant committed to additional public benefits at the public hearing, including the rebuilding of sidewalks to the north of the PUD Site, increasing the percentage of hotel employees required to be District residents, and further defining the business incubator space proffer, which is valued at approximately \$21,600 per year for the life of the Project (\$648,000 for the 30-year Project). The Commission finds that these additional benefits, combined with the previously proposed benefits, results in an overall benefits and amenities package that is commensurate with the degree of development incentives requested.

- 106. The Commission finds that the evidence presented in the Applicant's post-hearing submission adequately responded to each of the outstanding concerns raised by the Commission, OP, ANC 5D, and ANC 6C, and that the PUD was significantly improved as a result of doing so.

CONCLUSIONS OF LAW

- 1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations 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.
4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mixed uses for the Project are appropriate for the PUD Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.
5. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the Project's benefits and amenities are reasonable tradeoffs for the requested development flexibility.
8. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2012 Rep.)), to give great weight to OP recommendations. The Commission carefully considered the OP report and testimony at the public hearing and finds its recommendation to grant the applications persuasive.
10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered ANC 5D's recommendation for approval and concurs in its recommendation. The Commission also considered ANC

6C's recommendation to deny the application, and carefully considered all of the issues and concerns in the report. The Commission commends the Applicant for continuing to work with ANC 6C following the hearing to address its concerns. For the reasons discussed in Findings of Fact No. 105, the Commission believes the Applicant has adequately addressed all of ANC 6C's issues and concerns.

11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 et seq. (2007 Repl.)).

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development and related Zoning Map amendment from the C-M-1 Zone District to the C-3-C Zone District for property located at 400 Florida Avenue, N.E. (Lots 4, 25, and 803 in Square 3588). The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The Project shall be developed in accordance with the Architectural Plans and Elevations dated January 7 (Exhibit 47A), with Sheet A221 modified as shown on the revised plan sheet dated January 31, 2017 submitted as Exhibit 50 (together, the "Plans"), and as modified by the guidelines, conditions, and standards of this Order. The materials shown on Sheets A-401 through A-404 of the Plans shall be used as indicated on those sheets. All landscape, park, open space, and streetscape designs shall be developed in accordance with the landscape plans included as Sheets L-001, L-002, L-02B, L-02C, L-02D, L-003 of the Plans. The hotel and residential signage shall be limited to the size and locations depicted on Sheet A221 of Exhibit 50.
2. In accordance with the Plans, the Project shall be a mixed-use building with residential, hotel, and ground-floor retail uses. The Project shall have a total of approximately 164,288 square feet of gross floor area (8.0 FAR) and a maximum building height of 120 feet, not including penthouses. Approximately 94,632 square feet of gross floor area shall be devoted to residential use (110 units, plus or minus 10%), approximately 66,924 square feet of gross floor area shall be devoted to hotel use (155 rooms, plus or minus 10%), and approximately 2,732 square feet of gross floor area shall be devoted to ground-floor retail use.
3. The Project shall provide three on-site parking spaces (two car-share spaces and one EV-charging space) and off-street loading facilities accessed from the public alley. The Project shall also provide a minimum of 50 off-site parking spaces

located at Square 3587, Lots 827, 828, 7012, and 7013 for the life of the Project, as set forth in Exhibit 42A.

4. **Prior to issuance of a Certificate of Occupancy for the applicable residential or hotel portion of the Project, respectively,** the Applicant shall demonstrate to the Zoning Administrator that it has ensured active retail space at the ground level of the building by implementing the following design techniques:
 - a. Devote not less than 50% of the surface area of the streetwall(s) at the ground level to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to the building;
 - b. Design the building so as not to preclude an entrance every 40 feet, on average, for the linear frontage of the building on Florida Avenue, including entrances to ground-floor uses and the main lobby; and
 - c. At the ground-floor level of the building, provide a uniform minimum clear floor-to-ceiling height of at least 10 feet.
5. The Applicant is granted flexibility from the parking requirements of 11 DCMR § 2101.1; the loading requirements of 11 DCMR § 2201.1; and the penthouse height requirements of 11 DCMR § 411.9.
6. The Applicant is permitted to establish a bar/restaurant in the penthouse of the hotel portion of the building of 11 DCMR § 411.1(c). The use is consistent with the approved Plans and as discussed in the Special Exception Use section of this Order.
7. The Applicant shall also have flexibility with the design of the PUD in the following areas:
 - a. 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;
 - b. To be able to provide a range in the number of residential units and hotel rooms of plus or minus 10%;
 - c. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the residential portion of the Project is not below the LEED-Gold rating standards and that the total

number of LEED points achievable for the hotel portion of the Project is not below the LEED-Silver rating standards;

- d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of 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; and any other changes in order to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;
- e. To vary the features, means and methods of achieving (i) the code-required Green Area Ratio (“GAR”) of 0.2, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control; and
- 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.

B. Public Benefits

- 1. **Prior to issuance of a Certificate of Occupancy for the residential portion of the Project and for the life of the residential portion 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 approximately 94,632 square feet of residential gross floor area (“GFA”) of housing;
 - ii. Devote no less than 12% of the residential GFA equaling not less than 11,356 square feet of GFA as inclusionary units pursuant to 11 DCMR Chapter 26;
 - iii. Set aside no less than seven units (50% of the inclusionary units), equaling not less than 5,678 square feet of GFA as inclusionary

units for eligible households earning equal to or less than 50% of the AMI; and

iv. Set aside no less than seven units (50% of the inclusionary units), equaling not less than 5,678 square feet of GFA as inclusionary units for eligible households earning equal to or less than 80% of the AMI;

b. The affordable housing units shall be distributed in accordance with Sheets A103 – A109A of the Plans marked as Exhibit 47A of the record, and shall be provided in accordance with the chart below; and

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

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	94,632 sf of GFA (100%)	110	NA	NA	NA
Market Rate	83,276 sf of GFA (88%)	96	Market Rate	NA	NA
IZ	5,678 sf of GFA (6%)	7	Up to 50% AMI	Life of the project	Rental
IZ	5,678 sf of GFA (6%)	7	Up to 80% AMI	Life of the project	Rental

2. **Prior to issuance of a Certificate of Occupancy for the applicable residential or hotel portion of the Project, respectively,** the Applicant shall demonstrate to the Zoning Administrator that it has registered that portion of the Project with the USGBC to commence the LEED certification process under the USGBC’s LEED 2009 for New Construction rating system.

3. **Prior to the issuance of a Certificate of Occupancy for the applicable residential or hotel portion of the Project,** the Applicant shall also furnish a copy of its LEED certification application submitted to the USGBC to the Zoning Administrator. The application shall indicate that the residential portion of the building has been designed to include at least the minimum number of points necessary to achieve LEED-Gold certification under the USGBC’s LEED for New Construction v2009 standards, and that the hotel portion of the building has been designed to include at least the minimum number of points necessary to

achieve LEED-Silver certification under the USGBC's LEED for New Construction v2009 standards.

4. **Prior to issuance of a Certificate of Occupancy for the hotel portion of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has executed a memorandum of understanding with the Goodwill Hospitality Training Program governing the recruitment, screening, training, and referral of hotel employees. **For the life of the hotel portion of the Project**, a minimum of 51% of hired hotel employees shall be District residents.
5. **Prior to issuance of a Building Permit for either portion(s) of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has executed and submitted a First Source Employment Agreement to DOES, consistent with the First Source Employment Agreement Act of 1984.
6. **Prior to issuance of a Certificate of Occupancy of either the residential or hotel portion of the Project (whichever is first) and for the life of either portion of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has: contributed \$25,000 to Edens Realty, Inc. an entity formed by EDENS, to provide security and street cleaning services in the surrounding neighborhood, and that these funds have been or are being used for that purpose. The contribution shall be provided annually. If an official Business Improvement District ("BID") is created for the Florida Avenue Market area, then the Applicant shall contribute \$25,000 annually to the BID instead.
7. **Prior to issuance of a Certificate of Occupancy for the hotel portion of the Project, and for the life of the hotel**, the Applicant shall demonstrate to the Zoning Administrator that it has dedicated a minimum of 200 square feet of professional office space on the ground floor of the hotel portion of the building to support start-up companies. The office space shall include desks, chairs, printers, free wi-fi, and shall be free of charge for one year, after which a new group of start-ups will be selected.
8. **Prior to issuance of a Certificate of Occupancy of either the residential or hotel portion of the Project (whichever is first)**, the Applicant shall demonstrate to the Zoning Administrator that it has rebuilt the sidewalks and curbs and installed trees on the east side of 4th Street and the west side of 5th Street, N.E., from the alley to Morse Street, N.E. These improvements shall be designed and constructed to match the sidewalks adjacent to the PUD Site and shall be consistent with DDOT standards.
9. **Prior to issuance of a Certificate of Occupancy of either the residential or hotel portion of the Project (whichever is first)**, the Applicant shall demonstrate to the Zoning Administrator that it has installed or otherwise constructed the

Project to be consistent with the deaf-space design principles, set forth in Finding of Fact No. 72(d) of this Order.

C. Transportation Incentives

1. **Prior to issuance of a Certificate of Occupancy for either the residential or hotel portion of the Project (whichever is first), and for the life of either portion of the Project,** Applicant shall demonstrate to the Zoning Administrator that it has contracted with the owner of Square 3587, Lots 827, 828, 7012, and 7013, to provide 50 dedicated parking spaces for the Project. The 50 parking spaces shall be available for use prior to issuance of a Certificate of Occupancy.
2. **Prior to issuance of a Certificate of Occupancy for either the residential or hotel portion of the Project (whichever is first),** the Applicant shall demonstrate to the Zoning Administrator that it has contributed \$80,000 to DDOT for the operations and maintenance for one year of a new Capital Bikeshare station.
3. **Prior to issuance of a Certificate of Occupancy for either the residential or hotel portion of the Project (whichever is first),** the Applicant shall demonstrate to the Zoning Administrator that it has reconstructed the curb ramps and striped the crosswalks on Morse Street, N.E., at the intersections of 4th and 5th Streets, N.E.
4. **Prior to issuance of a Certificate of Occupancy for the residential portion of the Project, and for the life of the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has undertaken the following actions with respect to implementation of the TDM plan:
 - a. Dedicated two parking spaces along the alley for car-sharing services and one parking space along the alley as an EV-charging space (240 volt);
 - b. Installed a Transportation Information Center display within the residential lobby containing information related to local transportation alternatives;
 - c. Prepared materials for residents that provide carpooling information and refers them to other carpool matching services;
 - d. Designated TDM leaders to work with residents to market transportation alternatives and options;
 - e. Prepared TDM materials to give to new residents in the Resident Welcome Package;

- f. Exceeded zoning requirements for the provision of secure indoor and outdoor bicycle parking facilities;
- g. Installed a bicycle repair station within the long-term bicycle storage room;
- h. Included in the residential leases a provision that the cost of residential parking is unbundled from the cost of lease or purchase of each residential unit. Parking shall be available on a monthly basis at market rate; and
- i. Recorded a covenant among the Land Records of the District of Columbia prohibiting any tenant of the residential portion of the Project from obtaining an RPP for so long as the PUD Site is used as an apartment building. **For the life of the residential portion of the Project**, the Applicant shall: (i) not seek or support any change to designate the PUD Site as becoming eligible for RPP; (ii) include in its residential leases a provision that prohibits tenants from obtaining an RPP for the PUD Site from the DMV, under penalty of lease termination and eviction; and (iii) obtain written authorization from each tenant through a required lease provision that allows the DMV to release to the Applicant every six months any and all records of that tenant requesting or receiving an RPP for the PUD Site;

5. **Prior to issuance of a Certificate of Occupancy for the hotel portion of the Project, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has undertaken the following actions with respect to implementation of the TDM plan:

- a. Installed a Transportation Information Center display within the hotel lobby containing information related to local transportation alternatives;
- b. Established a TDM marketing program that provides detailed transportation information to hotel guests regarding parking and transportation options;
- c. Prepared materials for hotel employees that provide carpooling information and refers them to other carpool matching services;
- d. Designated TDM leaders to work with hotel employees and guests to market transportation alternatives and options;
- e. Installed shower and changing facilities for bicycle commuters;

- f. Installed a bicycle repair station within the long-term bicycle storage room; and
 - g. Purchased free daily Capital Bikeshare passes to provide to hotel guests, available upon request.
6. **Prior to issuance of a Certificate of Occupancy for the residential portion of the Project, and for the initial lease-up of each residential unit**, the Applicant shall offer each unit's incoming residents either a one-year Capital Bikeshare membership or a one-year membership to a car-sharing service.
7. **Prior to issuance of a Certificate of Occupancy for the hotel portion of the Project, and for the first year of hotel operations**, the Applicant shall offer all new hotel employees either a one-year Capital Bikeshare membership or a one-year membership to a car-sharing service.
8. **Prior to issuance of a Certificate of Occupancy for the hotel portion of the Project, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has done the following with respect to hotel parking and valet services:
- a. Established a hotel valet zone in the public space on 4th Street, N.E., subject to DDOT approval;
 - b. Hired a third-party valet service or designated a hotel staff member to manage valet operations, greet incoming hotel guests, and direct vehicles to the valet zone or a nearby local garage;
 - c. Installed signage at the valet zone stating that there is no parking at the PUD Site and that valet service is offered upon request. If guests choose to valet their vehicles, the valet shall transport the vehicles between the valet zone and the designated parking facility. The valet shall provide tickets that will instruct guests on how to retrieve their vehicle. This may include contacting the valet stand directly, contacting the hotel front desk, and/or the ability to request the vehicle via text and/or smartphone app. The number of valets may be adjusted in order to achieve the most efficient and cost effective valet parking system; and
 - d. Established and implemented the following system to inform hotel guests about parking and alternate modes of transportation at every step of the reservation process, through check-in, so that guests know what to expect when booking a reservation:

- i. Display transportation and parking information on the hotel website, Online Travel Agency websites, other online booking and informational websites with which the hotel partners (including rating review websites), email booking confirmations and reminders, printed brochures, and verbally via reservationists. All information shall emphasize and encourage alternate modes of travel and will indicate off-site parking locations; and
- ii. Ensure that all hotel confirmations contain notice to guests that no parking is available on-site and that the hotel encourages and emphasizes alternative modes. The reservation email shall provide the alternative transportation options and the locations of off-site parking facilities, in the event guests decide to drive, and the Applicant shall assist guests in planning ahead to use alternative methods of transportation.

The Applicant shall continually adapt the hotel parking plan in order to streamline the process based on continued experience and feedback.

D. Miscellaneous

1. No building permit shall be issued for the PUD 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 the PUD Site 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. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 16-10. Within such time, an application must be filed for a building permit, with construction to commence within three years of the effective date of this Order.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On December 12, 2016, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at its public meeting by a vote of **3-1-1** (Anthony J. Hood, Robert E. Miller, and Michael G. Turnbull to approve; Peter G. May to oppose, Peter A. Shapiro, not present, not voting).

On January 30, 2017, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, not having participated, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on May 5, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING