

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-31
Z.C. Case No. 15-31
777 17th Street, LLC
(Consolidated PUD and PUD-Related Map Amendment @ 777 17th Street, NE
Square 4507, Lots 936, 941, and 942)
January 9, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on September 29, 2016, to consider an application from 777 17th Street, LLC (“Applicant”) for review and approval of a consolidated planned unit development (“PUD”) and PUD-related map amendment for Lots 936, 941, and 942 in Square 4507 (“Property”). The application proposes a mixed-use development consisting of retail and residential uses (“Project”). The Commission considered the application pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”).¹ The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The Property is comprised of lots 936, 941, and 942 in Square 4507 (“Property”). It is located in the Northeast neighborhood of Ward 5 and consists of approximately 26,285 square feet of land area. (Exhibit [“Ex.”] 2.)
2. The Property is currently unimproved and is located two blocks from two stops along the H Street – Benning Road streetcar line. (Ex. 2.)
3. On December 17, 2015, the Applicant submitted an application to the Commission for the review and approval of a PUD and PUD-related map amendment to rezone property located in the C-3-A Zone District to the C-2-B Zone District. (Ex. 2.)

¹ Pursuant to Subtitle A § 102.3(c) of the 2016 Zoning Regulations, an application for a building permit filed on or after September 6, 2016 is vested under the 1958 Zoning Regulations if the building permit plans are consistent with an unexpired approval of a first-stage, second-stage, or consolidated planned unit development that was granted after September 6, 2016, but which was set down for a public hearing prior to September 6, 2016. In this case, the consolidated planned unit development was set down for a public hearing on June 3, 2016, and is therefore considered a vested project under the 1958 Zoning Regulations.

4. On April 1, 2016, the Office of Planning (“OP”) submitted a setdown report recommending that a public hearing be held on the application. It requested additional information on several items prior to the public hearing: (Ex.11.)
 - A transportation demand management plan and loading management plan;
 - Street level renderings; and
 - Refined amenities package.
5. On April 11, 2016, the Commission set the application down for a public hearing, supporting OP’s request for additional information prior to the public hearing. The Commission asked for additional materials, including a construction management plan, details regarding the roof structure, details regarding the material palette for the eastern wall of the building; and additional information concerning the future development of neighboring properties. (April 11, 2016 Transcript [“Tr.”], pp. 35-48.)
6. The Applicant filed its pre-hearing statement on April 26, 2016, including responses to OP’s and the Commission’s comments above. (Ex. 13-13A4.)
7. Notice of the public hearing was published in the *D.C. Register* on June 27, 2016 and was mailed to Advisory Neighborhood Commissions (“ANC”) 5D and 6A and to owners within 200 feet of the Property on June 27, 2016. (Ex. 16, 17.)
8. A public hearing was held on September 29, 2016, during which the Applicant gave its presentation and responded to cross-examination. The Applicant proffered, and the Commission accepted, Sean Stadler, as an expert in architecture and Nicole White as an expert in transportation engineering. The Applicant also proffered testimony from Mark Gionet, its landscape architect. (See September 29, 2016 Transcript.)
9. No parties spoke in support or opposition to the application.
10. Sharon Cole and Bruce Adkins, neighbors of the proposed development, testified in opposition to the application. Equitable and Reasonable Investment submitted comments in opposition to the application. (Ex. 33, 35; September 29, 2016 Tr., pp. 78-89.)
11. Prasun Desai and Yohance Fuller, neighbors of the proposed development, submitted letters in support of the application. (Ex. 27, 31.)
12. H Street Main Street submitted a letter in support of the application. (Ex. 24)
13. ANC 5D did not take action on this application prior to the hearing; however, the Single Member District representative submitted a letter in support of the application. (Ex. 36.)
14. ANC 6A submitted a resolution in support of the application. (Ex. 26.)

15. At the conclusion of the public hearing, the Commission closed the record except for the Applicant's post-hearing submission and proposed order as well as responses to the Applicant's post-hearing submission from OP, DDOT, and both ANCs. The Commission requested additional information regarding:
 - a. Additional penthouse details, including information on the material palette, landscaping, lighting, and the feature wall and to provide additional sections and perspectives;
 - b. Signage plan;
 - c. Revised locations for affordable units and to consider deeper affordability proffer; and
 - d. Consideration of incorporating additional balconies on the eastern façades.
16. The Commission specifically asked the Applicant to meet with ANC 5D prior to submission of the post-hearing materials, as well as with Mr. Adkins and Ms. Cole. (September 29, 2016 Tr., pp. 77-96.)
17. The Applicant filed its post-hearing submission and draft order on October 31, 2016. Its submission provided responses to each item requested by the Commission. (Ex. 41-41B2.)
18. On November 8, 2016, ANC 5D submitted a resolution "generally supportive" of the Project, but with concern about the Project's height. (Ex. 42.) The ANC's report is discussed in more detail below.
19. At its public meeting on November 14, 2016, the Commission considered the case and stated that it was concerned that the proposed rooftop planters violated the one-to-one rooftop setback requirement of the Zoning Regulations, requested that the Applicant and/or OP consult with the Zoning Administrator to ascertain whether he believed they violated this requirement, requested a report on the results of this consultation, and took proposed action to approve the application.
20. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") as required by the District of Columbia Home Rule Act on November 15, 2016. NCPC's Executive Director, by delegated action dated December 29, 2016, found that the proposed PUD would not adversely affect the identified federal interests in the National Capital and would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.
21. On November 21, 2016, the Applicant submitted its list of proffered public benefits of the PUD and draft conditions, pursuant to 11 DCMR §§ 2403.16 - 2403.18. (Ex. 44.)
22. On December 5, 2016, the Applicant submitted its final list of proffered public benefits of the PUD and draft conditions, pursuant to 11 DCMR § 2403.20. (Ex. 45.)

23. On December 12, 2016, the Applicant submitted an additional post-hearing submission. (Ex. 46.) It stated that per the Commission’s request when it took proposed action, the Applicant met with the Zoning Administrator regarding the proposed rooftop planters and whether they violated the one-to-one penthouse setback requirement of the Zoning Regulations. The Applicant reported that the Zoning Administrator reviewed the plans and concluded that the planters would violate the Regulations. Accordingly, the Applicant submitted a revised set of plans with the planters set back so as to comply with the requirement. (Ex. 46A.)
24. At its January 9, 2017 public meeting, the Commission considered the revised rooftop plans submitted by the Applicant and concluded that the revised rooftop design did not violate the 1:1 penthouse setback requirement.
25. The Commission took final action to approve the application at its public meeting.

THE MERITS OF THE APPLICATION

Description of Property and Surrounding Areas

26. The Property consists of approximately 26,285 square feet of land area at the intersection of 17th Street, N.E., H Street, N.E. and Benning Road, N.E. The Property is bounded by Benning Road to the south, 17th Street to the west, H Street to the north, and private property to the east. It is located along a major gateway into the District. It is currently improved with a used car sales lot. (Ex. 2.)
27. The stretch of Benning Road along which the Property sits, exhibits a wide variety of uses and massings. To the west of the Project is a surface shopping center known as Hechinger Mall, which is owned by a developer and contemplated for redevelopment. To the east of the site are low-rise garden apartments. The south side of Benning Road is improved with two- to three-story residential uses. Caddy-corner to the Property is a dry cleaner, low-rise office use, and a McDonald’s. To the north of the site is the Developing Families Center, which is under contract with a developer. (Ex. 2.)
28. The Property is located in the C-3-A Zone District, which permits a maximum height of 65 feet and a maximum density of 4.0 floor area ratio (“FAR”). It abuts land to the east that is located in the R-5-B Zone District, as does the property to the south of Benning Road. The properties to the west and north of the site are also located in the C-3-A Zone District, while the commercial uses caddy-corner to the Property are located in the C-2-A Zone District. (Ex. 2.)

The Project

29. The Project will deliver a mixed-use building with approximately 180 residential units, approximately 11,468 square feet of which will be set aside as affordable housing. A major feature of this development is its focus on public spaces: it not only physically improves public spaces, but the building design was developed with a focus on how it is perceived from public spaces. (Ex. 2-2A5, 13-13A4.)

30. The massing of the Project is sensitive to the surrounding context. The maximum building height of 90 feet is at the corner of 17th Street and Benning Road. The building otherwise steps down to lesser heights as the building stretches toward neighboring properties. The building is fully designed so as to establish a strong sense of place. (Ex. 2-2A5, 13-13A4.)
31. The building façades along H Street and 17th Street incorporate a series of undulating interior balconies that provide articulation in the building elevations and create visual interest for pedestrians. In an effort to enhance the pedestrian experience, the Applicant is setting the building back from the property line approximately four feet along both 17th Street and Benning Road for a height of approximately 16 feet, six inches. This will create comfortable sidewalk widths and ease pedestrian circulation. (Ex. 2-2A5, 13-13A4.)
32. The Applicant is also incorporating tree boxes along 17th Street, which will improve the streetscape and provide an aesthetic respite for pedestrians. In addition to enhancing the sidewalks for its own Project, the Applicant is proposing to establish a sidewalk on the north side of H Street, where one does not currently exist. The Applicant wants to create clear, physical connections with the community it is joining; establishing the missing link in the sidewalk will help facilitate access to its Project for those living in the community and vice versa. (Ex. 2-2A5, 13-13A4.)
33. The Project will have two vehicular entrances. Two 30-foot, surface loading spaces will be accessed from Benning Road. The loading area is tucked in an internal courtyard, buffering it from adjacent homes. The parking garage will be accessed via the 16-foot public alley that extends to 18th Street. The western end of the alley is a “paper” alley, meaning that it only exists on paper and has never been constructed. The Applicant is improving the public alley to establish a connection with 18th Street. The alley will remain open to use by the public. Approximately 45 parking spaces will be provided in a below-grade garage: 36 spaces are zoning-compliant and nine spaces are located in vault space below the alley. (Ex. 2-2A5, 13-13A4.)
34. The Project will consist of approximately 180 residential units. The units will reflect a mix of studios, one-bedroom units, and two-bedroom units. The articulation of the building provides numerous opportunities for private outdoor spaces. Many of the residential units include an interior balcony, while some units on the second and seventh floor will enjoy private terraces. The rooftop will provide amenity spaces available for all residents, including a pool and a green roof. (Ex. 2-2A5, 13-13A4.)
35. The Project will be constructed to a density of approximately 6.0 FAR (including 0.55 FAR of nonresidential uses) and a maximum height of 90 feet at the corner of 17th Street and Benning Road. The building will step down in height as it stretches to the east along both Benning Road and H Street. (Ex. 2-2A5, 13-13A4.)

PUD Flexibility Requested

36. Parking and Loading: The parking requirements of the Zoning Regulations require 72 parking spaces for this Project. The Project will include 45 parking spaces, nine of which are located in vault space below the public alley. The Zoning Regulations require a 55-foot berth for the residential uses and the Project will include a 30-foot berth for the residential uses. (Ex. 13-13A4.)
37. The Applicant further sought flexibility in the design of the building:
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - b. To provide a range in the number of residential units plus or minus 10% from the number depicted on the plans and in this statement;
 - c. To vary the number and location of affordable units, provided that (i) the minimum amount of square feet of gross floor area required for affordable housing is met; (ii) the affordable units will be distributed proportionately across unit types and evenly on all floors except the top two floors; and (iii) the proportion of affordable studio, efficiency, and one-bedroom units to all affordable units will not exceed the proportion of market-rate studio, efficiency, and one-bedroom units to all market-rate units;
 - 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;
 - e. To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction;
 - f. To vary the final streetscape design and materials, as required by District public space permitting authorities.
 - g. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems;
 - h. To vary the final use and design on the ground-floor retail space frontage, including the number, size, design, and locations of doors, windows, awnings, canopies, and similar features, to accommodate the needs of specific tenants over the life of the Project; and

- i. To vary the number, location, size, and other features of signs, subject to the dimensions provided as Exhibit 41-41B.

(Ex. 13.)

Project Amenities and Public Benefits

38. As detailed in the Applicant’s testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits: (Ex. 13.)

- a. Exemplary Urban Design, Architecture, and Open Spaces. The building design concentrates the massing at the corner of Benning Road and 17th Street, which establishes a sense of place along Benning Road, while still respecting the surrounding lower scale buildings. The design also sets the building back from the lot lines abutting Benning Road and 17th Street, expanding the spaces at the base of the building that will be open to the public. Setting the building back will allow for wider sidewalks, which will encourage pedestrian traffic around the retail spaces. In addition to providing the setback at the ground floor, the design incorporates setbacks on the upper levels in order to provide articulation and depth to the building. With the exception of the projection that is proposed on H Street, the articulation of the façade is accommodated on private property and does not require use of public space;
- b. Site Planning and Efficient Land Utilization. The Project will transform an underutilized lot into a well-designed, mixed-use structure. The new Project will be both an efficient and economical use of land along the Streetcar line, a major bus line (Routes X1, X2, and X9) and along a major gateway into the District. The Project will also activate the surrounding street network with a combination of active ground-floor uses, additional residents, and streetscape improvements; (Ex. 2.)
- c. Housing and Affordable Housing. This Project will create approximately 180 new residential units. Eight percent of the residential floor area will be set aside as affordable housing. Half of these units will be reserved for households earning up to 80% of the area median income (“AMI”) and the other half will be reserved for households earning up to 50% of AMI, as outlined in the chart below. Fifty percent of the affordable units will be two- or three-bedroom units and 60% of the units reserved at the 50% AMI level will be two- or three- bedroom units;

Residential Unit Type	Residential GFA/ Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type
Total	143,338 sf/100%		Life of project	Rental
Market Rate	131,871 sf/92%	Market	Life of project	Rental
IZ	Not less than 4%	80% AMI	Life of project	Rental
IZ	Not less than 4%	50% AMI	Life of project	Rental

- d. Effective and Safe Vehicular and Pedestrian Access and Transportation Demand Management Measures. As noted above, the project incorporates setbacks on private property to enhance the pedestrian experience around the site. The project also reduces the number of curb cuts that serve the site from four to one, which will reduce the potential for conflicts between vehicular and pedestrian traffic. Two of the existing curb cuts are within 60 feet of an intersection, which is considered a subpar condition by DDOT; the project eliminates those curb cuts and will establish one that is sufficiently set back from Benning Road’s intersection with 17th Street. The Applicant is also filling in a missing link in the sidewalk network on the north side of H Street, which further supports pedestrian maneuvering around the site. Although the improvements do not immediately abut the Property, the Applicant sees this as an opportunity to integrate with the community by strengthening the physical connections between them. Providing a sidewalk on the north side of H Street will facilitate pedestrian activity from the existing neighborhood to and from the Project.

In addition to the pedestrian-friendly improvements, the Applicant is proposing a number of measures that will minimize impacts from its vehicular maneuvers. All access to the parking garage will be via the public alley at the rear of the Property. The Applicant is proposing to construct the western portion of the alley, as it does not currently exist. A separate point of access will be provided via Benning Road for the loading. All loading maneuvers will be accommodated on-site, and will not require any use of public space for backing-in or backing-out of the spaces;

- e. Environmental Benefits. The project will be certifiable at the LEED v. 2009 Gold level; and
- f. Uses of Special Value. The Applicant is offering the following benefits and amenities as uses of special value, in addition to those items referenced above:
- i. Construction. Applicant shall abide by the terms of the Construction Management Plan entered into the Record as Exhibit 28C;
 - ii. Security. The Applicant will install a minimum of four security cameras on the façade of the building, at least two of which will be installed on the

eastern façade of the building. The Applicant will incorporate security lighting on its property, adjacent to the public alley;

- iii. Residential Permit Parking Program. The Applicant will include a provision in its leases to preclude residents from securing a Ward 5 residential parking permit;
- iv. Community Room. The Applicant will designate a space within its project that will be a minimum of at least 500 square feet for use by the community for public meetings or programs, as determined by the ANC;
- v. Tree Boxes. The Applicant will provide four tree boxes along 17th Street; and
- vi. Flowers. The Applicant will provide flowering plantings along the south side of H Street in an effort to beautify the streetscape, as depicted in the plans.

Compliance with PUD Standards

- 39. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” The Commission finds that the development incentives for the height, density and flexibility are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines set forth in the Applicant’s statement and the OP report.
- 40. The Commission credits the testimony of the Applicant and its experts as well as OP and DDOT, and finds that the superior design, site planning, streetscape improvements, housing and affordable housing, uses of special value, and transportation demand and loading management plans all constitute acceptable project amenities and public benefits.
- 41. The Commission finds that the PUD as a whole is acceptable in all proffered categories of public benefits and project amenities. The proposed benefits and amenities are superior as they relate to urban design, landscaping, housing and affordable housing, effective and safe transportation access, and uses of special value to the neighborhood and the District as a whole.
- 42. The Commission believes the final benefits and amenities package addresses the comments and concerns noted by those who testified in opposition to the application, particularly the transportation demand management (“TDM”) plan and loading management plan. The Commission credits the testimony of OP and agrees that the PUD provides significant and sufficient public benefits and project amenities.

43. The Commission finds that the character, scale, massing, mix of uses, and design of the PUD are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant's architectural and transportation planning witnesses that the PUD represents an efficient and economical redevelopment of a strategic and transit-oriented parcel located along the streetcar line.
44. The Commission credits the testimony of OP and DDOT, and accepts both of the ANCs' reports, noting that the PUD will provide benefits and amenities of substantial value to the community and the District commensurate with the additional height and density sought through the PUD process. The Commission notes that the proposed massing is consistent with the goals and objectives of the Benning Road Redevelopment Framework Plan and the Comprehensive Plan. The massing of the project balances the potential massing of future development with the existing massing of neighboring residential uses.
45. The Commission credits OP and DDOT's testimony that the impact of the PUD on the level of services will not be unacceptable. The Commission notes that the TDM measures that the Applicant undertakes will mitigate any impacts of the project.
46. The Commission credits the testimony of the Applicant's traffic consultant, who submitted a comprehensive transportation review that concluded that the PUD would not have adverse effects due to traffic or parking impacts. The Applicant is providing a substantial TDM package, that DDOT supports, which will not only mitigate impacts from the project but generally improve existing conditions. Specifically, the Applicant will improve pedestrian and vehicular conditions on the Property. Any traffic, parking, or other transportation impacts of the PUD on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD, particularly in light of the transportation demand management plan being proffered.

Compliance with the Comprehensive Plan

47. The Commission credits the testimony of OP and the Applicant regarding the Property's designation as appropriate for Medium-Density Residential and Medium-Density Commercial development pursuant to the Future Land Use Map of the District of Columbia. The proposed height and density of the PUD is consistent with this designation. (Ex. 13, 29.)
48. The Commission credits the testimony of the Applicant and OP regarding the compliance of the PUD with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide, and area elements of the plan: (Ex. 2, 11, 13, 29.)
 - a. The Commission finds that the proposed PUD is not inconsistent with the written elements of the Comprehensive Plan and promotes the policies of its Land Use,

Transportation, Environmental, Housing, and Urban Design Citywide Elements and its Upper Northeast Area Element;

- b. The Project implements Land Use Element policies that encourage growth and revitalization to an underutilized lot along a high transit corridor;
- c. The Project implements Transportation Element policies that promote transit-oriented development and urban design improvements. The PUD brings new housing and retail uses within walking distance of the H Street streetcar and, through its TDM Plan, provides effective incentives to discourage motor vehicle use;
- d. The Project implements Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing, including affordable housing units that are family-size units and provide deeper affordability limits;
- e. The Project implements Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves an underutilized parcel of land along a vital corridor in the District of Columbia;
- f. The Project advances several objectives of the Upper Northeast Area Element, including the development of an underutilized site, streetscape improvements and pedestrian facility improvements. Achieving these objectives will strengthen the gateway into the District and provide a stronger link to the Anacostia River. This development is a key link between the successful H Street Corridor and entry points further east along Benning Road. The Project is consistent with the objectives of the Area Element and seeks to create a successful mixed-use residential project; and
- g. The Commission credits the testimony of the Applicant that the PUD is consistent with and furthers the goals of the Benning Road Redevelopment Framework Plan. The Benning Road plan was prepared by OP and approved by the District Council in 2008. The objective of the plan was to encourage new development along the Benning Road corridor that incorporates new residential uses and improved retail options into existing neighborhoods. The plan notes that this Property, along with five nearby neighboring properties are appropriate for redevelopment. Collectively, the plan viewed the five development sites as ripe for infill residential and neighborhood serving retail. More specifically, the plan envisioned this Property to be a prime opportunity for retail uses given its proximity to the Hechinger Mall property and for incorporation of new residential uses. This site is the first of the sites along Benning Road to move forward with redevelopment, leading the way to effectuating a vision for development that was put into motion by OP eight years ago.

Agency Reports

49. By report dated September 19, 2016, OP recommended approval of the application. OP confirmed that the Project supports the written elements of the Comprehensive Plan and is not inconsistent with the Future Land Use and Generalized Policy maps of the Comprehensive Plan. OP also noted that the Project is consistent with the Benning Road Plan in that it provides neighborhood-serving retail, it proposes architecture and massing to better frame the corridor, and it provides mixed income housing. The Benning Road Plan specifically calls the Property out as appropriate for redevelopment as a mixed-use residential and retail project. (Ex. 29.)
50. OP concluded that the benefits and amenities were commensurate given the flexibility requested. (Ex. 29.)
51. OP recommended approval of the application subject to continued coordination with other District agencies including the District's Department of Housing and Community Development ("DHCD"), DDOT, and the District Department of Energy and Environment ("DOEE") on the specific details of the application to ensure advancement of the District's goals and that the Applicant will update the construction management plan in conjunction with the neighbors' input. (Ex. 29.)
52. By report dated September 19, 2016, DDOT noted its support of the application. DDOT noted that it had no objections to the PUD. (Ex. 30.)
53. DDOT noted that although it typically requires all access to a site to occur via an existing alley, it was comfortable with allowing all retail loading to access the site via Benning Road given the size constraints of the existing alley. DDOT noted that the existing alley would be challenging for trucks to maneuver, thus it supports a curb cut from Benning Road for loading. Residential access to the garage will occur via the existing alley. DDOT testified that the alley could accommodate the proposed traffic despite resident concerns to the contrary. The existing alley is a typical size for alleys in the District. (Ex. 30; September 29, 2016 Tr., p. 74.)

Advisory Neighborhood Commission Reports

54. ANC 6A submitted a letter in support of the application. It noted that the developer undertook a significant level of outreach and communication regarding its plans with the residents of our area. It also supported the use of private property along 17th Street and Benning Road to improve pedestrian circulation. It further noted that the building will have adequate parking, reducing traffic or congestion impact on the neighborhood, and that the design of the building ensures that the light and air of neighboring properties will not be negatively impacted. (Ex. 26.)
55. ANC 5D did not take action on the application prior to the public hearing, though the Single Member District representative submitted a letter in support of the application. (Ex. 36.)

56. ANC 5D submitted a report “generally in support” of the application dated November 7, 2016. (Ex. 42.) The report stated that the ANC was concerned about the building’s height, and the potential impact the height on the immediate vicinity. ANC 5D further stated that “the proposed use will benefit the neighborhood by adding affordable units and other community benefits.”

Parties in Support and in Opposition

57. There were no additional parties to this application, either in support or in opposition.

Persons and Organizations in Support or Opposition

58. H Street Main Street submitted a letter in support of the application noting that this project would provide much needed neighborhood-serving retail and is critical to improving the walkability of this area. The project is a vast improvement over the existing use and is better utilization of the property. (Ex. 24.)
59. Prasun Desai, the owner of 1707 H Street, the property immediately abutting the project, submitted a letter in support. The neighbor noted that the proposed use was an improvement over the existing use of the site and that the proposed massing was appropriate for its context. He further noted that retail uses would benefit the neighborhood and that he supported the proposed architecture. (Ex. 27.)
60. Yohance Fuller, serving as the representative of 1709 H Street, LLC, the owner of 1709 H Street, submitted a letter in support of the application. Mr. Fuller noted that the building was designed to relate to its context and that the proposed massing was appropriate. He indicated his own plans for a vertical addition on his property, confirming that the proposed height of the Project would be consistent with his own proposal. As noted by other supporters, Mr. Fuller agreed that the proposed use was an improvement over the existing used car sales lot located on the Property. (Ex. 31.)
61. Equitable and Respectful Reinvestment submitted a letter noting concerns about redevelopment in the area. The letter opposed redevelopment of sites adjacent to the Property, but did not address redevelopment of the instant Property. Equitable and Respectful Reinvestment noted general concerns about eliminating services currently utilized by long-time residents. These concerns related to services provided on neighboring sites but not on the Property itself. (Ex. 33.)
62. Bruce Adkins, the owner of 1711 H Street, submitted a letter in opposition to the application and testified in opposition to the application at the public hearing. He noted three primary concerns: the existing alley cannot accommodate the proposed traffic; the at-risk windows on the eastern façade might affect his development rights, which concerned him because he was contemplating a vertical addition to his property; and the proposal projects beyond the existing building line. DDOT provided testimony in response to his concerns regarding use of the alley. DDOT testified that the existing alley is a typical condition throughout the District and it can accommodate the number of trips that are proposed to and from the site. DDOT also noted that the alley forks toward the

eastern end of the square, which provides a release valve in the event there is a vehicular conflict in the square. With respect to Mr. Adkins' second concern, the Applicant confirmed that the windows were being provided at their own risk, meaning that if the neighboring property owner constructed a vertical addition, they would have to remove them. These windows would not affect Mr. Adkins' ability to construct a vertical addition on his property. Finally, the Applicant confirmed that it was proposing a projection along H Street, consistent with what was permitted under the Building Code. (Ex. 35; September 29, 2016 Tr., pp. 78-82.)

63. Sharon Cole, the immediate neighbor on Benning Road, testified in opposition to the application at the public hearing. She testified that it was her understanding that the Applicant was purchasing her property and displacing the existing residents living in the rental units along Benning Road. The Applicant confirmed that this was not the case and that no residential uses would be displaced by the Project. (September 29, 2016 Tr., pp. 79-89.)

CONCLUSIONS OF LAW

1. Pursuant to Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the application as a consolidated PUD and it has the authority to approve a PUD-related map amendment. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.
3. The Property meets the minimum area requirements of Chapter 24 of the Zoning Regulations.
4. Proper notice of the proposed PUD was provided in accordance with the requirements of the Zoning Regulations and as approved by the Commission.
5. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a mix of uses with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, massing, mix of uses, and design of the proposed PUD is appropriate. The proposed redevelopment of the Property, with a mix of residential and retail uses, capitalizes on the Property's transit-oriented location and is compatible with citywide and area plans of the District of Columbia, including the Benning Road Plan.

6. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.
7. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential and retail uses for this PUD are appropriate for the Property's location. The PUD's height, bulk, and uses are consistent with the District's planning goals for the surrounding neighborhood and are consistent with anticipated future development.
8. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than the matter-of-right development on the Property provides. The Commission finds that the urban design, site planning, public space improvements, efficient and safe transportation features and measures, housing and affordable housing, ground-floor retail uses, and uses of special value are all significant public benefits. The impact of the PUD is acceptable given the exceptional quality of the public benefits of the PUD.
9. The impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, loading, or pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
10. Approval of the PUD is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed PUD is consistent with the Property's Medium-Density Commercial and Medium-Density Residential designation on the Future Land Use Map and furthers numerous goals and policies of the written elements of the Comprehensive Plan as well as other District planning goals for the immediate area, including the Benning Road Plan.
11. The Commission concludes that the proposed PUD is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
12. The PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
13. The Applicant proposed improvements for the public space immediately abutting its property and while the Zoning Commission does not have jurisdiction over the development of public space, it supports the proposed improvements. It understands the Applicant will work with DDOT regarding the specific improvements to the public space.

14. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.
15. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the positions of ANC 5D and ANC 6A in support of approving the application and concurs in the recommendation of approval. The Commission considered ANC 5D's comments regarding its concern about the height. The Commission concludes that the proposed height is appropriate when considering the future context of the development. This area has been designated for redevelopment in the Benning Road Corridor Plan and two neighboring properties are currently being marketed for redevelopment, both of which would allow a similar height through the PUD process. The proposed height exceeds existing building heights in this neighborhood; however, this is the first development to move forward along Benning Road. The expectation, as noted in the Benning Road Plan, is that additional properties will follow suit, many of which will likely seek approvals for similar massing. The proposed height is not inconsistent with the Comprehensive Plan or with development plans for this neighborhood. For these reasons, the Commission considers the height to be appropriate.
16. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for the review and approval of a consolidated planned unit development and PUD-related map amendment from the C-3-A Zone District to the C-2-B Zone District for the Property for the mixed-use development described herein, subject to the following conditions:

A. Project Development

1. The Project shall be developed in accordance with the architectural drawings submitted into the record on October 31, 2016, as Exhibit 41B1-41B2, as modified by the drawings submitted into the record on December 12, 2016, as Exhibit 46A, and as further modified by the guidelines, conditions, and standards herein (collectively, the "Plans").

2. The Project will have flexibility from the parking and loading requirements as noted herein.
3. The Applicant will 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, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - b. To provide a range in the number of residential units plus or minus 10% from the number depicted on the plans and in Exhibits 2-2G and 13-13A4;
 - c. To vary the number and location of affordable units, provided that: (i) the minimum amount of square feet of gross floor area required for affordable housing is met; (ii) the proportion of affordable studio, efficiency, and one-bedroom units to all affordable units will not exceed the proportion of market-rate studio, efficiency, and one-bedroom units to all market-rate units; and (iii) the same number of affordable units have frontage on 17th Street and Benning Road as depicted in Exhibit 41;
 - 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;
 - e. To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction;
 - f. To vary the final streetscape design and materials, as required by District public space permitting authorities;
 - g. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems;
 - h. To vary the final use and design on the ground-floor retail space frontage, including the number, size, design, and locations of doors, windows, awnings, canopies, and similar features, to accommodate the needs of specific tenants over the life of the Project; and

- i. To vary the number, location, size, and other features of signs, subject to the dimensions provided as Exhibit 41-41B.

B. Transportation

1. **For the life of the Project**, the Applicant shall abide by the terms of the loading management plan, which requires compliance with the following:
 - a. Delivery and trash trucks will unload/load in the loading dock;
 - b. Parcel vehicles for the retail area will use the loading dock;
 - c. Loading vehicles, including delivery vans and trucks will access the loading dock via the proposed curb cut on Benning Road. The driveway will support right-turn in access and right-turn out egress;
 - d. All reverse maneuvers in the loading area will occur on site and not across public space;
 - e. Trucks larger than 30 feet will be restricted from delivery onto the site;
 - f. Resident move-ins, move-outs, and retail and residential deliveries, excluding FedEx and UPS trucks, will be scheduled in advance by a loading dock manager;
 - g. Trucks will not be allowed to idle pursuant to the guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (engine idling);
 - h. Residents will be required to schedule move-ins and move-outs;
 - i. Trash and recycle pick-up will occur in rear-loaded vehicles. All trash pick-up will occur in the loading dock;
 - j. A dedicated trash and recycling area is provided in the loading dock area; and
 - k. It shall be the responsibility of building management to inform all building tenants of this LMP and its conditions.
2. **For the life of the Project (except as noted below)**, the Applicant shall abide by the terms of the transportation demand management (“TDM”) plan, which requires compliance with the following:

- a. **For the first five years that the building is open**, the Applicant will provide to each new resident an one-time Capital Bikeshare or a car share subsidy of \$85 (annual membership costs, plus an account credit if an annual membership costs less than \$85) until the maximum value is obtained. The total amount of subsidies will have a maximum value of \$76,075 cumulative for the Project (equivalent to providing one subsidy for each dwelling unit; the subsidy is not required to be paid in full but as each unit is filled). This benefit shall be codified in the rental/condominium documents;
- b. Provide, as a one-time incentive, bicycle helmets for distribution to new residents (one per unit or a maximum of 179 helmets);
- c. Install a TransitScreen or similar device displaying real-time transportation schedules and the location of bikeshare stations, carshare vehicles, and any other public transportation options;
- d. The applicant will reserve a space in the parking garage for a car sharing service if there is interest by the car sharing company to provide a car on-site;
- e. Offer a preloaded \$10 SmarTrip card for each unit at the initial sale or rental of units in the building;
- f. Provide long-term and short-term bicycle parking spaces in-line with zoning regulations. The applicant will meet the zoning requirement and provide 62 long-term spaces and 14 short-term bicycle parking spaces (or seven racks in public space);
- g. Provide an electric vehicle charging station with the parking garage;
- h. Provide a repair station within the bike room;
- i. Post all TDM commitments on-line and provide each initial resident with links to CommuterConnections.com, goDCgo.com, WMATA Metrobus routes, and DC Bicycle maps; and
- j. Designate a member of the building's management or operations staff as the site's TDM coordinator.

C. Construction

The Applicant shall abide by the terms of the construction management plan submitted as Exhibit 28C in the record. The Applicant shall provide proof of compliance to the Zoning Administrator in the form of a letter **prior to issuance of a building permit.**

D. Benefits and Amenities

1. **Affordable Housing. Prior to the issuance of the first Certificate of Occupancy for the residential component of the Project,** the Applicant shall demonstrate the following:

a. **For the life of the Project,** the Applicant shall:

- (i) Provide a total of approximately 143,338 square feet (“sq. ft.”) of residential Gross Floor Area (“GFA”) of housing;
- (ii) Devote not less than eight percent of the residential GFA, equaling approximately 11,468 sq. ft., as inclusionary units pursuant to 11 DCMR, Chapter 26;
- (iii) Devote not less than 50% of the inclusionary units (equaling not less than six units) for households earning less than 50% of the Area Median Income for the Washington, DC metropolitan statistical area (“AMI”); and
- (iv) Devote not less than 50% of the inclusionary units (equaling not less than six units) as inclusionary units for households earning less than 80% of the AMI;

b. **For the life of the Project,** 50% of the inclusionary units shall be two- or three-bedroom units, and 60% of the units set aside at the 50% of AMI level shall be two- or three-bedroom units;

c. **For the life of the Project,** the distribution of the affordable housing units shall be in accordance with Sheets A-06 and A-07 marked as Exhibit 41B of the record, and in accordance with the following chart. The Applicant shall have the flexibility to modify the location of the affordable units so long as the same proportion of affordable units are located along 17th Street and Benning Road as reflected in Exhibit 41B and the distribution otherwise complies with § 2605.6; and

Residential Unit Type	Residential GFA / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type
Total	143,338 sf/100%		Life of project	Rental
Market Rate	131,871 sf/92%	Market	Life of project	Rental
IZ	Not less than 4%	80% AMI	Life of project	Rental
IZ	Not less than 4%	50% AMI	Life of project	Rental

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

2. **LEED-Gold.** Prior to the issuance of a certificate of occupancy, the Applicant shall submit evidence to the Zoning Administrator, in the form of a document certified by the project's architect, that the Project shall be eligible for certification at the LEED v. 2009 Gold level.
3. **Security.** Prior to the issuance of a certificate of occupancy, the Applicant shall submit evidence to the Zoning Administrator that the Applicant has installed a minimum of four security cameras on the façade of the building, at least two of which will be installed on the eastern façade of the building, and that the Applicant has incorporated security lighting on its property, adjacent to the public alley.
4. **Residential Permit Parking Program.** For the life of the Project, the Applicant shall include a provision in its leases precluding residents from securing a residential parking permit. The Applicant shall provide the relevant excerpt of the lease to the Zoning Administrator prior to issuance of a certificate of occupancy.
5. **Community Room.** For the life of the Project, the Applicant shall reserve a space of at least 500 square feet for use by the community for public meetings or programs, as determined by the ANC in coordination with the Applicant. The Applicant shall submit evidence of this to the Zoning Administrator in the form of plans showing the space reserved for this use prior to the issuance of a certificate of occupancy.
6. **Tree Boxes.** The Applicant shall provide four tree boxes along 17th Street, in coordination with DDOT during the public space process. The Applicant shall provide a copy of its public space permit allowing such work prior to issuance of a residential certificate of occupancy.
7. **Flowers.** The Applicant will provide flowering plantings along the south side of H Street in an effort to beautify the streetscape. The Applicant shall provide photographic evidence of the landscaping within six months of issuance of the certificate of occupancy.

8. **Public Space. Prior to the issuance of a residential certificate of occupancy, the Applicant shall submit evidence to the Zoning Administrator that it has completed the following:** The Applicant shall set its building back four feet from the property line for its entire façade along Benning Road and 17th Street for a height no less than 15 feet. This setback shall be used to widen the public sidewalk. The Applicant shall coordinate with DDOT during the public space process regarding the design of this space.
9. **Prior to the issuance of a residential certificate of occupancy, the Applicant shall submit evidence to the Zoning Administrator that is has completed the following:** The Applicant shall construct at least 65 feet of sidewalk on the north side of H Street at the northeast corner of 17th Street and H Street, NE. The Applicant shall coordinate with DDOT during the public space process regarding the design of this space.
10. **Prior to the issuance of a residential certificate of occupancy, the Applicant shall submit evidence to the Zoning Administrator that is has completed the following:** The Applicant shall construct the unimproved portion of the public alley at the west end of Square 4507. The Applicant shall coordinate with DDOT during the public space process regarding the design of this space.

E. Miscellaneous

1. No building permit shall be issued for the Project 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 of the Department of Consumer and Regulatory Affairs (“DCRA”). Such covenant shall bind the Applicant and all successors in title to construct and use the property 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 this Order. Within such time, an application must be filed for a building permit for the Project. Construction of the Project must begin within three years of the effective date of this Order.
3. In accordance with the DC Human Rights Act of 1977, as amended, DC Official Code §§ 2-1401.01 et al (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, familial responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above

protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

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

On January 9, 2017, upon the motion of Chairman Hood, as seconded by Councilmember 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 present, 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 March 10, 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