

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-01
Z.C. Case No. 14-01
Jemal's Hecht's, LLC
(Consolidated PUD and Related Map Amendment @
Square 4037, Parts of Lots 7 and 804)
July 17, 2014

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on June 12, 2014, to consider applications for a consolidated planned unit development ("PUD") and related zoning map amendment filed by Jemal's Hecht's, LLC (the "Applicant"). The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

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

1. On January 27, 2014, the Applicant filed applications with the Commission for consolidated review of a PUD and related map amendment from the C-M-2 Zone District to the C-3-C Zone District for property located at 1401 New York Avenue, N.E. (the western 345.93 feet of Lots 7 and 804 in Square 4037) (the "PUD Site").
2. The PUD Site is located on New York Avenue, N.E. in the Ivy City neighborhood of Ward 5, and has a land area of approximately 119,037.97 square feet (2.73 acres). The PUD Site is presently occupied by the historic Hecht's Company Warehouse building, which is listed as an individual landmark on the District of Columbia Inventory of Historic Sites and the National Register of Historic Places.
3. The Applicant proposes to redevelop the warehouse structure with a new mixed-use building that includes two full stories of retail and service uses and five stories of residential uses. The Applicant will completely renovate and repurpose the existing warehouse building, and will add a two-story addition atop the four-story wing on the eastern side of the building and a one-story addition atop the main portion of the building. The new addition will be set back on the primary historically contributing New York

Avenue and Fenwick Street façades a minimum of 24 feet. Upon completion, the project will include approximately 559,245.1 square feet of gross floor area, or an aggregate floor area ratio ("FAR") of approximately 4.70. The overall height of the building will be 95.15 feet.

4. By report dated February 14, 2014, the Office of Planning ("OP") recommended that the applications be set down. (Exhibit ["Ex."] 12.) At its public meeting held on February 24, 2014, the Commission voted to schedule a public hearing on the applications.
5. The Applicant submitted a prehearing statement for the project on April 1, 2014, and a hearing was timely scheduled for the matter on April 17, 2014. A description of the proposed development and the notice of the public hearing in this matter were published in the *D.C. Register* on April 25, 2014. The notice of public hearing was mailed to all property owners within 200 feet of the PUD Site and to Advisory Neighborhood Commission ("ANC") 5D on April 22, 2014.
6. On May 5, 2014, the Applicant submitted revised architectural plans and elevations in response to comments raised by the Commission at set down. (Ex. 21B.) The revised plans incorporated the new addition to the building, which added 68 residential units to the initial design. In this submission, the Applicant proposed increasing the affordable housing subsidy so that 10 of the affordable units in the building would be devoted to households earning 50% of the area median income ("AMI"), instead of the required 80% AMI subsidy as required by the Zoning Regulations and as previously proposed. The Applicant also provided a chart showing the revised unit breakdown and stated that ANC 5D was supportive of the revised plans. (Ex. 21A.) On May 6, 2014, OP submitted a memorandum stating no objections to the Applicant's revised plans. (Ex. 22.)
7. At its regularly scheduled public meeting on May 12, 2014, for which notice was properly given and a quorum was present, ANC 5D voted 4-0-0 to support the application. (Ex. 24.)
8. On May 23, 2014, the Applicant submitted supplemental prehearing materials in support of its application. (Ex. 23.) These materials included a full set of revised architectural plans and elevations showing the revisions submitted on May 5, 2014, as well as other minor design and program adjustments. In this submission, the Applicant provided a traffic impact study, prepared by Gorove/Slade Associates, Inc., the Applicant's traffic and transportation consultant.
9. On June 2, 2014, OP submitted its final report recommending approval of the application and the requested areas of zoning flexibility. (Ex. 26.) On June 4, 2014, the District Department of Transportation ("DDOT") submitted its final report stating no objection to the application, subject to several conditions. (Ex. 27.)

10. The parties to the case were the Applicant and ANC 5D.
11. The Commission convened a hearing on June 12, 2014, which was concluded that same evening. At the hearing, the Applicant presented five witnesses in support of its application: Paul Millstein, Douglas Development Corporation; Laura Hughes, EHT Traceries; Joe Antunovich, Antunovich Associates Architects; Erwin Andres, Gorove/Slade Associates; and Steven Sher, Holland & Knight. Based upon their professional experience and qualifications, the Commission qualified Ms. Hughes as an expert in historic preservation, Mr. Antunovich as an expert in architecture and design, Mr. Andres as an expert in transportation planning and engineering, and Mr. Sher as an expert in land use and zoning. The Commission also qualified George Warholc of Dewberry as an expert in landscape architecture.
12. Karen Thomas, Development Review Specialist with OP, and Jennifer Steingasser, Deputy Director of Development Review with OP, testified in support of the application. Evelyn Isreal and Anna Chamberlin, transportation planners with DDOT also testified in support of the application with conditions.
13. Kathy Henderson of ANC 5D and Alicia Swanson of the Ivy City Civic Association testified in support of the application.
14. The record was closed at the conclusion of the hearing, except to receive additional submissions from the Applicant, as requested by the Commission. After closing the record, the Commission took proposed action to approve the application. The proposed action was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The Commission also requested proposed findings of fact and conclusions of law from the Applicant.
15. On June 30, 2014, the Applicant submitted the following post-hearing items, as requested by the Commission:
 - (a) A drawing of a typical unit showing where the glass blocks and windows will be used and located;
 - (b) A drawing of the roof showing the heights of the existing and proposed roof structures;
 - (c) A calculation of the green area ratio for the building;
 - (d) A description of the Applicant's use of the green roof of a total of 13,000 square feet; and
 - (e) A description of the Applicant's outreach efforts with the Unity Health Care Homeless Shelter, located at 1355 New York Avenue, N.E., adjacent to the PUD Site.

16. The proposed action of the Commission was referred to NCPC on June 12, 2014. (Ex. 37.) NCPC did not provide a response.
17. The Commission took final action to approve the PUD on July 17, 2014.

The PUD Site, Surrounding Area, and Prior Commission Actions in Square 4037

18. The PUD Site is located on New York Avenue, N.E. in the Ivy City neighborhood of Ward 5. The rectangular-shaped site is comprised of the western-most 345.93 feet of Lots 7 and 804 in Square 4037, and has a total land area of approximately 119,037.97 square feet (2.73 acres). The PUD Site is presently occupied by the historic Hecht Company Warehouse building, which is listed as an individual landmark on the District of Columbia Inventory of Historic Sites and the National Register of Historic Places.
19. Square 4037 has a total land area of approximately 371,334 square feet (8.52 acres) and is comprised entirely of Lots 7 and 804. Square 4037 is a rectangular block bounded by New York Avenue to the north, Fenwick Street to the west, Okie Street to the south, and 16th Street to the east, all within the northeast quadrant of Washington, D.C. Situated along New York Avenue, Square 4037 is surrounded by production, distribution and repair uses, as well as residential neighborhoods to the south. The CSX railroad and Metrorail tracks are located across New York Avenue to the north. Other one- and two-story industrial buildings dating from the early twentieth century predominate the surrounding area, as well as single-family detached dwellings and low-rise multi-family apartment buildings in the Ivy City neighborhood to the south. The Unity Health Care Homeless Shelter, with approximately 360 beds for overnight accommodations, is located approximately 358 feet to the west of the PUD Site.
20. The majority of the Hecht's Company warehouse building was constructed in 1937 and designed in the Streamline Moderne manner by engineer Gilbert V. Steel of the New York engineering firm Abbott and Merkt. The building consists of the original warehouse structure plus four additions, prominently located at the corner of New York Avenue and Fenwick Street, N.E. The contributing sections date from 1937, 1948, and 1961, and range in heights of approximately 82 feet (1937 landmark section), 54.5 feet (1948 landmark section), and 14 feet (1961 landmark section). Of historic significance is the use of glass block, particularly striking in the building's quarter-round northwest corner, which supports a large glass block tower. Also noteworthy is the use of black and white glazed bricks in simple, geometric patterns.
21. The warehouse building was listed on the National Register of Historic Places in 1994. Macy's purchased the building from the Hecht Company in 2006, and shut its doors soon thereafter. The Applicant purchased the warehouse from Patriot Equities in late 2011, and it has been vacant ever since, despite the Applicant's diligent efforts to market the

building to industrial, office, and warehouse users. The warehouse building is unique in that it is the only building in the vicinity or on this section of New York Avenue that is listed as an individual historic landmark.

22. On July 8, 2013, pursuant to Z.C. Order No. 13-02, the Commission approved a map amendment to rezone the eastern portions of Lots 7 and 804, also owned by the Applicant, from the C-M-2 Zone District to the C-M-3 Zone District. Based on this approval, the Applicant is presently constructing, as a matter of right, a seven-story, 1,067-car above-ground parking garage in the center of Square 4037, with ground floor retail and service uses. A Mom's Organic Market is scheduled to open in the ground floor of the structure in late 2014. At the time of the rezoning of the eastern portion of the Square in 2013, the Applicant did not request a map amendment for the PUD Site, which remained in the C-M-2 Zone District. The present application will allow for development that is complimentary to the parking garage and retail spaces on the adjacent land in Square 4037 and takes advantage of the parking spaces and retail opportunities.

Existing and Proposed Zoning

23. The PUD Site is located in the C-M-2 Zone District. 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 "[h]eavy truck traffic and loading and unloading operations are expected to be characteristic of C-M Zone Districts." (11 DCMR § 800.2.) The maximum permitted height and density within the C-M-2 Zone District is 60 feet and 4.0 FAR, respectively. (11 DCMR § 840.1 and § 841.1). A rear yard with a minimum depth of 2.5 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, is required for structures in the C-M-2 Zone District. (11 DCMR § 842.2.)
24. The Applicant is requesting a map amendment to rezone the PUD Site from the C-M-2 Zone District to the C-3-C Zone District. The C-3-C Zone District permits medium-high density development, including office, retail, housing, and mixed-use development. (11 DCMR § 740.8.) The maximum permitted height and density within the C-3-C Zone District is 90 feet and 6.5 FAR, respectively. (11 DCMR §§ 770.1 and 771.2.) The maximum permitted height and density within the C-3-C Zone District as a PUD is 130 feet and 8.0 FAR.
25. Consistent with these parameters, the Applicant will develop the PUD Site with office, retail, service, and residential uses. The maximum proposed height for the building is

95.15 feet and the maximum proposed density is 4.70, as permitted for a PUD in the C-3-C Zone District.

Description of the PUD Project

26. The PUD project consists of an existing building that incorporates a two-story addition to the low-rise portion of the building and a one-story addition to the top of the higher-rise portion of the building. The final building design is a seven-story mixed-use, retail, service, and residential building, with a total gross floor area of 559,245 square feet. The first and second floors will contain retail and service uses, comprised of approximately 196,343.8 square feet of gross floor area, plus approximately 5,590 square feet of retail space in the cellar. Retail entrances will be reestablished along New York Avenue and Fenwick Street with large glazed windows, providing new vibrancy and activity along these corridors. Floors three through seven will contain approximately 362,901.3 square feet of gross floor area devoted to residential and residential amenity spaces, comprised of approximately 338 dwelling units. The residential entrance will be from the new Hecht Avenue, N.E., located directly to the east of the building on the PUD Site.
27. Three light-well atriums will be cut into the center of the building at the third floor level, providing natural light for the interior residential units. These interior courtyards will provide natural amenity spaces for building residents that include landscape and hardscape, open green areas, and seating. The Applicant intends to preserve and incorporate the existing columns into the proposed courtyard. Floors two and five will also provide outdoor terraces on the east side of the building, and the roof will provide additional exterior amenity space with views of downtown Washington, D.C.
28. Due to the historic nature of the warehouse building, and the fact that the gross floor area of the historic resource is not being increased by 50%, the Applicant is not required to provide additional parking facilities. (11 DCMR 2120.3.) Nor is the Applicant required to provide additional loading facilities. (11 DCMR § 2200.5.) However, approximately 1,067 parking spaces for residential and retail uses to be located in Square 4037 will be located in the parking garage presently under construction east of the PUD Site. Loading will be accessed from Okie Street and will include the following facilities: (i) two loading berths at 55 feet deep, (ii) one loading berth at 30 feet deep, and (iii) three loading platforms at 200 square feet each. The Applicant will provide approximately 224 bicycle parking spaces dispersed throughout the building, on the exterior of the building on the PUD Site, and in the parking garage adjacent to the PUD Site. In addition, the Applicant will provide a shuttle service for residents and retail employees connecting the PUD Site with the NoMA/Gallaudet University Metrorail Station.
29. Redevelopment of the PUD Site will emphasize the unique architectural character of the historic structure, and will artfully retain the iconic exterior along New York Avenue and

Fenwick Street. The design involves the retention of the historic glass blocks and glazed brick where possible, and the substitution of the glass where necessary with in-kind replacements using the original molds. The steel windows will be refabricated to allow for double glazing and improved operability, but with the same profiles. On the ground level, the storefront openings will be restored to their original glazed condition. The two-story addition will be clad in metal panels and vertical glass panes to match the existing façade materials.

30. Consistent with Chapter 26 of the Zoning Regulations, the Applicant will set aside eight percent of the residential gross floor area of the PUD Site for affordable dwelling units. In order to help address the inadequacy of affordable housing throughout the District, and in Ivy City in particular, 10 of the total affordable units will be devoted to households earning up to 50% of the AMI, with the remainder devoted to households earning up to 80% of the AMI. The affordable units will be distributed throughout the residential portion of the building (excluding the top two floors), as indicated on Sheets 15 through 19 of the Architectural Plans and Elevations, dated June 12, 2014. (Ex. 29A.)

Flexibility Requested

Zoning Flexibility

31. The Applicant requested flexibility from the roof structure requirements because there will be multiple roof structures with multiple heights. The Commission concurs with the Office of Planning that a single enclosure would be impractical due to the locations of the elevators and mechanical penthouse. Further, if all rooftop structures were enclosed in one wall, it would increase the visibility of the rooftop structure from the surrounding neighborhood and would detract from the historic character of the landmark structure. All new roof structures meet the height and set back requirements.

Development Flexibility

32. The Applicant requested flexibility to vary the number of residential units provided in the project. The project will include 338 units, plus or minus 10%.
33. The Applicant 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; and

- (b) 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 materially reducing the quality of the materials; and to make refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code, to comport with final design comments from the Historic Preservation Review Board, or that are otherwise necessary to obtain a final building permit.

Project Benefits and Amenities

- 34. Urban Design, Architecture and Landscaping. The PUD implements a number of urban design and architectural best practices, and will assist in the further development of Ivy City into a mixed-use community with higher-density residential uses and high-quality community oriented retail uses. New retail entrances to the building will be located along New York Avenue and Fenwick Street, providing vibrancy and activity along these corridors. The residential entrance will be from the new Hecht Avenue, located directly to the east of the PUD Site. New and open courtyards are provided within the central building mass to allow sunlight into the existing building's sizable floor plate and provide additional amenity spaces to building residents.
- 35. Historic Preservation. The historic preservation element of the PUD preserves and celebrates the existing historic warehouse building and reuses it in a productive and useful manner. The PUD will allow for the renovation and adaptive reuse of the iconic structure, which has been vacant for over eight years, and will carefully integrate the building into the existing community. The reuse of the building will improve significantly the appearance of the streetscape along New York Avenue and will enhance the attractiveness and safety of the surrounding community, bringing new "eyes and ears" to the streets.
- 36. First Source Employment Agreement. Expanding employment opportunities for residents and local businesses is a priority of the Applicant. The Applicant will enter into a First Source Employment Agreement with the Department of employment Services ("DOES"), whereby the Applicant will use DOES as its first source for recruitment, referral, and placement of new hires for construction employees whose jobs are created by the PUD.
- 37. Housing and Affordable Housing. The PUD will contain 338 residential units (plus or minus 10%) with a maximum residential gross floor area of approximately 362,901 square feet of gross floor area. The Applicant will set aside no less than eight percent of the residential gross floor area for affordable units, with 10 of those units devoted to low-income households and the remainder of the units devoted to moderate-income

households as those households are defined by 11 DCMR § 2601¹. Since residential use is presently not permitted on the PUD Site under its current CM zoning and because the Applicant is offering a deeper level of affordability than required by the Inclusionary Zoning Regulations, the affordable housing component of the Project is a public benefit, pursuant to § 2403.9(f) of the Zoning Regulations. In addition to furthering the general housing objectives and policies of the Zoning Regulations and the Comprehensive Plan, the proposed development will help satisfy the growing demand for housing in this rapidly changing neighborhood.

38. *Environmental Benefits.* The PUD will help to ensure the environmental, economic, and social sustainability of its residents through the implementation of sustainable design features. A number of strategies will be implemented to enhance the inherently sustainable nature of the PUD Site's location and to promote a healthy, desirable, and comfortable lifestyle that will fully benefit the project's residents while minimizing impacts on the environment. The proposed development will provide a number of environmental benefits, including street tree planting and maintenance, landscaping, energy efficient and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices. Although the Applicant is not seeking LEED-certification for the building, the project will meet a LEED-Silver equivalent rating.
39. *Transportation Benefits.* The PUD includes approximately 224 bicycle parking spaces distributed throughout the building and in several locations outside of the building, adjacent to the building entrances. The project will also implement significant transportation demand management ("TDM") measures, including providing a shuttle service for residents and retail employees that connects the PUD Site with the NoMa/Gallaudet University Metro Station; unbundling all parking costs from the cost of lease of the residential units; designating a residential TDM leader for all phases of the project; providing a transportation kiosk in the residential lobby that will contain printed materials related to local transportation alternatives; providing website links to Commuter Connections.com and goDCgo.com on developer and property management websites; and installing a TransitScreen to provide real-time transportation information.

¹ Those definitions are:

Low-income household - a household of one or more individuals with a total annual income adjusted for household size equal to less than fifty percent (50%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

Moderate-income household - a household of one or more individuals with a total annual income adjusted for household size equal to between fifty-one percent (51%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

40. Uses of Special Value to the Neighborhood. The Applicant has agreed to: (1) pay for a new Capital Bikeshare station in the public space abutting or within Square 4037; (2) pay \$50,000 toward neighborhood cleanup and improvements, in cooperation with ANC 5D; and (3) pay for 500 linear feet of new sidewalk in the surrounding neighborhood, the exact location to be determined in cooperation with ANC 5D.

Comprehensive Plan

41. The PUD Site is identified as a Neighborhood Conservation Area ("NCA") on the Generalized Policy Map. The guiding philosophy in the NCA is to ensure that the unique and special qualities of each area are maintained and conserved, and that the overall neighborhood character is protected as development takes place. The proposed map amendment and associated PUD will continue to protect and strengthen the existing community while returning an iconic historic structure to productive use. The Future Land Use Map of the Comprehensive Plan designates the PUD Site for PDR land uses. The Land Use Map by its terms is not a zoning map, but designates the predominant use in an area. Although the C-3-C Zone District is not listed among the corresponding land use categories for the PDR category, the zoning requested for the PUD Site is not inconsistent with the Future Land Use Map, and will only apply to approximately 30% of the land area of Square 4037, and to significantly less of the broader area designated for PDR uses in the vicinity, which spans from the New York Avenue/Florida Avenue/Gallaudet Metrorail station to the eastern boundary of the District.
42. The PUD is unique in that the warehouse building is the only landmark structure on the segment of New York Avenue, N.E. on which it is located. Thus, the PUD furthers the goals of Policy HP-2.4.2: Adaptation of Historic Properties for Current Use: Maintain historic properties in their original use to the greatest extent possible. If this is no longer feasible, encourage appropriate adaptive uses consistent with the character of the property. (10A DCMR § 1011.7.) The existing building will be adapted for commercial, retail, and residential uses, which will allow for a diverse treatment of the PUD Site that is consistent with the character of the neighborhood, preserves the historic qualities of the building, and promotes the adaptive reuse of an old building to appropriate new and higher-value uses. Maintaining the original warehouse and industrial uses in the building is impractical due to the existing structure's outdated and undesirable physical characteristics for those uses, such as its density, ceiling height, number of stories, and insufficient space for truck loading and maneuverability.
43. The PUD furthers the goals of Policy H-1.1.1 Private Sector Support: Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives. The Applicant will provide new, high-density housing options in the vacant, underutilized warehouse building to meet the housing needs of present and future D.C. residents.

44. The PUD Site is located in the Upper Northeast Area Element of the Comprehensive Plan and furthers the following policies:

- (a) Policy UNE-1.1.5: Vacant and Abandoned Structures: *Reduce the number of vacant, abandoned, and boarded up structures in Upper Northeast, particularly in the Ivy City and Trinidad areas. (10A DCMR § 2408.6.)* The PUD will redevelop and repurpose a vacant historic structure in the Upper Northeast, allowing for new development opportunities;
- (b) Policy UNE-1.1.9: Production, Distribution, and Repair Uses: *Retain the existing concentration of production, distribution, and repair (PDR) uses in Upper Northeast, but encourage the upgrading of these uses through higher design standards, landscaping, and improved screening and buffering. Emphasize new uses, including retail and office space, that create jobs for Upper Northeast area residents, and that minimize off-site impacts on the surrounding residential areas. (10A DCMR § 2408.10).* The PUD and map amendment are consistent with Policy UNE-1.1.9. With only approximately 16.5% of the potential gross floor area of the entire Square proposed for residential use, the majority of the Square will retain development that emphasizes new uses at the former warehouse site, including retail and office space, which will help create additional jobs for Upper Northeast residents;
- (c) Policy UNE-2.3.1: New York Avenue Corridor: *Improve the appearance of New York Avenue as a gateway to the District of Columbia. Support road design changes, streetscape improvements, and new land uses that improve traffic flow and enhance the road's operation as a multi-modal corridor that meets both regional and local needs. (10A DCMR § 2413.5.)* The PUD and map amendment will allow for redevelopment of the warehouse in a manner that will enhance the streetscape and appearance of New York Avenue and create a new vitality along this major gateway to the District. Development on the Warehouse is subject to review by the D.C. Historic Preservation Review Board, which ensures high-quality design;
- (d) Policy UNE-2.3.2: Production, Distribution, and Repair Land Uses: *Retain a significant concentration of production, distribution, and repair (PDR) land uses in the New York Avenue corridor. While the conversion of industrial land to other uses can be considered on key sites, including the Bladensburg/Montana/New York "triangle," these changes should not diminish the area's ability to function as an industrial district meeting the needs of government and District businesses and residents. Retail and office uses have existed historically along both sides of V Street between Bladensburg Road and South Dakota Avenue NE and should*

continue in accordance with the existing CM- and M- zoning. (10A DCMR § 2413.6). The proposed C-3-C Zone District for the PUD Site will allow the upper floors of the building to be converted to residential use. Despite this proposed new use for the majority of Square 4037, the rest of the Square will retain its industrial C-M-3 zoning designation. Furthermore, the C-M-3 and the C-3-C Zone Districts have similar development restrictions: both Districts allow for a maximum building height of 90 feet; and while the C-M-3 Zone District has a maximum FAR of 6.0, the C-3-C Zone District has a maximum FAR of 6.5. Permitted uses also overlap significantly. Both districts permit medium density development, including office, retail, and mixed-uses. The only significant difference is that while the C-M-3 Zone District is limited to non-residential uses and permits light manufacturing activities, the C-3-C Zone District permits residential use as a matter of right and does not permit light manufacturing activities. Overall, the requested PUD and map amendment will have the effect of permitting residential use in a small portion of the otherwise industrially-zoned Square;

- (e) *Policy UNE-2.3.3: Infill Development: Support infill development and redevelopment on underutilized commercial sites along New York Avenue. Particularly encourage large-format destination retail development that would provide better access to goods and services for residents, and sales tax dollars for the District. (10A DCMR § 2413.7).* In fulfillment of this goal, the project will support infill development and redevelopment on a site that is presently underutilized along New York Avenue. Moreover, in approving the Applicant's map amendment application for the eastern portion of the Square in July, 2013, the Office of Planning noted that the C-M-3 Zone District's additional height would permit greater flexibility for future use. For example, the C-M-3 zone's additional height would enable future conversion of the outer bays of the parking garage decks into flat-floored residential units, should a future Comprehensive Plan, zone change, or the marketplace deem such a use to be appropriate (*see transcript from the Zoning Commission hearing on February 25, 2013, pages 42-47*). Thus, pursuant to Z.C. Order No. 13-02, granting the map amendment for the land adjacent to the PUD Site, the Applicant and the city anticipated the potential demand for new uses along the New York Avenue corridor; and
- (f) *Policy Action UNE-2.3.C: Hecht's Warehouse: Encourage the reuse of the historic Hecht's warehouse building as an incubator for technology-oriented uses, creative industries, and other activities which help grow the District's "knowledge economy." (10A DCMR § 2413.11.)* The Comprehensive Plan specifically highlights the Hecht Company Warehouse in Policy Action UNE-2.3.C. The proposed map amendment furthers this policy action for many of the reasons already described herein, including developing the existing building with

productive and high-value uses. Moreover, the requested map amendment to the C-3-C Zone District will permit the PUD Site to include technology-oriented uses, creative industries, and many other activities that can help grow the District's knowledge economy. This policy action specifically anticipates a use for the PUD Site that is no longer devoted strictly to industrial, distribution, and warehouse uses. Consistent with this expectation, the C-3-C Zone District permits, as a matter-of-right, multiple types of office, commercial, service, retail, and residential uses that can easily accommodate the technology-based and creative industry uses. Maintaining the PUD Site's existing zone designation as C-M-2 has not furthered this provision of the Comprehensive Plan.

45. The Commission finds that the proposed development is consistent with these policies and goals of the Comprehensive Plan. The PUD and map amendment will allow for the adaptive reuse of an historic structure in a manner that is consistent with the surrounding PDR and residential uses. It will return a vacant building to an appropriate use, thereby enhancing the quality of the entire community. The map amendment will not generate any negative external effects, but will promote the efficient use of high-value land in a manner that will renew and reinvigorate the image of the city.

Government Agency Reports

46. By report dated June 2, 2014, OP recommended approval of the proposed PUD and related Zoning Map amendment. In its report, OP stated that the requested C-3-C Zone District would support the written elements of the Comprehensive Plan, which address the adaptive reuse of historic resources, and would not be inconsistent with the Future Land Use and Generalized Policy Maps. OP stated that typically it would have difficulty supporting a proposal for a residential mixed-use development in the PDR land use category. In this case, however, the exceptional situation of the already developed site, including its existing historic building, density, and height; its location on a major District avenue; and the changed nature of industrial uses, made the map amendment application truly unique. The proposal includes the provision of a high level of housing affordability and quality ground floor retail space through the adaptive reuse of a prominent historic vacant building, which are goals supported by the Generalized Policy Map and Comprehensive Plan policy statements. OP urged that the requested PUD and related map amendment will not threaten the stability of adjacent PDR uses, nearby residential uses, or other mixed uses in commercial areas located in the general area.
47. By report dated June 4, 2014, DDOT stated its non-objection to the application, subject to the following conditions:

- (a) The Applicant provide additional loading facilities or work with DDOT to establish a loading zone that would be subject to various restrictions, such as time of use;
 - (b) The Applicant complete a loading management plan that minimizes conflicts related to the backing maneuvers required to access the loading docks;
 - (c) The Applicant construct the missing sidewalk link on the east side of Fenwick Street from Gallaudet Street to West Virginia Avenue;
 - (d) The Applicant provide operational details for the proposed shuttle service subject to DDOT review and approval. The shuttle service should be frequent, reliable, and have a long span of service such that residents would significantly utilize transit not only for commute trips, but also for trips related to shopping and entertainment;
 - (e) The Applicant provide signal, design, and engineering details subject to DDOT review and approval of the two proposed mitigation measures at New York Ave and Fenwick Street and at Okie and Fenwick Streets;
 - (f) The Applicant may be required to construct a west bound left turn pocket at New York Avenue and Fenwick Street, which may necessitate a widening of the cart way and the replacement of the signal at the intersection; and
 - (g) The Applicant should identify how many parking spaces will be allocated to the proposed retail and residential uses at the site.
48. After receiving the DDOT report and before the public hearing, the Applicant met with DDOT to discuss each of the specific conditions. At this meeting and at the public hearing the Applicant agreed to comply with all of DDOT's requests, except that the Applicant agreed to pay for 500 linear feet of sidewalk at a location to be determined in cooperation with ANC 5D, rather than at the location specified by DDOT. The Applicant also offered to pay for a new Capital Bikeshare station in Square 4037, adjacent to the PUD Site. A summary of the Applicant's response to DDOT's conditions is included in Hecht's PUD Team Response to DDOT Conditions Memorandum. (Ex. 29G.)

ANC 5D Report

49. By report dated May 12, 2014, ANC 5D recommended approval of the PUD and related map amendment. The ANC resolution stated that the Applicant met with ANC 5D on multiple occasions to present its proposed design and program for the PUD Site. The ANC resolution affirmed that the Applicant responded to all of the questions raised by

the ANC Commissioners and the community. The ANC asserted strong support for the project, particularly since the development will assist in the revitalization of the area.

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 Zoning 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, FAR, lot occupancy, parking and loading, or for yards and 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 project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD Site meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD Site, as approved by the Commission, complies with the applicable height, bulk and density standards of the Zoning Regulations. The retail, service, and residential uses for this 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.
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 benefits and amenities are reasonable trade-offs for the requested development flexibility.
8. Approval of this PUD is appropriate because the proposed development is not inconsistent with the Comprehensive Plan. In addition, the proposed development 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 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 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, 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 has carefully considered the ANC 5D's recommendation for approval and concurs in its recommendation.
11. The application for a PUD 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 applications for consolidated review and approval of a planned unit development and related map amendment from the C-M-2 Zone District to the C-3-C Zone District for property located in the western portions of Lots 7 and 804 in Square 4037. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The PUD shall be developed in accordance with the plans and materials submitted by the Applicant, dated June 12, 2014, and marked as Exhibit 29A in the record, as modified by the guidelines, conditions, and standards of this Order.
2. In accordance with the plans, the PUD shall be a mixed-use project consisting of approximately 559,245 square feet of gross floor area. Approximately 196,344 square feet of gross floor area will be devoted to retail and service uses on floors one and two, and approximately 362,901 square feet of gross floor area will be devoted to residential uses on floors three through seven, with approximately 338 units (plus or minus ten percent).
3. The Applicant shall have design flexibility with the PUD in the following areas:

- (a) To vary the number of residential units to plus or minus 10%;
- (b) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure;
- (c) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on the availability at the time of construction;
- (d) To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit; and
- (e) The Applicant shall have zoning flexibility with the PUD to allow multiple roof structures with varying heights, consistent with the roof plans on page 20 of the architectural plans (Ex. 29A), and as supplemented by Exhibit 33A.

B. Public Benefits

1. First Source Employment Agreement. Prior to the issuance of a certificate of occupancy for the PUD, the Applicant shall enter into a First Source Employment Agreement with DOES, whereby the Applicant shall use DOES as its first source for recruitment, referral, and placement of new hires for construction employees whose jobs are created by the PUD.
2. Housing and Affordable Housing. In accordance with the plans, the PUD shall include 338 units (plus or minus 10%) with a maximum residential gross floor area of approximately 362,901 square feet. Pursuant to Chapter 26 of the Zoning Regulations, the Applicant will set aside no less than eight percent of the residential gross floor area for affordable units, with 10 of those units devoted to low-income households and the remainder of the units devoted to moderate-income households as those households are defined by 11 DCMR § 2601².
3. Sustainability Features and LEED Equivalency. The PUD building shall be designed to include no fewer than the minimum number of points necessary to be

² See footnote 1.

the equivalent of a Silver designation, as shown on the theoretical LEED score sheet submitted with the Plans dated June 12, 2014. (Ex. 29A.) The Applicant shall put forth its best efforts to design the PUD so that it may satisfy such LEED standards, but the Applicant shall not be required to register or to obtain the certification from the United States Green Building Council.

4. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole. Prior to the issuance of a certificate of occupancy for the PUD, the Applicant shall submit to the Department of Consumer and Regulatory Affairs evidence that the Applicant has: (1) paid the District Department of Transportation ("DDOT") or otherwise incurred costs for the installation of a new Capital Bikeshare station within Square 4037; (2) paid to a designated ANC 5D account or otherwise incurred costs of \$50,000 for neighborhood cleanup to alley areas and vacant lots in the Ivy City Community, and other improvements to the neighborhood park located at the intersection of Capital Avenue and Kendall Street, installation of tree boxes, and new curbing; and (3) paid DDOT or otherwise incurred costs for the installation of 500 linear feet of sidewalk in the surrounding neighborhood, the exact location to be determined in cooperation with ANC 5D. No certificate of occupancy shall issue unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.

C. Transportation Measures

1. Prior to the issuance of a certificate of occupancy for the PUD, the Applicant shall provide a minimum of 224 bicycle parking spaces distributed throughout the building and in several locations outside of the building, adjacent to the building entrances.
2. Transportation Demand Management ("TDM") Measures. Prior to the issuance of a certificate of occupancy for the PUD, the Applicant shall implement the following Transportation Demand Management ("TDM") measures, which shall apply for the life of the Project:
 - (a) Unbundle all parking costs from the cost of lease or purchase of residential units;
 - (b) Identify a TDM leader for all phases of the project and provide this information to DDOT and to Zoning Enforcement;

- (c) Provide a transportation kiosk in the residential lobby, which will contain printed materials related to local transportation alternatives and maintain a stock of materials at all times;
 - (d) Provide a TransitScreen in the residential lobby;
 - (e) Provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites; and
 - (f) Provide evidence of a shuttle service to be provided for residents and retail employees connecting the development with the NoMa/Gallaudet University Metro Station to commence operation when the PUD building is 50% occupied. The shuttle service shall comply with the terms listed on page 2 of Exhibit 29G.
3. **For the life of the Project**, the Applicant shall comply with the Loading Management Plan attached as the Appendix to Exhibit 29G.

D. Miscellaneous

- 1. No building permit shall be issued for the PUD and the map amendment shall not become effective 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 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. Pursuant to § 2408.8, the PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 14-01. Within such time, an application must be filed for a building permit for the construction of the project as specified in 11 DCMR § 2409.1. Pursuant to § 2408.9, construction of the project must 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.

On June 12, 2014, upon the motion of Commissioner May, as seconded by Vice Chairman Cohen, the Zoning Commission **APPROVED** the applications at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On July 17, 2014, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Michael G. Turnbull to adopt; Peter G. May to adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 8, 2014.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING