

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 15-34**  
**Z.C. Case No. 15-34**  
**Sherman Avenue, LLC**  
**(Consolidated PUD @ Square 2873)**  
**July 28, 2016**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on June 6, 2016, to consider an application for a consolidated planned unit development (“PUD”) filed by Sherman Avenue, LLC (“Applicant”). The Commission considered the application 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 application.

**FINDINGS OF FACT**

**A. The Applications, Parties, Hearings, and Filings**

1. On December 22, 2015, the Applicant filed an application with the Commission for consolidated review of a PUD for property located at 965 Florida Avenue, N.W. (Square 2873, Lot 1102) (“Property”). The Property has a land area of approximately 63,389 square feet with frontage on Sherman and Florida Avenues, N.W. to the west and a small portion of 9<sup>th</sup> Street, N.W. to the east. The Property is located in the CR Zone District, and is within the boundaries of Advisory Neighborhood Commission (“ANC”) 1B.
2. The Property is presently improved with a vacant warehouse building and associated surface parking. The Applicant proposes to raze the existing building in connection with redevelopment of the Property and construct a mixed-use project with a grocery store on the ground and mezzanine levels of the building and an apartment house on floors two through 10 above (“Project”).
3. The grocery store will have approximately 51,540 square feet of floor area and the apartment house will have approximately 351,245 square feet of floor area, generating approximately 428 dwelling units. The Project will have approximately 343 parking spaces – 218 spaces dedicated to the grocery store use and 125 spaces dedicated to the residential use. The maximum building height will be 110 feet, as measured from Sherman Avenue, and the site density will be 7.42 floor area ratio (“FAR”), not including the area of the proposed private street.

The lot occupancy for the PUD, at the lowest residential level, will be 76% where 75% is permitted in the CR Zone District as a matter of right.<sup>1</sup>

4. Of the 428 units, 30% shall be set aside as affordable units. Of the affordable units, 25% (approximately 32 units) will be reserved for households with incomes not exceeding 30% of the Area Median Income (“AMI”) and 75% (approximately 97 units) will be reserved for households with incomes not exceeding 50% of AMI.
5. By report dated February 18, 2016, the District of Columbia Office of Planning (“OP”) recommended that the application be set down for a public hearing. (Exhibit [“Ex.”] 12.) At its public meeting on February 29, 2016, the Commission voted to set down the application for a public hearing.
6. The Applicant submitted a prehearing statement on March 16, 2016, and a public hearing was timely scheduled for the matter. (Ex. 14-14L.) On March 30, 2016, the notice of public hearing was mailed to all owners of property located within 200 feet of the Property and to ANC 1B. A description of the proposed development and the notice of the public hearing in this matter were published in the *DC Register* on April 8, 2016.
7. On May 17, 2016, the Applicant submitted a supplemental prehearing statement. (Ex. 23-23D.) The supplemental submission included the following materials: (i) revised architectural plans and elevations; (ii) a comprehensive transportation review (“CTR”) report prepared by Gorove/Slade Associates, Inc.; (iii) a security plan submitted in response to comments from the Metropolitan Police Department (“MPD”); and (iv) a letter from the Pleasant Plains Civic Association expressing support for the Project.
8. On May 27, 2016, the Applicant submitted a letter requesting a waiver from 11 DCMR § 3013.8 in order for the Commission to accept, less than 20 days prior to the public hearing, a corrected site plan, building sections, and penthouse plans. (Ex. 27, 28.) In this submission, the Applicant also amended its application to include flexibility from the penthouse regulations to permit: (i) a guard rail that is not set back a distance equal to its height from the front of the building; and (ii) a penthouse that is not set back a distance equal to one-half of its height from the side building wall.
9. On May 27, 2016, OP submitted a report on the application. The OP report recommended approval of the application and requested that the Applicant address the following two items at the public hearing: (i) provide a plan showing the distribution of the affordable units within the building; and (ii) provide information regarding maintenance of the proposed pocket park across Florida

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<sup>1</sup> A maximum lot occupancy of 80% is permitted for an inclusionary zoning (“IZ”) development in the CR Zone District.

and Sherman Avenues from the Property Site. (Ex. 25.) At the hearing, the Applicant submitted the affordable unit plan and confirmed that the District Department of Transportation (“DDOT”) will maintain the pocket park.

10. On May 27, 2016, DDOT submitted a report on the application. The DDOT report indicated no objection to the application with a number of conditions set forth on page 3 of its report and as listed in Finding of Fact (“FF”) No. 63 herein. (Ex. 26.)
11. MPD submitted a letter (attachment 1 to the OP report) indicating no objection to the Project. MPD also submitted an email to OP, dated May 2, 2016, requesting that the Applicant address concerns related to security, rules and regulations for the rooftop amenity spaces, the impact of the Project on surrounding traffic flow, residential and retail loading, and parking flexibility. The MPD email noted that the Project was a “positive indication of vibrant progress and growth,” and that the additional items would help to “minimize any negative impacts on public safety.”
12. At its regularly scheduled public meeting on May 5, 2016, for which notice was properly given and a quorum was present, ANC 1B voted unanimously 12-0-0 to support the application. (Ex. 22.)
13. The parties to the case were the Applicant and ANC 1B.
14. The public hearing on the Application was held on June 6, 2016. At the hearing, the Applicant presented four witnesses in support of the application: Matthew Robinson on behalf of the Applicant; Frank Andre of Hord/Coplan/Macht Architects, architect for the Project; Don Hoover of Oculus, landscape architect for the Project; and Erwin Andres of Gorove/Slade Associates, Inc., transportation consultant for the Project. Based upon their professional experience and qualifications, the Commission qualified Mr. Andre as an expert in architecture, Mr. Hoover as an expert in landscape architecture, and Mr. Andres as an expert in transportation planning and engineering.
15. The Applicant submitted the following supplemental materials at the public hearing: (i) proposed PUD conditions; (ii) an updated civil sheet responding to comments by DDOT; (iii) an updated LEED checklist; (iv) affordable unit plan; (v) a copy of the Applicant’s PowerPoint presentation to the Commission; and (vi) photographs of the materials board. (Ex. 30-35.)
16. Maxine Brown-Roberts and Joel Lawson testified at the public hearing on behalf of OP.
17. Jonathan Rogers and Anna Chamberlin testified at the public hearing on behalf of DDOT.

18. Commissioner Robb Hudson, the Single Member District Representative for ANC 1B11, testified in support of the Application.
19. At the close of the public hearing, the Commission took proposed action to approve the application.
20. The proposed action was referred to the National Capital Planning Commission (“NCPC”) on June 7, 2016, pursuant to § 492 of the Home Rule Act.
21. On June 24, 2016, the Applicant submitted its proposed Findings of Fact and Conclusions of Law. (Ex. 42.)
22. On June 27, 2016, the Applicant submitted a post-hearing submission, which included the following materials and information requested by the Commission at the public hearing: revised architectural drawings; clarification on the flexibility for signage; eligibility for residential parking permits; a comprehensive list of transportation demand management (“TDM”) measures; a revised loading management plan; the revised affordable dwelling unit plan and details about the level and amount of affordable housing for the PUD; additional information on the Community Foundation and the Howard University incubator; a discussion on the Project’s consistency with the Comprehensive Plan; and a description of the penthouse structures. (Ex. 44-44E.)
23. On July 1, 2016, DDOT submitted a supplemental report (discussed below). (Ex. 45.)
24. On July 8, 2016, the Applicant submitted a copy of its letter to the Director of DDOT regarding the revisions to the loading management plan. (Ex. 46.)
25. The Executive Director of NCPC, by delegated action dated July 1, 2016, found that the project would not be inconsistent with the Comprehensive Plan for the National Capital. (Ex. 47A.)
26. At a public meeting on July 25, 2016, the Commission considered the case, but deferred action to permit the Applicant to work with DDOT on finalizing the PUD’s loading management plan, and to submit a revised affordable dwelling unit plan showing the location of the affordable and market rate units on the second floor over the loading dock.
27. On July 27, 2016, the Applicant submitted an additional post-hearing submission that attached a final loading management and operations plan, and a revised second floor affordable dwelling unit plan. (Ex. 49, 49A-B.) The submission stated that DDOT had approved the loading management and operations plan.
28. On July 28, 2016, the Commission took final action to approve the application.

29. On August 3, 2016, the Applicant submitted a comprehensive set of the final architectural plans and elevations reflecting all of the changes accepted by the Commission following the public hearing in this case and a copy of the affordable unit plan that was accepted by the Commission. (Ex. 51-51A8, 52.)
30. On August 12, 2016, the Applicant requested that the Commission re-open the record to receive revised plans and state that the Applicant planned to present the revised plans to ANC 1B, and to community stakeholders. (Ex. 53.)
31. The Commission denied the request at its September 12, 2016 public meeting and advised the Applicant it should submit its request as a PUD modification.

**B. The Property and Surrounding Area**

32. The Property consists of 63,389 square feet located in the Shaw/Cardozo neighborhood on the east side of Florida Avenue, adjacent to the intersection where Florida Avenue and Sherman Avenue split into two streets. The Property is presently improved with a vacant warehouse building and associated surface parking.
33. The Property is located within the CR Zone District, which extends east of the Property to Georgia Avenue and south of the Property to V Street. Ninth Street and a Howard University surface parking lot are located to the east of the PUD Site. A vacant, privately-owned lot is located to the south of the Property. The parcel to the north is in the R-5-E Zone District and is improved with the Howard Plaza Towers, residential dormitory buildings owned by Howard University. The parcels across Florida Avenue to the west are in the R-5-B and ARTS/C-2-B Zone Districts, and are developed with a mix of residential, institutional, and commercial uses.
34. The Property is linked to an abundance of public transportation options, dedicated bicycle lanes, and safe pedestrian infrastructure. It is within walking distance (approximately 0.2 miles) of the U Street/African American Civil War Memorial/Cardozo Metrorail station, which services the Yellow and Green Metrorail lines. Nine Metrobus routes are located within 0.3 miles of the PUD Site; six permanent car-share locations are located within 0.3 miles of the PUD Site; and two Capital Bikeshare stations are located within 0.3 miles of the PUD Site. Additionally, the Property is rated a "Walker's Paradise" on walkscore.com (96/100) due to its location in close proximity to a variety of restaurants and bars, retail and service establishments, parks and schools, and entertainment venues.

**C. Description of the Project**

35. The Project is a 10-story building with a grocery store on the ground floor and mezzanine levels and an apartment house on floors two through 10 above. The grocery store will contain approximately 51,540 square feet of floor area with

frontage on Florida and Sherman Avenues. The mezzanine space along Florida and Sherman Avenues will include customer seating and will have elevator and stair access. A second mezzanine is located at the rear of the grocery store for the grocery store's mechanical equipment. The apartment house will have approximately 351,245 square feet of floor area, generating approximately 428 dwelling units. Separate pedestrian entrances for the grocery store and apartment house will be located along Florida Avenue.

36. Vehicular access to the Project will be on the east side of the building from a single curb cut on 9<sup>th</sup> Street, which will be accessed via a new private street along the northern boundary of the Property. The private street will function as an extension of Bryant Street and will facilitate the east-west connection between Sherman/Florida Avenues and Georgia Avenue. The curb cut on 9<sup>th</sup> Street will lead to a parking garage with three levels of below-grade parking. The first two levels of the parking garage will have 218 parking spaces dedicated to the grocery store use; the third level of the garage will have 125 parking spaces dedicated to the residential use. All loading facilities and trash rooms will be on the ground level of the building and will be accessed from the private street. For the grocery store, the PUD will provide two 70-foot loading berths, one 100-square-foot platform, and one 200-square-foot platform. For the residential use, the PUD will provide one 40-foot loading berth and one 200-square-foot platform.
37. The PUD will have a maximum building height of 110 feet, measured from Sherman Avenue, and the site density will be 7.42 FAR. The lot occupancy at the second floor of the building, which is the lowest residential level for the Project, will be 76%.
38. The programmed amenities for the residential building include a fitness center, bicycle storage, club room, an expansive central courtyard of approximately 14,000 square feet, an on-site leasing facility, a secondary lobby from 9<sup>th</sup> Street, a rooftop club room, a rooftop pool, and indoor and outdoor gathering spaces.
39. The primary residential entrance is located along Florida Avenue at the southwest corner of the building. The entrance is expressed as a glass tower element that visually links the lobby, second-floor amenity spaces, and the rooftop amenity. A continuous element forms the entry canopy as a vertical plane that defines the edge of the Project. The roof of the tower element spans the courtyard forming a bridge that connects the hardscape amenities (roof deck and swimming pool) on the west side of the building with more natural amenities (community gardens and dog run) on the east side of the building.
40. As indicated in the chart shown below, the Applicant will reserve a minimum of 30% of the residential units as affordable units. Of the affordable units, 25% (approximately 32 units) will be reserved for households with incomes not exceeding 30% of the AMI, and 75% of the affordable units (approximately 97 units) will be reserved for households with incomes not exceeding 50% of the

AMI. The affordable units will be provided for the life of the Project, and be distributed throughout the project as reflected on the Affordable Dwelling Unit Plan. (Ex. 52.)

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
<b>Total</b>	351,245 sf of GFA (100%)	428	NA	NA	NA
<b>Market Rate</b>	245,871 sf of GFA (70%)	299	Market Rate	NA	NA
<b>30% AMI</b>	28,100 sf of GFA (8%)	32	30% AMI	For the life of the project	Rental
<b>50% AMI</b>	77,274 sf of GFA (22%)	97	50% AMI	For the life of the project	Rental

**D. Zoning Flexibility**

41. The Applicant requested zoning flexibility from the following requirements of the Zoning Regulations: (i) ground level open space (11 DCMR § 663); (ii) loading (11 DCMR § 2201.1); (iii) number of penthouse enclosures and penthouse setbacks (11 DCMR § 411); (iv) lot occupancy at the second level of the building (11 DCMR § 634.1); and (v) residential parking (11 DCMR § 2101.1); and a waiver from the IZ requirements (11 DCMR, Chapter 26).
42. Ground-Level Open Space. Section 633 of the Zoning Regulations requires that 10% of the total lot area must be public space at the ground level, immediately adjacent to the main entrance to the principal building. The Project is unable to provide any open space at the ground level due to the minimum amount of space necessary to provide a full-service grocery store and the land area required to be set aside for the new private street.
43. Loading. For the residential use, the Project includes a 40-foot loading berth instead of the required 55-foot berth, and does not provide the required 20-foot service/delivery space. For the grocery store use, the PUD provides two 70-foot loading berths instead of the required 30-foot and 55-foot loading berths, and does not provide the required 20-foot service/delivery space.
44. Penthouse Number and Setback. The Applicant requests flexibility to have multiple penthouse structures on the roof of the building. The Commission finds this flexibility appropriate. Due to the shape of the building and the ground level constraints created by the grocery tenant, having a single penthouse enclosure would be impractical. Moreover, providing a single penthouse would severely limit the amount of usable exterior space on the roof and reduce the extent of rooftop amenities and design elements proposed by the Applicant.

45. Lot Occupancy. The Applicant requests flexibility to have a lot occupancy of 76% at the lowest residential level of the building where a maximum lot occupancy of 75% is permitted.
46. Residential Parking. The Applicant proposes 125 residential parking spaces where a minimum of 143 spaces are required. The PUD Site is located in close proximity to abundant public transportation services such as bus routes on Sherman Avenue and the U Street/African-American Civil War Memorial/Cardozo Metrorail station. The PUD Site also has convenient access to car-share and ride-share services and Capitol Bikeshare stations. The Applicant will also provide a substantial TDM plan that includes additional measures to reduce the number of vehicular trips associated with the PUD.
47. Inclusionary Zoning. The Applicant will reserve 30% of the residential units as affordable units for households with incomes not exceeding 30% and 50% of AMI, respectively. The amount and levels of affordability provided by the PUD exceed the minimum Inclusionary Zoning requirements under Chapter 26 of the Zoning Regulations.

**E. Development Flexibility**

48. The Applicant requests flexibility in the following additional areas:
  - a. To be able to provide a range in the number of residential units of plus or minus 10% from the 428 proposed for the development so long as the 30% of the units are reserved as affordable units and, of the affordable units, 25% are reserved for households with incomes not exceeding 30% AMI and 75% are reserved for households with incomes not exceeding 50% AMI;
  - b. To shift the location of the penthouse walls so long as the penthouses meet the required setbacks;
  - c. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, amenity spaces, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building;
  - d. To vary the number, location, and arrangement of parking spaces provided that the minimum number of residential parking spaces is not reduced below a ratio of 0.25 spaces per unit, and that the number of retail spaces is not reduced below the minimum number of spaces required by the Zoning Regulations;
  - e. To vary the final selection of the color of the exterior materials within the color ranges and material types as proposed, based on availability at the



time of construction without reducing the quality of the materials; and to make minor refinements to exterior details 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 or that are otherwise necessary to obtain a final building permit; and

- f. To vary the final selection of all exterior signage on the building, except that permanent signage for the grocery store and apartment house shall be limited to the ground floor of the building.

## **F. Project Benefits and Amenities**

- 49. Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a)). The Project will have a positive impact on the visual and aesthetic character of the immediate neighborhood and will further the goals of urban design while enhancing the streetscape. The Project will be a vibrant mixed use, mixed income community that will serve and enhance the neighborhood by providing a new grocery store and housing close to excellent public transportation infrastructure. The programmed amenities for building residents include a fitness center, bicycle storage, club room, an expansive central courtyard, on-site leasing facility, a secondary lobby from 9<sup>th</sup> Street, rooftop club room, rooftop pool, and indoor and outdoor gathering spaces.
- 50. Housing and Affordable Housing (11 DCMR § 2403.9(f)). The PUD will deliver substantially more housing than what could be developed on the Property under the matter-of-right CR zoning. More importantly, the Applicant will reserve a minimum of 30% of the dwelling units for households with incomes not exceeding 30% AMI and 50% AMI, respectively, for the life of the Project. The project will include approximately 77,274 square feet reserved for households earning less than 50% of AMI and 28,100 square feet of reserved for households earning less than 30% of AMI. This will result in significantly more affordable housing at deeper levels of affordability than what is required under the Inclusionary Zoning regulations in Chapter 26 of the Zoning Regulations. The PUD has approximately 351,245 square feet of residential gross floor area and approximately 4,110 square feet of habitable penthouse space subject to IZ. Therefore, 28,100 square feet would have to be set aside for households with incomes not exceeding 80% of AMI and 329 square feet would have to be set aside for households with incomes not exceeding 50% of AMI.
- 51. Environmental Benefits (11 DCMR § 2403.9(h)). The PUD will achieve LEED Silver certification. The Applicant commits to use LEED for Homes v4, the most current LEED standards. In addition, the Applicant will utilize solar panels on the roof to generate electricity to support approximately one percent of the residential component's project power requirements.

52. Employment and Training Opportunities (11 DCMR § 2403.9(e)).
- a. First Source Agreement. The Applicant has entered into a First Source Agreement with the Department of Employment Services (“DOES”). The First Source Agreement requires the Applicant to use diligent efforts to hire at least 51% District residents for all new jobs created by the PUD and use diligent efforts to ensure that at least 51% of apprentices and trainees employed are residents of the District and registered in apprentice programs approved by the DC Apprenticeship Council; and
  - b. CBE Agreement. The Applicant has entered into a Certified Business Enterprise (“CBE”) Agreement with the Department of Small and Local Business Development, which requires the Applicant to contract with a CBE for at least 35% of the contract dollar volume of the Project, and requires at least 20% equity and 20% development participation of CBEs.
53. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403.9(i)).
- a. Community Grant Program. The Applicant will contribute \$200,000 to the Community Foundation of the National Capital Region. The funds will be placed in the Community Foundation’s Greater Washington Workforce Development Collaborative to be used for job training for residents and employers within a one-mile radius of the PUD Site;
  - b. Local Retailers Assistance Program. The Applicant will contribute \$118,462 to the Shaw Main Streets organization. The funds will be used to establish a grant program for locally based retailers to make capital improvements to their stores. Any businesses that front or are located within the boundaries of S Street, 7<sup>th</sup> Street/Georgia Avenue, 11<sup>th</sup> Street, and Harvard Street shall be eligible for grants. ANC 1B shall establish a committee of community members to determine the criteria for grant applications. In the event that a Georgia Avenue Main Streets Program is established prior to the creation of the local retailers’ assistance program, the community committee and Shaw Main Streets shall coordinate their work with the newly formed Georgia Avenue Main Streets; and
  - c. Off-Site Business Incubator. The Applicant will contribute \$142,155 to Howard University to subsidize the costs associated with the business incubator joint venture between the District of Columbia and Howard University.

**G. Comprehensive Plan**

54. The Commission finds that the PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map and Generalized Policy Map,

complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. The PUD significantly advances these purposes by promoting the social, physical, and economic development of the District by delivering to the Shaw/Cardozo neighborhood a new large-format grocery store and approximately 428 new residential units. Moreover, 30% of the residential units will be affordable, accommodating households with incomes at 30% AMI and 50% AMI, respectively.

55. The Property is designated in the Mixed-Use Medium-Density Residential/Medium-Density Commercial land use category on the District of Columbia Comprehensive Plan Future Land Use Map.
56. The Medium-Density Residential designation is used to define neighborhoods or areas where mid-rise (four-seven stories) apartment buildings are the predominant use. Pockets of low and moderate density housing may exist within these areas. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone Districts are generally consistent with the Medium-Density designation, although other zones may apply. (10A DCMR § 225.5.)
57. The Medium-Density Commercial designation is used to define shopping and service areas that are somewhat more intense in scale and character than the moderate density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation generally draw from a citywide market area. Buildings are generally larger and/or taller than those in moderate density commercial areas but generally do not exceed eight stories in height. The corresponding Zone Districts are generally C-2-B, C-2-C, C-3-A, and C-3-B, although other districts may apply. (10A DCMR § 225.10.)
58. In this case, the Property is located in the CR Zone District, which permits, as a matter of right, a building height of 90 feet and a density of 6.0 FAR, the same height and density permitted for a building permitted as a matter of right in the C-2-C Zone District, which is a corresponding zone district for the Medium-Density Commercial Designation.
59. The Property is designated in the Land Use Change Area on the District of Columbia Comprehensive Plan Generalized Policy Map. The guiding philosophy in Land Use Change Areas is to encourage and facilitate new development and to promote the adaptive reuse of existing structures. Many of these areas have the capacity to become mixed-use communities containing housing, retail shops, services, workplaces, parks, and civic facilities. (10A DCMR § 223.11.) As Land Use Change Areas are redeveloped, the District aspires to create high quality environments that include exemplary site and architectural design and that are compatible with and do not negatively impact neighborhoods. (10A DCMR § 223.12.) Consistent with the purpose of Land Use Change Areas, the PUD includes a mix of housing and retail, which will improve and positively impact the

surrounding urban environment. Thus, the Commission finds that the PUD redevelopment of the PUD Site is consistent with the policies indicated in the Land Use Change Area.

60. The Commission finds that the PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change and creating successful neighborhoods, as follows:

Managing Growth and Change. In order to manage growth and change in the District, the Comprehensive Plan encourages, among other factors, the growth of both residential and non-residential uses, particularly since non-residential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income. (10A DCMR § 217.4.) The Comprehensive Plan also states that redevelopment and infill opportunities along corridors are an important part of reinvigorating and enhancing neighborhoods. Development on such sites must not compromise the integrity of stable neighborhoods and must be designed to respect the broader community context. (10A DCMR § 217.6.) The PUD is fully consistent with these goals. Redeveloping the PUD Site into a vibrant, mixed-use development in an infill location along a major corridor will contribute to the revitalization of the neighborhood; and

Creating Successful Neighborhoods. One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the Plan's elements. (10A DCMR § 218.8.) The PUD furthers this goal, since as part of the PUD process, the Applicant worked with several community stakeholders - ANC 1B, Georgia Avenue Task Force and the Pleasant Plains Civic Association - to ensure that the PUD, especially through the benefits and amenities package, positively impacts the surrounding neighborhood.

61. The Commission also finds that the PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as set forth in the Applicant's Statement in Support and in the OP reports. (Ex. 4, 12, 25.)

#### **H. Duke Small Area Plan**

62. The Project is within the boundaries of and consistent with the Duke Small Area Plan (the "Duke Plan"), which was approved by the City Council in 2005. Specifically, for public land disposition, the Public Policy & Placemaking section of the Duke Plan states that public amenities on any one site may include some combination of a minimum of 20%-30% of the total residential units as affordable, local business development opportunities, cultural use set asides, public parking and job apprenticeships for local residents. In this case, 30% of the residential units will be reserved as affordable for households within incomes not exceeding 30% and 50% of the AMI, respectively.

63. The Duke Plan also recommends greater connectivity through the area and, to this end, suggests that Bryant Street be continued between Georgia Avenue and Sherman Avenue. The PUD proposes the construction of the Bryant Street connection along the northern boundary of the Property as suggested by the Duke Plan.

**I. Office of Planning Reports**

64. On February 18, 2016, OP submitted a report recommending setdown of the application. (Ex. 12.) The OP setdown report found that the Project is not inconsistent with the Comprehensive Plan Future Land Use Map, Generalized Policy Map, and specific recommendations of the Duke Plan. Moreover, the OP report asserted that the Project would meet or further many of the policies of the Comprehensive Plan.
65. On May 27, 2016, OP submitted a hearing report recommending approval of the application. (Ex. 25.) The OP hearing report reconfirmed that the Project is not inconsistent with the Comprehensive Plan Future Land Use Map, Generalized Policy Map, and specific recommendations of the Duke Plan. The hearing report also noted that the Applicant had responded to the issues and questions raised by OP and the Commission at the setdown meeting, and requested that the Applicant address the following two items at the public hearing: (i) provide a plan showing the distribution of the affordable units; and (ii) provide information regarding maintenance of the pocket park.
66. The OP hearing report also included a memorandum from MPD, which had no objection to the Project. MPD also submitted an email to OP, dated May 2, 2016, requesting that the Applicant address concerns related to Project security, rules and regulations for the rooftop amenity spaces, the impact of the Project on surrounding traffic flow, residential and retail loading, and parking flexibility. The MPD email noted that the Project is a “positive indication of vibrant progress and growth,” but that the additional items would help to “minimize any negative impacts on public safety.”

**J. DDOT Reports**

67. On May 27, 2016, DDOT submitted a report indicating that it had no objection to the application, subject to the following conditions:
  - a. Construct the proposed redesign of the Sherman Avenue/Florida Avenue intersection and the associated traffic signal improvements to DDOT standards;
  - b. Construct the proposed Bryant Street to all DDOT construction standards and all applicable design standards, including street lighting, street trees, and pedestrian infrastructure;

- c. Construct the proposed traffic signal and associated pedestrian infrastructure and vehicle circulation improvements at the W Street/Florida Avenue intersection;
  - d. Strengthen the Loading Management Plan to include:
    - i. Peak period restrictions to prohibit trucks maneuvers affecting eastbound Bryant Street operations. These restrictions may vary by the type of delivery vehicle (grocery versus residential) and truck type/size, and should be informed by traffic volume counts and truck turning diagrams; and
    - ii. A standard operating procedure, including flaggers and flagger positions, to effectively accommodate loading activity affecting eastbound Bryant Street;
  - e. Provide 177 long-term bicycle parking spaces and ensure that residents can use the residential lobby elevators to access the spaces on P3; and
  - f. Strengthen the TDM plan to include:
    - i. Install at least 40 short-term bicycle parking spaces;
    - ii. Install a transportation information screen in the grocery store;
    - iii. Provide showers and changing facilities for grocery store employees;
    - iv. Dedicate two parking spaces for car sharing services to use with right of first refusal;
    - v. Provide one carshare space in the residential parking level of the garage for prospective carshare providers, for use by residents of the building only. In the event that no carshare providers are willing to operate in that space, the dedicated space shall be returned to the general residential parking supply;
    - vi. Offer each unit's incoming residents an annual carsharing membership or an annual Capital Bikeshare membership for a period of three years; and
    - vii. Price residential parking no less than charges of the lowest fee garage within one quarter mile.
68. On July 1, 2016, DDOT submitted a supplemental report responding to the Applicant's revised loading management plan. (Ex. 45.) The report stated that the

Applicant's revised loading management plan was insufficient to address the issues identified in the report related to loading from Bryant Street. The report identified three options for effectively addressing the loading concerns.

69. On July 27, 2016, the Applicant submitted a revised loading management and operations plan. (Ex. 49A.) The Applicant represented that DDOT had approved the plan.
70. The Applicants final list of transportation mitigations and TDM elements are set forth in Decision Nos. C.1 and C.2 of this Order. The Applicant's loading management and operations plan is set forth in Decision Nos. C.3, C.4, and C.5 of this Order.

**K. ANC Report**

71. At its regularly scheduled public meeting on May 5, 2016, for which notice was properly given and a quorum was present, ANC 1B voted unanimously 12-0-0 to support the application. (Ex. 22.) At the public hearing, Commissioner Robb Hudson of ANC 1B-11 testified on behalf of ANC 1B in support of the application.

**CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, yards, 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 variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD complies with the development standards of the Zoning Regulations. The retail and residential uses for the Project are appropriate for the PUD Site. The impact of the

Project on the surrounding area and the operation of city services is acceptable, given the quality of the public benefits in the Project. Accordingly, the Project should be approved.

5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mixed uses for the Project are appropriate for the Property. 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. The Commission also concludes that the Project benefits and amenities are reasonable trade-offs for the requested development flexibility in accordance with §§ 2400.3 and 2400.4.
8. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the Property 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 carefully considered the ANC 1B'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, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.* (2007 Repl.)).

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development for property located at 965 Florida Avenue, N.W. (Square 2873, Lot 1102). The approval of the 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 titled “965 Florida Ave., NW” prepared by PGN Architects, PLLC, dated August 3, 2016, and marked as Exhibits 51A1-51A8 of the record (the “Plans”), and as modified by the guidelines, conditions, and standards of this Order.
2. In accordance with the Plans, the PUD shall have a density of 7.42 FAR, excluding the area for the private street along the northern boundary of the PUD Site. The maximum building height for the Project shall be 110 feet, as measured from Sherman Avenue.
3. The Applicant has flexibility from the requirements for ground level open space (11 DCMR § 663); loading (11 DCMR § 2201.1); number of penthouse enclosures and setbacks (11 DCMR § 411); lot occupancy at the second level of the building (11 DCMR § 634.1); and residential parking (11 DCMR § 2101.1) and a waiver from the IZ requirements (11 DCMR, Chapter 26), consistent with the Plans and as discussed in the Development Incentives and Flexibility section of this Order.
4. The Applicant has flexibility with the design of the PUD in the following areas:
  - a. To be able to provide a range in the number of residential units of plus or minus 10% from the 428 proposed for the development, so long as the 30% of the units are reserved as affordable units and, of the affordable units, 25% are reserved for households with incomes not exceeding 30% AMI and 75% of the affordable units are reserved for households with incomes not exceeding 50% AMI;
  - b. To vary the locations and unit mix of the affordable units, provided that the locations and unit mix of affordable units are proportional to the locations and unit mix of market-rate units;
  - c. To shift the location of the penthouse walls so long as the penthouses meet the required setbacks;
  - d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, amenity spaces, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building;
  - e. To vary the number, location, and arrangement of parking spaces, provided that the minimum number of residential parking spaces is not reduced below a ratio of 0.25 spaces per unit, and that the number of retail spaces is not reduced below the minimum number of spaces required by the Zoning Regulations;

- f. To vary the final selection of the color of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details 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 or that are otherwise necessary to obtain a final building permit; and
- g. To vary the final selection of all exterior signage on the building, except that permanent signage for the grocery store and apartment house shall be limited to the ground floor of the building.

**B. Public Benefits**

- 1. Affordable Housing. The project shall provide the following housing and affordable housing:
  - a. The project shall provide a total of approximately 351,245 square feet of residential Gross Floor Area (“GFA”) of housing, and approximately 4,110 square feet of habitable penthouse space. Approximately 245,871 sq. ft. of GFA of this total will be market-rate housing, and approximately 105,374 sq. ft. will be affordable housing;
  - b. The Applicant shall set aside a minimum of 30% of the residential units as affordable units **for the life of the project**. Of the affordable units, 25% (approximately 32 units) shall be reserved for households with incomes not exceeding 30% of the AMI and 75% (approximately 97 units) shall be reserved for households with incomes not exceeding 50% of the AMI;
  - c. The distribution of the affordable housing units shall be in substantial accordance with the matrix and plans marked as Ex. 52 of the record<sup>2</sup>, and substantially in accordance with the following chart<sup>3</sup>; and

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<sup>2</sup> The Applicant has the flexibility to vary the locations and the unit mix of the affordable units, provided the locations and unit mix of affordable units are proportional to the locations and the unit mix of market rate units.

<sup>3</sup> The Applicant has the flexibility to be able to provide a range in the number of residential units of plus or minus 10% from the 428 proposed for the development, so long as the 30% of the units are reserved as affordable units and, of the affordable units, 25% are reserved for households with incomes not exceeding 30% AMI and 75% of the affordable units are reserved for households with incomes not exceeding 50% AMI, and provided further that the total amount of gross square feet devoted to affordable housing and the total amount devoted to each income type as specified in the chart is not reduced .

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
<b>Total</b>	351,245 sf of GFA (100%)	428	NA	NA	NA
<b>Market Rate</b>	245,871 sf of GFA (70%)	299	Market Rate	NA	NA
<b>30% AMI</b>	28,100 sf of GFA (8%)	32	30% AMI	For the life of the project	Rental
<b>50% AMI</b>	77,274 sf of GFA (22%)	97	50% AMI	For the life of the project	Rental

- d. The monitoring and enforcement documents required by 11 DCMR § 2409.10 shall include a provision requiring compliance with Conditions B.1.b and B.1.c.
2. Environmental Benefits. The Project shall be certified LEED Silver for Homes v4, the most current LEED standards. In addition, the Project shall utilize solar panels on the roof to generate electricity to support approximately one percent of the residential component’s project power requirements.
  3. Agreements with the District.
    - a. First Source Agreement. **Prior to the issuance of a building permit for the PUD,** the Applicant shall submit to the Department of Consumer and Regulatory Affairs (“DCRA”) evidence that the Applicant executed and submitted a First Source Employment Agreement to DOES. The First Source Employment Agreement shall require the Applicant to use diligent efforts to hire at least 51% District residents for all new jobs created by the PUD and use diligent efforts to ensure that at least 51% of apprentices and trainees employed are residents of the District and registered in apprentice programs approved by the DC Apprenticeship Council; and
    - b. CBE Agreement. **Prior to the issuance of a building permit for the PUD,** the Applicant shall enter into a CBE Agreement with the Department of Small and Local Business Development, which shall require the Applicant to contract with a CBE for at least 35% of the contract dollar volume of the Project, and require at least 20% equity and 20% development participation of CBEs.
  4. Community Programs.
    - a. Community Grant Program. **Prior to the issuance of a building permit,** the Applicant shall fund \$200,000 to the Community Foundation of the National Capital Region. The funds shall be placed in the Community Foundation’s Greater Washington Workforce Development Collaborative to be used for job training for residents and employers within a one-mile radius of the PUD site. ANC 1B shall establish a committee of community members to determine the criteria for grant applications. The

Applicant shall submit evidence to the Zoning Administrator that the items funded have been provided prior to the issuance of a certificate of occupancy for the Project;

- b. Local Retailers Assistance Program. Prior to the issuance of a building permit, the Applicant shall fund \$118,462 to Shaw Main Streets, Inc. The funds shall be used to establish a grant program for locally-based retailers to make capital improvements to their storefront or other exterior improvements. Any businesses that front or are located within the boundaries of: (i) S Street to the south; (ii) 7th Street/Georgia Avenue to the east; (iii) 11th Street to the west; (iv) Harvard Street to the north; and (v) the 600 block of Florida Avenue and T Street, N.W. will be eligible for grants. ANC 1B shall establish a committee of community members to determine the criteria for grant applications. In the event that a Georgia Avenue Main Streets Program is established prior to the creation of the local retailers' assistance program, the community committee and Shaw Main Streets shall coordinate their work with the newly formed Georgia Avenue Main Streets. The Applicant shall submit evidence to the Zoning Administrator that the items funded have been provided prior to the issuance of a certificate of occupancy for the Project; and
- c. Off-Site Business Incubator. Prior to the issuance of a building permit, the Applicant shall fund \$142,155 to Howard University to subsidize the costs associated with the business incubator joint venture between the District of Columbia and Howard University. The Applicant shall submit evidence to the Zoning Administrator that the items funded have been provided prior to the issuance of a certificate of occupancy for the Project.

### C. **Transportation Mitigation Measures**

1. Transportation Improvements. The Applicant shall provide the following transportation improvements:
  - a. **Prior to the issuance of a certificate of occupancy for the PUD,** the Applicant shall construct or cause the construction of a private street along the northern edge of the PUD Site that will connect Sherman Avenue to 9<sup>th</sup> Street. The Applicant shall construct Bryant Street generally in conformance with DDOT standards for private streets and consistent with the civil drawings included as Sheets C-4 and C-5 of the Plans. The Applicant shall make best efforts to install two street trees along Bryant Street, which may require earth berming, alternate tree species, and/or raised planter boxes in order to achieve the required soil depths;
  - b. **Prior to the issuance of a certificate of occupancy for the PUD,** the Applicant shall cause the extension of the public access easement along 9<sup>th</sup> Street to the intersection of the new private Bryant Street;

- c. **Prior to the issuance of a certificate of occupancy for the PUD**, the Applicant shall reconfigure and signalize the intersection between Florida and Sherman Avenues as shown on Sheet C-6 of the Plans. The intersection and signal shall be built to DDOT standards;
  - d. **Prior to the issuance of a certificate of occupancy for the PUD**, the Applicant shall signalize the existing intersection between Florida Avenue and W Street to improve operational efficiency, improve safety, and accommodate the proposed new private street at 945 Florida Avenue;
  - e. **Prior to the issuance of a certificate of occupancy for the PUD**, the Applicant shall widen the sidewalks along Florida and Sherman Avenues adjacent to the PUD Site from 8 feet to 14 feet, and shall widen the sidewalk along 9th Street from 5 feet to 11 feet;
  - f. **Prior to the issuance of a certificate of occupancy for the PUD**, the Applicant shall construct or cause the construction of a pocket park on the west side of Florida Avenue, at the intersection of Florida and Sherman Avenues. The pocket park shall contain approximately 4,500 square feet of land area and shall substantially conform to the drawing on Sheet L1.01 of the Plans; and
  - g. **Prior to the issuance of a certificate of occupancy for the PUD**, the Applicant shall widen the sidewalks along Florida and Sherman Avenues adjacent to the PUD Site from eight feet to 14 feet, and shall widen the sidewalk along 9<sup>th</sup> Street from five feet to 11 feet.
2. **Transportation Demand Management. For the life of the Project (except where noted)**, the Applicant shall provide the following TDM measures:
- a. Unbundle the cost of residential parking from the cost of lease or purchase;
  - b. Identify TDM leaders (for planning, construction, and operations) for the residential and grocery uses. The TDM leaders will work with residents in the building to distribute and market various transportation alternatives and options;
  - c. Provide TDM materials to new residents in the Residential Welcome Package materials.
  - d. Install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives;

- e. Provide bicycle repair stations within the bicycle rooms in the development;
  - f. Provide a minimum of one secure, indoor bicycle parking space for every three residential units, and provide a minimum of 40 short-term, outdoor bicycle parking spaces adjacent to the PUD Site;
  - g. Install and maintain a transit information screen in the residential lobby and the grocery portion of the building;
  - h. Provide a minimum of one on-site shower and changing facilities for grocery employees;
  - i. Provide one carshare space in the residential parking level of the garage for prospective carshare providers. The carshare space shall be made available to residents of the building only. In the event that no carshare providers are willing to operate in that space, the dedicated space shall be returned to the general residential parking supply; and
  - j. **For a period of one year following the issuance of a certificate of occupancy for the PUD**, the Applicant shall offer to each residential unit the option of either a one-time annual carshare membership or a one-time annual Capital Bikeshare membership, up to a maximum amount of \$85.00 per unit and up to a maximum total benefit of \$36,380.00 for 428 residential units.
3. **Loading Management. For the life of the Project (except where noted)**, the Applicant shall implement a loading management plan for the PUD as follows:
- a. Loading dock managers will be designated for grocery and residential uses. The dock managers will coordinate with one another as well as vendors and tenants to schedule deliveries and will be on duty during business hours;
  - b. All tenants will be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 30 feet in length or larger;
  - c. The dock manager(s) will schedule deliveries such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as to not impede the drive aisle that passes in front of the loading dock;
  - d. The loading dock operation will be limited to daytime hours of operation, with signage indicating these hours posted prominently at the loading dock

and at both entrances to the garage. The loading dock will be open seven days a week from 7:00 a.m. to 10:00 p.m;

- e. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System;
- f. The dock manager(s) will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the loading dock. The dock manager(s) will also distribute flyers materials as DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock manager(s) will also post these documents in a prominent location within the service area. In order to effectively access the loading docks for the building, it is recommended that trucks approach the site via 9<sup>th</sup> Street and turn left onto Bryant Street before accessing the loading dock;
- g. When a 55-foot truck or larger arrives to the dock, the receiver will assist in directing traffic while the truck backs into the dock, as stated below in the “Loading Operations Plan”;
- h. Signage with flashing beacons will be placed at the intersection of Sherman Avenue/Florida Avenue and Bryant Street as well as at the Bryant Street/9th Street intersection to alert drivers to the presence of backing trucks and to not enter Bryant Street when the lights are flashing. The flashing lights will be controlled by the receiver at the loading dock and will be turned on for any truck that is 55 feet or larger; and
- i. Closed Circuit TV (CCTV) cameras will be installed on the northwest corner of the building directed at the intersection of Florida Avenue, Sherman Avenue and Bryant Street to record the truck backing operations. These operations will be reviewed with DDOT on a fixed periodic basis to determine if any additional mitigation measures are required to address any issues arising from the truck loading operations. The monitoring of these operations are discussed in the “Loading Operations Monitoring Program” stated below.

4. Loading Operations Plan. For the life of the project, (except as noted), the Applicant shall implement the following large truck loading operations plan for the proposed 965 Florida Avenue grocery store for all trucks 55 feet or larger. The components of the Loading Operations Plan are as follows and is graphically presented in Exhibit 49A, Figure 1:
  - a. As the large truck approaches the site, the truck driver will contact the loading dock manager (LDM) of their impending arrival at the site;
  - b. With this advance notice, the receiver walks to his position in the loading berth;
  - c. As the receiver walks to the designated position to assist with maneuvering, the receiver will manually activate the two flashing signs via switches installed within the loading dock. The signs shall be installed on Bryant Street, with one sign located on the western end of Bryant Street and the other sign located on the eastern end of the loading dock area on Bryant Street;
  - d. As traffic is alerted not to enter by the flashing signage, the receiver will ensure that no conflicting vehicles are present in Bryant Street and guide the driver maneuvering the large truck into the appropriate berth; and
  - e. When the truck is positioned fully within the building, the receiver will turn off the flashing signs to indicate that the truck loading maneuvering is complete. This procedure is similar to fire trucks backing into District firehouses throughout the District.
  
5. Loading Operations Monitoring Program. Upon completion of the building, the Applicant shall implement the following loading operations monitoring program. As shown on Exhibit 49A, Figure 2, the Applicant shall install a CCTV camera on the northwest corner of the building to record the large truck loading operations and any resulting impacts at the intersection of Bryant Street, Florida Avenue and Sherman Avenue. The components of this loading operations monitoring program are as follows:
  - a. Upon completion of the building and within the first six months of operation of the grocery store, the Applicant shall compile and review the CCTV recorded instances (approximately four trucks per day for 180 days (or approximately 720 possible loading maneuvers) of large trucks backing into the loading dock as part of the operation of the grocery store. The six-month period should include the Friday before Howard University's Homecoming and a weekday leading up to the Thanksgiving holiday. In the event that the initial six-month period does not include these two days, additional monitoring will be performed on those two days. As part of this monitoring review of the CCTV recorded data, the



Applicant will quantify any instances where vehicles are stuck waiting within the intersection of Florida Avenue, Bryant Street and Sherman Avenue. This will include (but is not limited to) a review and quantifying of the following:

- i. Vehicles queued at the Bryant Street/Florida Avenue/Sherman Avenue intersection due to truck maneuvering and whether through traffic on Florida Avenue or Sherman Avenue is impeded and specific times in which these occurred;
  - ii. Vehicles that cause queuing in the Bryant Street/Florida Avenue/Sherman Avenue intersection by entering Bryant Street while a truck is maneuvering into the loading berth and ignoring the flashing signage (and potentially stopping in the middle of the intersection) and specific times in which these occurred; and
  - iii. Additionally, any significant pedestrian and bicycle conflicts with the loading operations will also be quantified to determine if the loading operations plan has resulted in any issues. This will include (but is not limited to) a review and quantifying of pedestrian or bicycles that may be impeded by trucks blocking crosswalks for more than one minute and any potential conflicts that may result from loading maneuvers and specific times in which these occurred;
- b. After the review of the CCTV video and the compilation of the data, the CCTV video clips and observations compilation will be reviewed with DDOT staff to determine if additional mitigation measures are necessary to address any issues identified in the video compilations. Additional mitigation measures will be deemed necessary if any of the following instances occur during the review phase:
- i. Over six instances of vehicular queuing on any approach to the Bryant Street/Florida Avenue/Sherman Avenue intersection due to truck turning maneuvers of more than eight vehicles (or to the adjacent intersection) through one signal cycle length on any approach is noted and thereby blocking through traffic and when they occurred; and
  - ii. Over 36 instances of vehicles (or approximately five percent of the 720 potential loading maneuvers noted above) that cause queuing in the Bryant Street/Florida Avenue/Sherman Avenue intersection by ignoring the flashing signage and entering Bryant Street (and potentially stopping in the middle of the intersection) and when they occurred. Based on the review above, should none of the thresholds be met in the initial review, no further mitigation or monitoring will be necessary;

- c. If DDOT requires additional mitigation due to peak hour conflicts noted in the review period, the additional mitigation outlined further below for peak period conflicts will be implemented and monitored for three additional months after the improvements have been installed to determine the level of effectiveness addressing any issues. Similar criteria as noted above will be used to evaluate this effectiveness as follows:
  - i. Over three instances of vehicular queuing on any approach to the Bryant Street/Florida Avenue/Sherman Avenue intersection due to truck turning maneuvers of more than eight vehicles (or to the adjacent intersection) through one signal cycle length on any approach is noted and thereby blocking through traffic and when they occurred; and
  - ii. Over 18 instances of vehicles (or approximately five percent of the 360 potential loading maneuvers in the three-month period) that cause queuing in the Bryant Street/Florida Avenue/Sherman Avenue intersection by ignoring the flashing signage and entering Bryant Street (and potentially stopping in the middle of the intersection) and when they occurred;
- d. If DDOT requires additional mitigation due to conflicts occurring throughout the day as noted in either the first or second review period, the additional mitigation outlined further below to convert Bryant Street to one-way westbound will be implemented; and
- e. This section presents the additional mitigation that DDOT may require to address any issues that may arise from the loading operations plan. DDOT may request the following additional mitigation measures:
  - i. Peak period mitigation: signage will be placed on the southbound approach of Sherman Avenue to the Bryant Street/Florida Avenue restricting southbound left turns into Bryant Street during the a.m. and p.m. peak grocery hours (similar to turn restrictions throughout the District: 7:00-9:30 a.m. and 5:00-7:30 p.m). Turn restrictions during these hours will limit the number of vehicles that may queue onto Sherman Avenue or block the intersection waiting for trucks to complete their backing maneuvers during peak periods. This additional phase of mitigation is graphically illustrated in Exhibit 49A, Figure 2. These improvements will be monitored for three additional months after the improvements have been installed to determine the level of effectiveness addressing any issues based on the criteria described above; and
  - ii. One-Way Bryant Street mitigation: consistent with DDOT's review letter dated July 1, 2016, the last phase consists of converting Bryant Street to one-way westbound. This one-way westbound conversion

would be complemented by the currently proposed measures of flashing signs and the designated flagger. This additional phase of mitigation is graphically illustrated in Exhibit 49A, Figure 3. The Applicant will review and implement any other mitigations that may be necessary as a result of the conversion of Bryant Street from two-way operations to one-way westbound operation beyond those improvements currently planned by DDOT (such as the installation of the planned signal at the Florida Avenue/9<sup>th</sup> Street/V Street intersection).


**D. Miscellaneous**


1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-34. Within such time, an application must be filed for a building permit, with construction to commence within three years of the effective date of this Order.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.*, (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On June 6, 2016, upon the motion of Commissioner Turnbull, as seconded by Commissioners Miller, the Zoning Commission **APPROVED** the application at the conclusion of the public hearing 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 28, 2016, upon the motion of Chairman Hood, as seconded by Vice Chairperson Cohen, 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 § 3028, this Order shall become final and effective upon publication in the *DC Register*; that is on October 21, 2016.

  
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**ANTHONY J. HOOD**  
CHAIRMAN  
ZONING COMMISSION

  
\_\_\_\_\_  
**SARA A. BARDIN**  
DIRECTOR  
OFFICE OF ZONING