

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 15-32**  
**Z.C. Case No. 15-32**  
**1126 9th St. NW, LLC**  
**(Consolidated PUD & Related Map Amendment**  
**@ 1126 9th St N.W. (Square 369, Lot 880))**  
**September 26, 2016**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on July 7, 2016, to consider an application from 1126 9th St. NW, LLC (“Applicant”) for review and approval of a consolidated planned unit development (“PUD”) for Lot 880 in Square 369 (“Property”), and a related Zoning Map amendment to rezone a portion of the PUD site from the Downtown Development Overlay District (“DD”)/C-2-A to DD/C-2-C. The Applicant proposes to construct a mixed-use building with upper floor residential units and commercial uses on the ground floor (“Project”). The Commission considered the application pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”)¹. The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

**FINDINGS OF FACT**

**Procedural History**

1. On November 27, 2015, the Applicant submitted an application to the Commission for the review and approval of a consolidated PUD and a related Zoning Map amendment to rezone an approximately 6,408 square foot portion of the site from the DD/C-2-A Zone District to the DD/C-2-C Zone District and include it in Housing Priority Area “A”. The application proposes to construct a mixed-use building with upper floor residential units and commercial uses on the ground floor.
2. On February 19, 2016, the Office of Planning (“OP”) filed its setdown report indicating support for setting the application down for a public hearing. (Exhibit [“Ex.”] 10.)

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¹ Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016. Chapter 24 was replaced by Chapter 3 of Subtitle 11-X. However, because this application was set down for hearing before that date, the Commission’s approval was based on the standards set forth in Chapter 24.

3. At a public meeting on February 29, 2016, the Commission voted to set the case down for a public hearing and requested the Applicant to provide additional information and drawings to address Commission concerns regarding:
  - a. The building design, including roof plans, penthouse design, and requested court flexibility;
  - b. Street-level design, including signage, as well as information on loading and circulation in the alley to the rear of the Property;
  - c. The benefits and amenities package offered by the Project;
  - d. The feasibility of achieving a greater degree of LEED certification; and
  - e. Further information regarding the historic nature of the existing building on the Property.
4. Notice of the public hearing was published in the *D.C. Register* on May 13, 2016. (Ex. 15.)
5. On April 12, 2016, the Applicant filed a Pre-Hearing Statement responding to the Commission's and OP's requests. (Ex. 12-12E.) The Applicant filed its Transportation Demand Management ("TDM") Plan and Comprehensive Transportation Review as well as its response to additional OP requests on July 7, 2016. (Ex. 29, 30.)
6. Several individuals and neighbors submitted letters of support into the record, as discussed more fully in Findings of Fact Nos. 46-52 below.
7. A public hearing was conducted on July 7, 2016. The Commission accepted Peter Fillat as an expert in the field of architecture, and Chris Kabatt as an expert in the field of transportation consulting. The Applicant presented testimony from the experts as well as Chris VanArsdale, Kevin Brown, and Peter Stuart on behalf of the Applicant and submitted additional plans in support of the application. (Ex. 31A1-31A11.)
8. At the conclusion of the hearing, the Commission voted to take proposed action to approve the application.
9. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") as required by the District of Columbia Home Rule Act on July 11, 2016. (Ex. 34.)
10. On July 14, 2016, the Applicant submitted its list of final proffered public benefits of the PUD and draft conditions, pursuant to 11 DCMR §§ 2403.16 through 2403.18. (Ex. 35.) On July 28, 2016, the Applicant submitted its draft Findings of Fact and Conclusions of Law. (Ex 36-36A.)

11. The Commission considered final action at its September 12, 2016 public meeting. Commissioner May stated that he had participated in NCPC's review of this case as representative for the National Park Service. He advised the Commission that although NCPC had not yet submitted a report, it was concerned that the Project violated An Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 601.01 to 601.09) ("Height Act"). In response to this information, the Commission by consensus requested that OP communicate NCPC's Height Act concern to the Zoning Administrator and request that the Zoning Administrator offer his opinion about whether the Project violates the Height Act. The Commission deferred taking action until it received a response from the Zoning Administrator.
12. In a letter dated September 15, 2016, the NCPC Executive Director advised the Commission that through a delegated action he found that the proposed PUD "is inconsistent with the Comprehensive Plan for the National Capital and other federal interests, due to a minimal violation of the penthouse setback requirements" of the Height Act. (Ex. 37.)
13. On September 26, 2016, OP submitted a supplemental report that attached the Zoning Administrator's opinion interpreting the Height Act in relation to the Project. The Zoning Administrator concluded that the Project did not violate the Height Act. He explained that he disagreed with NCPC's conclusion because the penthouse setback in question was on the west side of the building, which faced an alley and did not face a street. The Height Act requires a 1:1 setback on all exterior walls, and the concept of what constitutes an "exterior wall" has been consistently interpreted by his office as walls that adjoin a street. Since the wall in question adjoined an alley, and not a street, he concluded that the Height Act did not require a 1:1 setback, and therefore the Project did not violate the Height Act. (Ex. 38.)
14. At its September 26, 2016 meeting, the Commission considered the NCPC report and the Zoning Administrator's response. The Commission voted to approve the application, but did so without taking a position on NCPC's interpretation of the Height Act. The Commission noted that it was up to the Zoning Administrator, not the Commission, to interpret the Height Act. Nevertheless, the Zoning Administrator should not view the Commission's approval of this modification as obviating the need for a careful review of these plans for compliance with the Height Act and the Zoning Regulations.
15. On September 26, 2016, the Commission voted to take final action to approve the application subject to the conditions enumerated in this Order.

#### **Description of Property and Surrounding Areas**

16. The Property is approximately 7,610 square feet, a portion of which is currently improved with a one and two-story building that fronts on 9<sup>th</sup> Street, N.W. and that previously contained commercial uses ("Existing Building"). The remainder of the

Property is an undeveloped lot. The Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 2F.

17. The Property is located in the Northwest quadrant of the District of Columbia on the block bounded by M Street, N.W. to the north, 9<sup>th</sup> Street, N.W. to the east, 10<sup>th</sup> Street, N.W. to the west, and L Street, N.W. to the south. The Property is approximately 500 feet from the Convention Center Metrorail Station, which sits along M Street, N.W. east of the Property. The Property is within the Shaw Historic District (the eastern boundary of which runs down 9<sup>th</sup> Street, N.W. immediately east of the Property). Mount Vernon Square is to the south of the Property, and Logan Circle is to the west.
18. The Property is located within areas designed for High-Density Residential Land Use and High-Density Commercial Land Use on the Future Land Use Map. The Generalized Policy Map includes the Property in a “Main Street Mixed Use Corridor.”

### **Underlying and Requested Zoning**

19. The Property is split between two zone districts. An approximately 843-square-foot portion is within the DD/C-2-C Zone District and Housing Priority Area “A”, and the remaining approximately 6,789-square-foot portion is within the DD/C-2-A Zone District. The DD/C-2-C Zone District permits a maximum height of 110 feet with no maximum floor area ratio (“FAR”) for residential uses at this location. The DD/C-2-A Zone District permits a maximum height of 50 feet with a maximum FAR of 2.5.
20. North of the Property, the zoning is generally either C-2-A or R-4, and the area north of the Property is outside of the DD overlay. The Property is otherwise surrounded by areas zoned DD/C-2-C or DD/C-3-C. The related Map Amendment proposes to rezone an approximately 6,408 square foot portion of the site from the DD/C-2-A Zone District to the DD/C-2-C Zone District and include it in Housing Priority Area “A”. As a result, the majority of the Property will be within the DD/C-2-C Zone District.

### **The Proposed Project**

21. The Project will contain a mixed-use building with upper floor residential units and commercial uses on the ground floor. In total, the Project will contain a gross floor area of approximately 40,290 gross square feet (“GSF”) and will have an overall FAR of approximately 5.3. The Project will create approximately 33 residential units and approximately 3,723 GSF of ground floor commercial use. The Project will have a maximum height of 100 feet. Two permanent non-conforming parking spaces (one of which may be used for two smaller car-share vehicles) and a loading space will be accessed from the alley.
22. Along the 9<sup>th</sup> Street façade, the Project will step back from the street before rising to the full 100 feet, allowing the existing structure to be solely expressed within such setback area. Most of the Existing Building will be retained and incorporated into the Project.

The Project will have a height of approximately 51 feet, eight inches, with two sixth-floor loft areas rising to approximately 61 feet, four inches along the M Street frontage. The Project includes public benefits and amenities such as the provision of housing in the DD Overlay, the provision of affordable housing at this core location where affordable housing would not otherwise be required, the restoration of the entirety of the historic Existing Building on the site, the strengthening of the streetscape of the re-emerging 9<sup>th</sup> Street commercial corridor, the infill of a gap in the M Street streetscape, the provision of a LEED v. 2009 Gold certification and an enhanced Green Area Ratio (“GAR”) for the site, the provision of car-share spaces at the rear of the Project, and the financial support of local neighborhood initiatives such as improvements to the 10<sup>th</sup> Street Park.

23. The design of the Project’s façade captures the aesthetic character of the historic Shaw neighborhood. The Project translates the detailed bays and oriels of the Historic District’s masonry buildings into a contemporary lifestyle solution utilizing similar materials with modernized but similarly proportioned bays and oriels. The Project’s masonry is a light shade of warm grey with bays that are framed in metal panels. This masonry façade is complemented by infill panels of wood finished aluminum to retain a residential character in the modern design.
24. A further design goal of the Project is to allow for light and a feeling of openness over an unusually configured space. The Project introduces extensive fenestration across the Project’s facades. In order to allow daylight to penetrate into certain lower-level interior units of the Project, the Project introduces a pair of closed courts to serve as light wells.
25. The Project’s ground-floor uses will enhance the commercial character of 9<sup>th</sup> Street and add vibrancy to a key corner across from the Convention Center.
26. The Project will provide two residential units totaling no less than four percent of the Project’s total gross square footage as affordable housing. More specifically, the Project will set aside one residential unit for households earning no more than 50% of the Washington D.C. Area Median Income (“AMI”) and one residential unit for households earning no more than 80% of AMI.
27. The Project will provide two non-conforming parking spaces and a loading pad at the rear of the Property accessible via the alley. Such loading facilities will allow space for the small delivery and service vehicles anticipated to utilize them. Additional loading for the Project will occur in the sizable commercial loading zone adjacent to the Property on 9<sup>th</sup> Street. The project will not require any new curb cuts and in fact will close a curb cut on M Street.
28. The Project will incorporate a high degree of sustainable elements into the Project. The Project will be designed and constructed to Gold certification under the LEED NC v. 2009 rating system. Additionally, as stated above, the Project will retain and restore the vast majority of the Existing Building, integrating it throughout the new structure. Such

historic preservation presents both an opportunity to celebrate the past and reuse existing materials and a challenge to modernize a property while achieving a high LEED score.

29. The Comprehensive Transportation Review concluded that the PUD “will have an imperceptible impact on the surrounding transportation network.” It confirmed that the project is well suited for non-auto modes of transportation and that the TDM plan will encourage residents to use public transit options. The Comprehensive Transportation Review also included the Project’s Transportation Demand Management Plan. (Ex. 29.)
30. The Commission finds that the Project’s design features are superior to those likely to be provided in a matter-of-right development at the PUD site. The Property is an important site for promoting further development within the Shaw Historic District and adjacent to the Convention Center. Through the PUD process, the Project will create an exemplary mixed-use development on the site. In fact, the PUD process will allow the Project to implement the Convention Center Strategic Development Plan. The PUD process will capture the benefits and amenities that will enhance the surrounding community while retaining the Shaw neighborhood’s historic charm.

#### **Development Incentives and Flexibility**

31. In addition to the rezoning of the Property from DD/C-2-A Zone District to the DD/C-2-C Zone District and the application of the PUD standards in Chapter 24 of the Zoning Regulations, the Applicant requests flexibility from the strict application of certain provisions of the Zoning Regulations as follows:
  - a. Penthouse flexibility: Under § 411.18 of the Zoning Regulations, the Project’s penthouse must be set back from the exterior walls surrounding the upper roof plane. The penthouse is proposed not to have any setback from three of the Project’s exterior building faces where setbacks would otherwise be required. The Penthouse therefore requires special exception flexibility;
  - b. Parking: A waiver of the minimum parking requirements of § 2101.1 requiring (i) one space for each two dwelling units in the C-2-A Zone District, (ii) one space for each four dwelling units in the C-2-C Zone District, (iii) one space for each 600 square feet over 2,000 square feet of gross floor area for office use or one space for each 300 square feet over 3,000 square feet of gross floor area of retail use in the C-2-A Zone District, and (iv) one space for each 1,800 square feet over 2,000 square feet of gross floor area for office use or one space for each 750 square feet over 3,000 square feet of gross floor area of retail use in the C-2-C Zone District. The Project would require up to nine parking spaces but would provide no compliant parking spaces (and two non-compliant parking spaces at the rear);
  - c. Courts: The Zoning Regulations require closed courts for residential uses to be no less than 15 feet wide (and 350 square feet in area). Two of the Project’s courts would not satisfy these requirements and would be nine feet wide (and 108 square



feet in area). As a result, the Applicant seeks relief from the court requirements of the Zoning Regulations to allow the courts as proposed;

- d. M Street building height: § 1706.15 of the Zoning Regulations requires that buildings fronting on M Street, N.W. at this location limit a building's height to 60 feet for a depth of 40 feet from M Street, N.W. However, the Project proposes two loft elements at the Project's sixth floor that will rise to a height of 61 feet, four inches. Therefore, the Applicant seeks relief from the building height requirements along M Street, N.W. to allow the lofts as proposed; and
- e. Minimum lot area: Pursuant to § 2401.1 of the Zoning Regulations, the minimum area for a proposed PUD is generally 15,000 square feet in the C-2-A and C-2-C Zone Districts, provided such minimum area may be reduced by up to 50% in the event the Commission finds that (i) the development is of "exceptional merit" and in the "best interest of" the District, and (ii) at least 80% of the gross floor area of the development is to be used exclusively for dwelling units and uses accessory thereto. Since the Property contains 7,610 square feet of lot area and is located outside of the Central Employment Area, the Applicant requests that the Zoning Commission permit a reduction to the required lot area for a PUD since the Project is of "exceptional merit" and in the best interest of the District and at least 80% of the Project's gross floor area is devoted to residential use.

### **Public Benefits and Project Amenities**

- 32. In addition to the sustainability features discussed above, the following benefits and amenities will be created as a result of the PUD project:
  - a. *Housing and affordable housing (§ 2403.9(f))* – The Applicant will set aside no less than four percent of the Project's residential gross square footage as affordable housing for the life of the Project. One of these units will be set aside for residents earning no more than 50% of AMI. The other such unit will be set aside for households earning no more than 80% of AMI. No affordable residential space would be required under the Inclusionary Zoning program so all of such space would be considered a public benefit of the Project. The Applicant shall distribute the mix of affordable housing unit types in proportion to the mix of market-rate unit types. The size of the affordable units shall be of a size substantially similar to the market rate units. The location of the affordable housing units shall be substantially similar to the locations shown on Pages ZC-31 and ZC-32 of Exhibit 31A in the record. In addition to the affordable housing contribution, the Project provides market-rate housing in a neighborhood where demand for new housing is very high, housing is considered a preferred use and even mandated in adjacent areas, and opportunities for new development are limited. The Commission finds that the provision of housing and affordable housing is a valuable community benefit of the PUD that should be recognized;

- b. *Urban design, architecture and landscaping (§ 2403.9(a))* – The Project exhibits the characteristics of exemplary urban design and architecture. The Project provides a superior design that fully responds to the site location and history while efficiently integrating a mix of uses that will directly benefit the neighborhood. The Project’s design will contribute to the Shaw neighborhood’s strong visually interesting sense of place, incorporating elements from the area’s past, and tying the Project to an exciting and vibrant future of new residential opportunities and a re-emerging 9<sup>th</sup> Street commercial corridor. Further, the Project design will respect the existing grain of the block and adding a contemporary feel that is complementary of the surrounding historic architecture without being imitative;
- c. *Historic preservation of private structures (§ 2403.9(d))* – As described above, the Project’s retention and rehabilitation of the Existing Building is a superior public benefit because that building is part of a row of several existing vintage storefronts along 9<sup>th</sup> Street. The Project’s rehabilitation of the Existing Building supports the objective of using 9<sup>th</sup> Street’s historic retail core as a unique identity;
- d. *Environmental benefits (§ 2403.9(h))* – The Project incorporates a high degree of sustainable elements into the Project. The Project will be designed and constructed to Gold certification under the LEED NC v. 2009 rating system. In addition, the Project will incorporate extensive sustainable features. Of particular note, the Project will exceed the Green Area Ratio requirement of 0.3 and achieve a GAR of 0.318. Other sustainable features include large areas of both intensive and extensive green roof covering more than half of the site, water efficiency measures such as low-flow plumbing fixtures, a highly efficient residential mechanical system, and low-emitting finishes for a healthier interior environment;
- e. *Site planning, and efficient and economical land utilization (§ 2403.9(b))* – The Project’s design reflects creativity and engineering to synthesize highly-beneficial residential and commercial uses at the Property, with loading facilities and parking spaces to the rear of the site and hidden from public view. The Project makes the Property’s unusual configuration a virtue, using it to present to two streets at different heights and to infill between a new large building and an older three story building. The Project efficiently and economically converts a vacant and underutilized site into a building of appropriate density, including the preferred uses of housing and affordable housing;
- f. *Effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts (§ 2403.9(c))* – The Project is an exemplary specimen of a transit oriented development that reduces vehicular traffic on the Downtown street network. The Project is appropriately dense for its location within a block of a Metrorail Station and readily served by multiple bus lines. It will provide



potential new riders for the Metrorail system at this location and is well suited for pedestrians, bikers, and transit-users to commute to work Downtown or to a variety of shopping, entertainment, and cultural destinations. The proximity and convenience to mass transit options, Downtown, and the Central Employment Area will help to reduce dependence on the private personal vehicles and allow residents to experience a live/work urban environment. Residents in the Project will be able to use public transit to and from work, and they will be able to shop and dine near home. Further, the Project will have a robust Transportation Demand Management Plan that will encourage residents, tenants and guests to use alternative modes of transportation; and

g. *Uses of special value to the neighborhood or the District of Columbia as a whole (§ 2403.9(i))* – The Applicant will provide \$12,500 to nonprofit community organizations or resources as determined pursuant to an agreement with the Commissioners of ANC 2F. The proposed distribution of these funds includes:

- *10th St. Park Investment* – The Applicant will provide a sunshade to be located over the play area of the 10<sup>th</sup> Street Park with an estimated value of approximately \$10,000; and
- *Donation to Thomson School Parent Teacher Association* – The Applicant will provide supplies and materials, including soil, planters, and other similar materials worth a total of \$2,500 for the Thomson Elementary School rooftop garden.

33. The Commission finds that the Applicant’s public benefits and project amenities provide value to the District and the community surrounding the Property and are sufficient to justify the density obtained through the PUD process and the relief requested.

#### **Compliance with the Comprehensive Plan**

34. The Commission finds that the proposed modification to the approved PUD is not inconsistent with the Comprehensive Plan (10 DCMR) and promotes the policies of its Land Use, Transportation, Housing, Urban Design, Economic Development, Historic Preservation Elements, and its Near Northwest Area Element.

35. The Project implements Land Use Element policies that promote transit oriented and mixed-use development. The Project contributes to the reinvestment in a block adjacent to the Central Employment Area and immediately across from a major District economic engine and a massive District investment – the Convention Center. The Project capitalizes on its proximity to a Metrorail Station by promoting density on an infill site and reducing the need for automobile traffic and automobile ownership through limited on-site parking. The multi-level vertical forms and strong street presence encourage

walking, biking and transit and are respectful of the character of the lower buildings on the north side of M Street, N.W.

36. The Project implements Transportation Element policies that promote transit-oriented development and urban design improvements. The Project brings new housing and commercial uses within walking distance of the Metrorail station and, through its Transportation Management Plan, provides effective incentives to discourage motor vehicle use.
37. The Project implements Housing Element policies that encourage expansion of the City's supply of high-quality market-rate and affordable housing. The Project will bring approximately 33 new residential units to a neighborhood in need of more housing options, with two of such units set aside as affordable units (one for households earning no more than 50% of AMI and one for households earning no more than 80% of AMI).
38. The Project implements Urban Design Element policies regarding the enhancement of the aesthetic appeal and visual character of areas around major thoroughfares. The Project significantly improves the appearance of a key and highly visible site in the Shaw Historic District and will catalyze additional investments in the neighborhood.
39. The Project implements Economic Development Element policies that encourage expanding the retail sector, developing locally oriented office space, and cultivating a vibrant mix of business in the neighborhood. New ground-floor space will be reserved for commercial uses such as a small office or a small footprint retailer. Given the floorplate of the commercial space, the Project would be an appropriate scale for a local entrepreneur and would allow such a small business to capitalize on the considerable foot traffic and activity levels around the Convention Center.
40. The Project implements Historic Preservation Element policies that encourage investment in, and the rehabilitation of, the City's historic structures. As described above, the Project is designed to be sensitive to the historic character of the surrounding neighborhood, to retain and rehabilitate the Existing Building, and to leverage the historic resources of the community and the Property. The preservation of the Existing Building is consistent with goals of celebrating the 9<sup>th</sup> Street, N.W. historic storefront identity.
41. The Project implements Near Northwest Area Element policies by thoughtfully maintaining and enhancing the historic and diverse architectural character of the Shaw neighborhood. The Project's high quality design will contribute to the area's character as an architecturally rich neighborhood, while providing much needed reinvestment and renovation at this particular long-underutilized site along the 9<sup>th</sup> Street, N.W. commercial corridor.

### **Government Reports**

42. OP filed a report on June 27, 2016. (Ex. 18.) The report noted that OP “recommends approval” of the Project, subject to the provision of more refined drawings at the public hearing, refinement of the affordable housing proffer, submission of the transportation demand management plan, and submission of justification for the requested relief for the building height along M Street, N.W. and the parking. At the hearing, OP reiterated its report and its recommendation of approval of the Project.
43. The District Department of Transportation (“DDOT”) submitted a report on June 27, 2016. (Ex. 19.) The report noted that DDOT had “no objection” to the approval of the Project, subject to continued coordination regarding public space and features within the public right of way expected to be built to DDOT standards. The DDOT Report noted that the Applicant’s traffic demand management measures are appropriate to address the impacts expected from the Project. At the hearing, DDOT rested on the record.

### **Advisory Neighborhood Commission Reports**

44. ANC 2F submitted a letter in support of the project noting that, “On April 6, 2016, at a duly called and properly noticed public meeting with a quorum (at least five Commissioners) present and acting throughout”, ANC 2F voted (7-0-1) to support this application. (Ex. 20.)

### **Parties in Support or Opposition**

45. No parties appeared in support or opposition to the application.

### **Persons in Support or Opposition**

46. A letter in support from Young Lee, the owner of 11 M Cleaners, was received into the record. (Ex. 21.)
47. A letter in support from David Galeas was received into the record. (Ex. 22.)
48. A letter in support from David O'Brien was received into the record. (Ex. 23.)
49. A letter in support from Kate Mellor was received into the record. (Ex. 24.)
50. A letter in support from Nina Sughrue was received into the record. (Ex. 25.)
51. A letter in support from Russell Breakwell received into the record. (Ex. 26.)
52. A letter in support from Stacie Fabre received into the record. (Ex. 27.)

## **CONCLUSIONS OF LAW**

1. Pursuant to Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, welfare, and convenience.” (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.
3. The Commission concludes that the Project shall receive the waiver from the minimum area requirements of § 2401.1 of the Zoning Regulations because the Property is not less than 50% of the 15,000-square-foot lot minimum, the Project is of exceptional merit and in the best interest of the District, and at least 80% of the gross floor area of the Project is to be used exclusively for residential uses.
4. The Project complies with the applicable height, bulk, and density standards of the Zoning Regulations except in the limited circumstances where flexibility therefrom is requested and will not cause a significant adverse effect on any nearby properties. The residential and commercial uses for the Project are appropriate for the Property. The impact of the Project on the surrounding area is acceptable given the quality of the public benefits of the Project, and the application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
5. The Applicant's request for flexibility from the Zoning Regulations – specifically, the parking requirements, court requirements, roof structure setback requirements, and building height along M Street, N.W. – is not inconsistent with the Comprehensive Plan. Moreover, the Project’s public benefits and amenities strike a reasonable balance with the requested development flexibility.
6. Approval of this PUD and related Zoning Map amendment is appropriate because the proposed development is consistent with the present and desired future character of the area, and is not inconsistent with the Comprehensive Plan or the Future Land Use Map of the Comprehensive Plan, which designates the Property as High-Density Mixed-Use. In addition, the Project will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia. In fact, it is through the PUD and Zoning

Map amendment process itself that this particular Property is able to be productively utilized in a manner sensitive to its neighbors.

7. The rezoning of a portion of the Property to DD/C-2-C is consistent with the purposes and objectives of zoning as set forth in the Zoning Act of 1938, approved June 20, 1938.
8. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.
9. 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 2F position supporting approval of the application and concurred in its recommendation of approval.
10. The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the ANC, OP, and to owners of property within 200 feet of the site in accordance with the Zoning Regulations and applicable case law.
11. Based upon the record before the Commission, having given great weight to the views of the ANC and having considered the reports and testimony of OP and DDOT provided in this case, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under Chapter 24. The Commission finds that the Project fully satisfies the goals and objectives of the PUD Regulations of Chapter 24 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. The Commission also approves the Applicant's requests for flexibility from specific areas of the Zoning Regulations including, the roof structure requirements of § 411.18, the court requirements of § 776, the parking requirements of § 2101.1, and the building height requirements along M Street, N.W. of § 1706.15. In addition, the Commission grants a waiver from the minimum lot area requirements for PUDS under § 2401.1.
12. The Commission finds that the Applicant's proposed TDM measures are adequate to mitigate any potential adverse effects on the surrounding area from the development that relate to traffic, and that these measures have been incorporated into the conditions of this Order.
13. 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 application for the review and approval of a consolidated Planned Unit Development and a related Zoning Map amendment from DD/C-2-A to DD/C-2-C (and Housing Priority Area A) for the portions of the Property requested subject to the following conditions:

### **A. PROJECT DEVELOPMENT**

1. The Project shall be developed in accordance with the architectural plans and drawings submitted on April 12, 2016 (Exhibit 12A1-12A2), and as modified by the plans and drawings presented the Applicant's presentation to the Commission on July 7, 2016 (Exhibit 31A1-31A11) and the guidelines, conditions, and standards herein (collectively, the "Plans").
2. The Project shall include a mixed-use building with upper-floor residential units and commercial uses on the ground floor containing up to approximately 40,290 gross square feet ("GSF") in total, with an equivalent FAR of up to approximately 5.3. Such GSF will be composed of up to approximately 3,723 GSF of commercial, retail and/or service uses and up to approximately 33 new residential units. The Project will have approximately two nonconforming surface parking spaces for commercial and/or residential parking and/or car-sharing services (one such space might be utilized for two car-sharing vehicles). The Project will be constructed to a maximum height of approximately 100 feet. Along the 9<sup>th</sup> Street, N.W. façade, the Project will step back from the street before rising to the full 100 feet, allowing the existing structure to be solely expressed within such setback area. Along the M Street, N.W. façade, the Project will have a height of approximately 51 feet, eight inches, with two sixth-floor loft areas rising to approximately 61 feet, four inches.
3. Approximately 6,408 square feet of the DD/C-2-A Zone District designation for the Property shall be amended to become the DD/C-2-C Zone District and included within Housing Priority Area A (as shown in the Plans). Pursuant to 11 DCMR § 3028.9, such amendment of zoning shall be effective upon the recordation of the covenant discussed in Condition No. D(2).
4. The Applicant shall have flexibility from the Zoning Regulations with respect to the Project's parking requirement, closed court requirements, roof structure setback requirements, and M Street, N.W. height setback (pursuant to § 1706.15) requirements as shown on the Plans.
5. The Project will include the preservation and restoration of the existing 1126 9<sup>th</sup> Street, N.W. structure in accordance with the Plans.



## B. PUBLIC BENEFITS

1. **Prior to the issuance of the first Certificate of Occupancy for the residential component of the Project**, and for the life of the Project, the Applicant shall demonstrate the following:
  - a. The project shall provide a total of up to approximately 36,567 square feet of residential gross floor area (“GFA”) of housing. No more than approximately 35,104 square feet of GFA of this total will be market rate housing, and no less than approximately 1,463 square feet of GFA will be affordable housing;
  - b. The Applicant shall set aside a minimum of four percent of the residential gross floor area as affordable housing for the life of the project. Of the affordable units, one unit shall be reserved for households with incomes not exceeding 50% of the Area Median Income for the Washington, D.C. metropolitan statistical area (“AMI”) and one unit shall be reserved for households with incomes not exceeding 80% of the AMI;
  - c. The distribution of the affordable housing units shall be in substantial accordance with the plans marked as pages ZC-31 and ZC-32 of Ex. 31A of the record<sup>[1]</sup>, and substantially in accordance with the following chart:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
<b>Total</b>	Up to 36,567 sf of GFA (100%)	33	NA	NA	NA
<b>Market Rate</b>	No more than 35,104 sf of GFA (96%)	31	Market Rate	NA	NA
<b>50% AMI</b>	No less than 731.5 sf of GFA (2%)	1	50% AMI	For the life of the project	NA
<b>80% AMI</b>	No less than 731.5 sf of GFA (2%)	1	80% AMI	For the life of the project	NA

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<sup>[1]</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. The net square footages of the affordable housing shown on pages ZC-31 and ZC-32 of Ex. 31A satisfy the gross square footages shown on the chart below due to the efficiency factor of the building.

- 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. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that it has completed the following:

- a. Provided supplies and materials, including soil, planters, and other similar materials worth a total of \$2,500 for the Thomson Elementary School rooftop garden; and
- b. Provided a sunshade to be located over the play area of the 10<sup>th</sup> Street Park with an estimated value of approximately \$10,000.

Such evidence shall be in the form of a letter (or letters) and/or receipts submitted to the Zoning Administrator stating that the above work, funding, or materials have been provided in the amounts set forth above and have been utilized for the purposes set forth above

3. The Project's LEED and sustainable design requirements shall be as follows:

- a. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that the Project has been designed to achieve a LEED NC v. 2009 Gold (or higher) level. The Applicant will obtain certification of such Gold level from the US Green Building Council within two years of the issuance of the first Certificate of Occupancy for the Project; and
- b. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that the Project has been designed to achieve a GAR of not less than approximately 0.318.

## C. TRAFFIC MITIGATION

1. **For the life of the Project, the following transportation demand management ("TDM") measures shall be in place:**

- a. Removal of the existing curb cut at the Property along M Street, N.W.;
- b. Provision of up to two non-conforming parking spaces for car sharing services to use with a right of first refusal, and such spaces shall be available to members of the car sharing service 24 hours a day, seven days per week (subject to sufficient demand for such space or spaces from such car share companies);

- c. Provision of at least 16 long-term bike parking spaces as shown on the Plans;
- d. Provision of an interior bike repair area for the residents and commercial uses and a shower facility for the commercial uses for bike riders;
- e. Provision of a transit information display in the residential lobby; and
- f. Maintenance of a transportation management coordinator to provide information to residents and employees.
- g. In addition, the TDM measures shall include the following items for a fixed Bike helmets shall be provided to the initial purchasers of the residential units at the time of the initial purchase;
- h. A SmarTrip card with \$25.00 shall be provided to new condominium owners for five years from project opening;
- i. A SmarTrip card with \$25.00 provided to initial tenants of rental units for five years from project opening;
- j. A two-year bike-share or car-share membership shall be offered to residents upon initial move-in; and
- k. Any resident choosing a car-share membership shall receive the equivalent cash value of a one-year bike-share membership (i.e., the one-year car-share membership fee plus a usage credit in the total cash equivalent amount equal a one-year bike-share membership).

#### **D. MISCELLANEOUS**

- 1. The Applicant shall have flexibility with the design of 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 but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details, dimensions and locations, including

curtainwall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, 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 or to address the structural, mechanical, design, or operational needs of the building uses or systems;


- d. To vary the final design of retail frontages, including locations of doors, design of show windows and size of retail units and signage, to accommodate the needs of specific retail tenants;
  - e. To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Plans do not change; and
  - f. To revise the design of the public space surrounding the Property and the exterior design of the project to the extent necessary to obtain approvals from District agencies and/or service to the Property from utilities.
2. No building permit shall be issued for this project until the Applicant has recorded a covenant among the land records of the District of Columbia between the owner and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Zoning Commission.
3. Pursuant to § 2408.8 of the Zoning Regulations, the PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-32. 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.
4. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, et seq. (“Act”) and this Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is 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.

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

On July 7, 2016, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at the conclusion of its 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 September 26, 2016, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; third Mayoral Appointee position vacant, not voting).

In accordance with the provisions of Section 3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on November 25, 2016.

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

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