

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 16-07**  
**Z.C. Case No. 16-07**  
**W-G 9<sup>th</sup> & O, LLC**  
**(Consolidated PUD and Related Map Amendment @ Square 399)**  
**January 9, 2017**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on October 24, 2016, to consider applications for a consolidated planned unit development (“PUD”) and related zoning map amendment filed by W-G 9<sup>th</sup> & O, LLC (“Applicant”). The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission **HEREBY APPROVES** the applications.<sup>1</sup>

**FINDINGS OF FACT**

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

1. On March 29, 2016, the Applicant filed applications with the Commission for consolidated review and approval of a PUD and a related Zoning Map amendment from the C-2-A Zone District to the C-2-B Zone District for property located at 810 O Street, N.W. (Square 399, Lot 66) (“PUD Site”).
2. The PUD Site has a land area of approximately 15,093 square feet and is a rectangular lot bounded by O Street, N.W. to the north, a 10-foot public alley to the east, private property to the south, and 9<sup>th</sup> Street, N.W. to the west. The PUD Site is located within the Shaw Historic District and is improved with the Scripture Cathedral Church, a 50-foot-tall brick building constructed in 1986. The Scripture Cathedral Church does not contribute to the Historic District since its construction post-dates the period of significance (1833-1932).

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

3. Other than the PUD Site, Square 399 is improved with residential dwellings, apartment houses, a gas station, and surface parking. The O Street Market, which was developed pursuant to Z.C. Order No. 07-26, is located across O Street to the north of the PUD Site. Across the alley to the east of the PUD Site is a vacant District-owned property that is proposed to be privately developed with a new mixed-use residential and retail building. (See D.C. Council Resolution R21-0374, dated February 2, 2016.)
4. The Applicant proposes to raze the existing building on the PUD Site to build a mixed-use building comprised of ground-floor retail use and approximately 66 residential units, including four penthouse units (“Project”). The Project will have a maximum density of 6.0 floor area ratio (“FAR”) and a maximum building height of 90 feet. The Project will include approximately 90,558 square feet of gross floor area, with approximately 83,658 square feet of gross floor area devoted to residential use (including residential amenity space) in the main building and approximately 6,900 square feet of gross floor area devoted to ground-floor use. The Project also includes approximately 4,822 square feet of gross floor area devoted to penthouse habitable space and approximately 1,364 square feet of gross floor area devoted to penthouse communal recreation space. The Project will provide 56 zoning-compliant parking spaces, three tandem parking spaces, and 12 vault parking spaces located in a two-level below-grade parking garage. Shared loading facilities will be provided for the retail and residential uses. Vehicular and loading access will both be provided from the public alley at the rear of the PUD Site.
5. The Project’s ground level is programmed with retail uses that will activate the surrounding streets and encourage the use of alternative transportation modes. The Project also includes significant public space improvements, including new lighting, trees, planting beds, bicycle racks, and sidewalk paving. The Project will provide a 10-foot setback from the east property line along the alley at the rear of the PUD Site, resulting in the ability to locate all proposed vaults for the building on private property and not in public space.
6. The Inclusionary Zoning (“IZ”) regulations, set forth in Chapter 26 of the 1958 Zoning Regulations, require the Applicant to set aside: (i) a minimum of eight percent of the Project’s residential gross floor area in the main portion of the building to households earning up to 80% of the area median income (“AMI”) (a minimum of 6,592 square feet required); and (ii) a minimum of eight percent of the penthouse habitable space to households earning up to 50% of the AMI (a minimum of 386 square feet required). The Applicant will set aside a minimum of eight percent of the residential gross floor area to IZ units, with approximately 4,610 square feet of gross floor area (four units) set aside for households earning up to 50% of the AMI and approximately 2,387 square feet of gross floor area (two units) reserved for households earning up to 80% of the AMI. The floor area devoted to units at 50% of the AMI is 2,346 square feet more than is required by the Zoning Regulations.
7. The Project was reviewed and conceptually approved by the Historic Preservation Review Board (“HPRB”), which voted 7-0-0 on April 30, 2015, to approve the Project concept and delegated final approval to staff. (See HPA 15-248.)

8. By report dated June 3, 2016 (Exhibit [“Ex.”] 13), the District of Columbia Office of Planning (“OP”) recommended that the application be set down for a public hearing. At its public meeting on June 13, 2016, the Commission voted to schedule a public hearing on the application.
9. The Applicant submitted a prehearing statement on June 29, 2016 (Ex. 15-15G) and a public hearing was timely scheduled for the matter. On July 22, 2016, the notice of public hearing was mailed to all owners of property located within 200 feet of the PUD Site; Advisory Neighborhood Commission (“ANC”) 6E, the ANC in which the PUD Site is located; ANC 2F, the ANC located across 9<sup>th</sup> Street from the PUD Site, and to Councilmembers Charles Allen and Jack Evans, of Ward 6 and 2, respectively. A description of the proposed development and the notice of the public hearing in this matter were published in the *DC Register* on July 29, 2016.
10. On October 4, 2016, the Applicant submitted a supplemental prehearing statement in response to comments raised by the Commission and OP at the setdown meeting. (Ex. 24-24B.) The supplemental submission included revised architectural plans and elevations and a comprehensive transportation review (“CTR”) report prepared by Gorove/Slade Associates and submitted to the District Department of Transportation (“DDOT”) on September 9, 2016.
11. On October 14, 2016, OP and DDOT each submitted a report on the application. The OP report indicated that it could not make a recommendation on the application due to concerns primarily related to whether Project’s benefits and amenities were commensurate with the flexibility being requested. (Ex. 26.) The DDOT report indicated no objection to the application with the following conditions: (i) the Applicant fund the installation and first year’s operation expenses of a new Capital Bikeshare station located within the boundaries of ANC 6E; (ii) the Applicant provide a TransitScreen in the residential lobby; (iii) the Applicant unbundle parking from leases of all units and charge market rate, defined as the average cost for parking within a quarter mile of the site on a weekday; and (iv) the Applicant provide six short-term bicycle parking spaces (three racks). (Ex. 27.)
12. On October 20, 2016, the Applicant submitted additional materials to the record, which responded to the issues raised in the OP and DDOT reports. (Ex. 29-29A.) On October 24, 2016, the Applicant submitted a motion to accept the late filing of the CTR, which was submitted to the record less than 30 days prior to the public hearing and thus inconsistent with the requirements of Subtitle Z, §§ 401.7 and 401.8 of the 2016 Zoning Regulations.<sup>2</sup>

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<sup>2</sup> Although the Project is subject to the 1958 Zoning Regulations, the Office of Zoning applied the procedural requirements of the 2016 Zoning Regulations to this case.

13. At its regularly scheduled public meeting on June 7, 2016, for which notice was properly given and a quorum was present, ANC 6E voted 5-0-1 to support the application. (Ex. 28.)
14. The parties to the case were the Applicant and ANC 6E.
15. The Commission convened a public hearing on October 25, 2016, which was concluded that same evening. At the hearing, the Applicant presented three witnesses in support of the application: Steven Cassell on behalf of the Applicant; Phil Esocoff of Gensler, architect for the Project; and Erwin Andres of Gorove/Slade Associates, transportation consultant for the Project. Based upon their professional experience and qualifications, the Commission qualified Mr. Esocoff as an expert in architecture and Mr. Andres as an expert in transportation planning and engineering.
16. At the public hearing, the Applicant submitted a copy of its PowerPoint presentation, which included photographs of the materials that were presented at the public hearing. (Ex. 31A.) As a preliminary matter, the Commission granted the Applicant's request to accept the CTR less than 30 days prior to the public hearing.
17. Jennifer Steingasser and Joel Lawson testified on behalf of OP at the public hearing. Evelyn Israel testified on behalf of DDOT at the public hearing.
18. The record was closed at the conclusion of the hearing except to receive additional submissions from the Applicant and responses thereto by OP, DDOT, and ANC 6E.
19. On October 31, 2016, the Applicant filed a post-hearing submission, which provided the information requested by the Commission at the public hearing. (Ex. 35-35B.) The post-hearing submission included the following materials: (i) updated architectural plan and elevation sheets; (ii) confirmation of Project development data; (iii) confirmation of the Project's proposed public benefits and amenities and TDM measures; (iv) response to an email in opposition to the Project, submitted during the October 25, 2016 public hearing; and (v) draft findings of fact and conclusions of law.
20. On November 9, 2016, OP submitted a supplemental report. (Ex. 36.) The report stated that the Applicant included a request for additional penthouse relief at the hearing, and that OP had not had an opportunity to evaluate the requested relief in its hearing report. OP stated that it believed the Applicant's justification for the relief was aesthetic, and that it therefore did not support the request for the relief.
21. At the public meeting of November 14, 2016, the Commission reviewed the additional materials submitted by the Applicant. The Commission stated that it did not believe the Applicant had sufficiently justified its request for penthouse setback relief. The Commission further stated that it agreed with the position stated in OP's supplemental report that the additional affordable housing provided in the Project at the 50% of AMI level above what would be required as a matter of right is 763 square feet, not 3,027 square feet as stated by the Applicant, and with the OP recommendation regarding the

language of the proposed affordable housing condition. At the meeting, the Applicant indicated that it consented to these changes. The Commission then took proposed action to approve the application. The proposed action was referred to the National Capital Planning Commission (“NCPC”) on November 15, 2016, pursuant to § 492 of the Home Rule Act.

22. On November 21, 2016, the Applicant submitted supplemental penthouse plans and sections that show a revised penthouse that does not require the previously requested setback relief, an updated affordable housing proffer, and its list of proffers and proposed conditions. (Ex. 38-38B.)
23. On December 16, 2016, the Applicant submitted its revised list of proffers and draft conditions that incorporated comments received from the Office of the Attorney General. (Ex. 39-39A.)
24. On December 22, 2016, the Applicant submitted a further revised list of proffers and draft conditions. The revised list incorporated a change suggested by ANC 6E. (Ex. 40-40A.)
25. The Executive Director of NCPC, by delegated action dated December 29, 2016, found that the Project was not inconsistent with the Comprehensive Plan for the National Capital or other federal interests. (Ex. 41.)
26. The Commission took final action to approve the Project on January 9, 2017.

#### **The PUD Site and Surrounding Area**

27. The PUD Site is located at 810 O Street, N.W. (Square 399, Lot 66) and has a land area of approximately 15,093 square feet. The PUD Site is rectangular in shape and is bounded by O Street, N.W. to the north, a 10-foot public alley to the east, private property to the south, and 9<sup>th</sup> Street, N.W. to the west. The PUD Site is located within the Shaw Historic District and is improved with the Scripture Cathedral Church, a 50-foot-tall brick building constructed in 1986. The Scripture Cathedral Church does not contribute to the Historic District since its construction post-dates the period of significance (1833-1932).
28. Square 399 is improved with residential row dwellings, apartment houses, a gas station, and surface parking. The O Street Market is located across O Street to the north of the PUD Site, and a vacant District-owned property that is proposed to be privately developed with a new mixed-use residential and retail building is located across the alley to the east of the PUD Site.
29. The PUD Site is presently zoned C-2-A. The Applicant proposes to rezone the PUD Site to the C-2-B Zone District. The requested map amendment is consistent with the Comprehensive Plan's Future Land Use Map designation of the PUD Site as mixed-use: Medium-Density Commercial and Medium-Density Residential. The requested map



amendment is also consistent with the Comprehensive Plan's Generalized Policy Map designation of the PUD Site as a Neighborhood Commercial Center.

### **Existing and Proposed Zoning**

30. The PUD Site is currently zoned C-2-A. The C-2-A Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. (11 DCMR § 720.2.) The C-2-A Zone Districts shall be located in low- and medium-density residential areas with access to main highways or rapid transit stops, and shall include office employment centers, shopping centers, and medium-bulk mixed-use centers. (11 DCMR § 720.3.) The C-2-A Zone District shall permit development to medium proportions, and shall accommodate a major portion of existing commercial strip developments. (11 DCMR §§ 720.4-720.5.) As a matter-of-right, property in the C-2-A Zone District can be developed with a maximum density of 2.5 FAR and a maximum building height of 50 feet. (11 DCMR §§ 770.1 and 771.2.)
31. The Applicant proposes to rezone the PUD Site to the C-2-B Zone District in connection with this application. The C-2-B Zone District is designed to serve commercial and residential functions similar to the C-2-A District, but with high-density residential and mixed uses. (11 DCMR § 720.6.) The C-2-B Zone District shall be compact and located on arterial streets, in uptown centers, and at rapid transit stops. (11 DCMR § 720.8.) In the C-2-B Zone District, building use may be entirely residential or a mixture of commercial and residential uses. (11 DCMR § 720.9.) The C-2-B Zone District permits a maximum height of 65 feet and 90 feet as a PUD (§§ 770.1 and 2405.1); a maximum density of 3.5 FAR and 6.0 FAR as a PUD (§§ 771.2 and 2405.2); a maximum lot occupancy of 80% (§ 772.1); a rear yard depth of 15 feet (§ 774.1); if provided, a side yard width of at least two inches per foot of height, with a minimum of six feet (§ 775.5); and a Green Area Ratio (“GAR”) of 0.3 (§ 3402.9). For off-street parking, one space is required for each three dwelling units (residential requirement); and one space is required for each additional 750 square feet of gross floor area in excess of 3,000 square feet (retail requirement) (§ 2101.1). For residential loading with more than 50 units, one berth at 55 feet, one platform at 200 square feet, and one service/delivery space at 20 feet are required. For retail loading with 5,000-20,000 square feet of gross floor area, one berth at 30 feet and one platform at 100 square feet are required.
32. Consistent with the C-2-B development parameters, the Applicant will develop the PUD Site with a mix of residential and retail uses. A tabulation of the PUD’s development data is included on Sheet A02 of the Architectural Plans and Elevations (“Plans”) dated October 4, 2016. (Ex. 24A.)

### **Description of the PUD Project**

33. The Applicant proposes to raze the existing building on the PUD Site to build a mixed-use building comprised of ground-floor retail use and approximately 66 residential units, including four penthouse units. The Project will have a maximum density of 6.0 FAR and

a maximum building height of 90 feet. The Project will include approximately 90,558 square feet of gross floor area, with approximately 83,658 square feet of gross floor area devoted to residential use (including residential amenity space) in the main building and approximately 6,900 square feet of gross floor area devoted to ground floor use. The Project also includes approximately 4,822 square feet of gross floor area devoted to penthouse habitable space and approximately 1,364 square feet of gross floor area devoted to penthouse communal recreation space. The Project will provide 56 zoning-compliant parking spaces, three tandem parking spaces, and 12 vault parking spaces located in a two-level below-grade parking garage. Shared loading facilities will be provided for the retail and residential uses. Vehicular and loading access will both be provided from the public alley at the rear of the PUD Site.

34. The Project's ground level is programmed with retail uses that will activate the surrounding streets and encourage the use of public transportation. The Project also includes significant public space improvements, including new lighting, trees, planting beds, bicycle racks, and sidewalk pavings. All proposed vaults for the building are located on private property and not in public space.
35. The Applicant will set aside a minimum of eight percent of the residential gross floor area to IZ units. Of that, approximately 4,610 square feet of gross floor area (four units) will be reserved for households earning up to 50% of the AMI and approximately 2,387 square feet of gross floor area (two units) will be reserved for households earning up to 80% of the AMI.
36. The Project is sensitive to the existing neighborhood context and responds in size, form, and in its use of materials. The building's design extends the rich masonry tradition of the Shaw Historic District as exemplified in the nearby landmark and contributing historic structures, such as the O Street Market, Catholic Church, and the Henrietta Apartment house and Bank. (Ex. 3A, Sheets A06-A08.) The base of the building along 9<sup>th</sup> Street features retail bays that are of a similar width and projection into public space as those of the historic shop fronts farther south along 9<sup>th</sup> Street and elsewhere throughout the Historic District. (Ex. 24A, Sheet A20.) The retail bays are intended to enhance the fabric of the surrounding urban environment and create an appropriate and inviting pedestrian scale and experience. Signage will be organized to reflect this rhythm and will be located in a manner that provides appropriate visibility to retail without diminishing the overall dignity and presence of the residential building above.
37. Above street level, the building's façade is articulated with projecting bays and balconies to provide the same level of sculptural plasticity that is found in the area. (Ex. 24A, Sheets A05-A08.) Brick is carefully coursed with matching mortar and V-Struck joints. This masonry technique allows the façade to have a similar quality to the tighter-jointed brickwork of historic row houses and larger historic buildings in the neighborhood like the Henrietta. (Ex. 24A, Sheets A19, A20.) Precast heads, sills, and ornamental cast stone trim include ornamental motifs that are unique to the Project in the same way that other buildings in the Historic District have done for more than a century. Window and balcony openings in the main façade are grouped into large and small groupings to create a lively

and varied rhythm while reducing the scale of the overall facade. The proportions of those openings reflect similar geometric ratios in the surrounding historic buildings. This scaling technique is a long established architectural strategy employed in the Shaw Historic District and elsewhere in Washington.

38. The top residential floor is set back to provide a subtle massing transition to the smaller structure farther south but not adjoining the Project. It also allows the bowed, bay projections to assume a vertical proportion similar to those of smaller individual apartment houses in the area. The setback also allows for an enriched and enlivened building skyline that includes a filigree, laser-cut metal pergola within the allowable height.
39. The north façade along O Street is similarly organized and architecturally developed as the 9<sup>th</sup> Street façade. This facade features the main residential entry and lobby. The entry door is set to the left of the residential lobby window. Both of these elements are set back from, and framed by, distinctive masonry elements at the base of the main façade tower projection. To the right of this tower element is the northern end of the 9<sup>th</sup> Street frontage. The north façade is crowned by an ornamental masonry tower that provides a distinguishing signature for the residential component of the building
40. The corner of the building has wrap-around balconies with an ornamental railing that provides a balance between transparency and opacity for residents to see out while maintaining an appropriate level of privacy. The geometry of the corner element is reflective of the chamfered corners of other commercial buildings in the neighborhood and just across 9<sup>th</sup> Street (Ex. 3A, Sheet A06.)
41. The penthouse is an integral part of the Project, with fenestration to support habitable uses along with required mechanical equipment. The penthouse is clad in terra cotta tiles similar in color to the other mansard roofs and pent-eaves in the neighborhood.
42. The building's south party wall has a developed façade since the future development of the adjoining parcel is undetermined. (Ex. 24A, Sheets A18, A21.) The eastern façades along the alley, are developed with bays that help direct views south, capture daylight, and provide visual privacy for the building's residents. The base of this façade is a garden that visually and acoustically screens the building's loading area and parking garage entry. The northeast wing of the building is offset 10 feet from the edge of the adjacent public alley to accommodate two-way vehicular circulation.
43. The Project will incorporate a number of sustainable and environmentally-friendly elements, such as new landscaping and street tree planting, energy and water efficient systems, construction waste management techniques, methods to reduce stormwater runoff, and bicycle parking. Based on these features, the Project will achieve LEED-Gold under the LEED-2009 for New Construction rating system, and the Applicant will certify the Project as LEED-Gold with the United States Green Building Council ("USGBC"). Moreover, the PUD Site is also located in a walkable, transit-oriented, and infill location,



such that many residents, visitors, retail patrons, and employees of the Project will not need to rely on a private vehicle to access the PUD Site.

### **Zoning Flexibility**

44. The Applicant requested the following areas of flexibility from the Zoning Regulations:
45. ***Flexibility from the Loading Requirements.*** The Applicant requested flexibility from the loading requirements of 11 DCMR § 2201.1, which require the following loading facilities: one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep (residential requirement); and one loading berth at 30 feet deep and one loading platform at 100 square feet (retail requirement). The Applicant proposed to provide one loading berth at 30 feet deep, one service/delivery space at 20 feet deep, and a total of 500 square feet devoted to loading platforms. Thus, the Applicant requests flexibility to not provide the one 55-foot loading berth, and to provide a shared loading platform.
46. The Commission finds that the requested loading flexibility is consistent with the Comprehensive Plan's recommendations to consolidate loading areas within new developments and provide shared loading spaces in mixed-use buildings. The Applicant will implement a loading management plan to ensure that conflicts between retail and residential use of the loading facilities are minimized. In addition, given the nature and size of the residential units, it is unlikely that building residents will use a tractor trailer-sized truck to move in and out of the building, and therefore the 55-foot berth is not necessary. The size and dimensions of the adjacent alley also prevent 55-foot trucks from being able to physically turn into the alley or into the building from the alley at all. Therefore, based on the above findings, as well as DDOT's assertion that the "amount of loading facilities is appropriate" (*see* DDOT Report, p. 2), the Commission supports the Applicant's request for loading flexibility in this case.
47. ***Flexibility from the Penthouse Setback Requirement.*** As shown on Sheet A19 of the Applicant's PowerPoint presentation, the Applicant requested flexibility from the penthouse setback requirement of 11 DCMR §§ 411.18 and 777.1 for a small portion of the penthouse facing O Street. (Ex. 31A.) The Commission concluded that the Applicant had not justified this relief, and the Applicant withdrew its request for this relief.

### **Development Flexibility**

48. The Applicant also 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%;
  - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms,

elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure;

- c. To vary the sustainable design features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the LEED-Gold designation;
- d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, including window frames, doorways, railings, and trim; and other changes to comply with applicable District of Columbia laws and regulations that are necessary to obtain a final building permit;
- e. To be able to select among a range of grill motifs for the ornamental metal railings and the brick balcony dividers;
- f. In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area; and
- g. To vary the features, means and methods of achieving (i) the code-required GAR of 0.3; and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.

### **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 thus further the goals of urban design while enhancing the streetscape. The Project includes significant new public space improvements, including new street trees, groundcover, and ornamental plantings; raised metal planters; a low wall for seating with decorative coping and LED lighting on O Street; lighting; bicycle racks; permeable paving and granite curbs; decorative stone unit pavers; and ADA-compliant curb ramps with detectable warning pavers. All proposed vaults for the building are located on private property and not in public space. Moreover, the Project's ground level is programmed with retail uses that will activate the surrounding streets. With respect to site planning and efficient and economical land utilization, the Applicant's proposal to replace the existing low-density church building with a new mixed-use, mixed-income apartment house constitutes a significant urban design benefit.

50. Housing and Affordable Housing (11 DCMR § 2403.9(f)). The Project will create new housing and affordable housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The Applicant will dedicate a minimum of eight percent of the building's residential gross floor area as IZ units reserved for households earning up to 80% of the AMI. The Applicant will also dedicate a minimum of eight percent of the residential gross floor area located in the penthouse's habitable space to households earning up to 50% of the AMI. The required square footage generated by the penthouse habitable space to be devoted to IZ units at 50% of the AMI is approximately 386 square feet of gross floor area. The Applicant proposes to dedicate approximately 4,610 square feet of gross floor area to IZ units at 50% of the AMI. Therefore, the Applicant is exceeding the required square footage for IZ units at 50% of the AMI by approximately 2,346 square feet. The IZ units generated by the penthouse habitable space will be located in the main portion of the building. The proposed IZ proffer is set forth in the chart below:

	GFA Required	Units	Income Type	Affordable Control Period	Affordable Unit Type	Required Set-aside percentage	Required AMI
<b>Total Residential GFA within Main Building</b>	82,403 sf GFA (100% of building)	62	Market rate + IZ	NA	NA	NA	NA
<b>Market Rate within Main Building</b>	75,811 sf GFA (92% of building)	56	Market rate	NA	NA	NA	NA
<b>IZ within Main Building</b>	<u>6,592</u> sf GFA from main bldg (8% of main building)	5	80% AMI	For the life of the Project	For-sale	8% of residential GFA	80% AMI
	<u>PLUS</u> <u>386</u> sf GFA from penthouse (8% of habitable space)	1	50% AMI				
	= <b>TOTAL IZ REQ'D:</b> 6,978 sf GFA in main bldg	= 6					
	<b>TOTAL IZ PROVIDED:</b>  80% AMI: 2,387 sf GFA <u>PLUS</u> 50% AMI: 4,610 sf GFA <sup>3</sup>  Total: <u>6,997</u> sf GFA	 2  4  = 6	 80% AMI  50% AMI	 For the life of the Project	 For-sale		

<sup>3</sup> Providing 2,346 square feet at 50% AMI more than is required by the Zoning Regulations.

	<b>GFA Required</b>	<b>Units</b>	<b>Income Type</b>	<b>Affordable Control Period</b>	<b>Affordable Unit Type</b>	<b>Required Set-aside percentage</b>	<b>Required AMI</b>
<b>Total Penthouse Habitable GFA</b>	4,822 sf habitable GFA (100% of penthouse habitable space will be market rate)	4	Market rate	NA	NA	8% of penthouse habitable space	50% AMI
<b>IZ within Penthouse</b>	0 sf. Generates 386 sf of habitable GFA to be located in main building (8% of penthouse habitable space)	0  Generates 1 required IZ unit located in Main Building	50% AMI	For the life of the Project	For-sale	0	NA
<b>Total</b>	87,225 sf GFA  <i>includes penthouse habitable space</i>	66	Market rate + IZ	All IZ units: for the life of the Project	For-sale	8% residential GFA in main building and penthouse	80% (main building) 50% (penthouse)

51. Environmental Benefits (11 DCMR § 2403.9(h)). The Applicant will ensure environmental sustainability through the implementation of a variety of sustainable design features, including strategies to further enhance the already sustainable nature of the PUD Site's mixed-use, transit-rich location, and to promote a healthy lifestyle that will holistically benefit Project residents while minimizing impact on the environment. The Project provides a host of environmental benefits consistent with recommendations of 11 DCMR§ 2403.9(h), which include street tree planting, landscaping, energy and water efficient systems, construction waste management techniques, methods to reduce stormwater runoff, and ample bicycle parking. Moreover, the Project will be designed to achieve LEED-Gold under the LEED-2009 for New Construction rating system, and the Applicant will certify the Project as LEED-Gold with the United States Green Building Council ("USGBC").
52. Employment Benefits (11 DCMR § 403.9(j)). The Applicant will submit to the Department of Consumer and Regulatory Affairs ("DCRA") a First Source Employment Agreement executed by the Applicant, consistent with the First Source Employment Agreement Act of 1984.
53. Transportation Benefits (11 DCMR §2403.9(c)). The Project includes a number of elements designed to promote effective and safe vehicular and pedestrian movement, transportation management measures, and connections to public transportation services. The Project provides 56 zoning-compliant parking spaces (plus 12 vault spaces and three tandem spaces), all located in the below-grade parking garage, which is an adequate amount given the PUD Site's highly walkable location. To promote pedestrian travel, the Applicant will improve the streetscape surrounding the PUD Site and will incorporate new pedestrian-oriented lighting and street furnishings. To promote bicycle travel, the Applicant will provide secure, indoor bicycle parking and will work with DDOT to install

bicycle racks in the public space adjacent to the PUD Site. The Applicant will also provide funding to DDOT for the installation and first year's operation expenses of a new Capital Bikeshare station located within the boundaries of ANC 6E and in a mutually acceptable location to the Applicant and DDOT.

54. The Applicant will implement the following transportation demand management ("TDM") strategies to reduce travel demand:

- a. Provide bicycle parking facilities for at least 23 long-term bicycles (secure, interior) and at least six short-term bicycles (exterior);
- b. Identify TDM leaders for planning, construction, and operations of the PUD. The TDM leaders will work with residents and employees of the building to distribute materials and market various transportation alternatives and options;
- c. Provide TDM materials to new residents in the Residential Welcome Package;
- d. Provide a bicycle repair station in the bicycle storage room;
- e. Provide a bicycle cleaning facility in the bicycle storage room;
- f. Provide a cargo bicycle for use by residents of the building for purposes of running errands;
- g. Install a TransitScreen in the residential lobby area;
- h. If any units within the PUD are rental units, unbundle the cost of the associated parking space from the cost of the residential lease; and
- i. For the first year following Certificate of Occupancy for the building, offer each unit's incoming residents a one-year membership to Capital Bikeshare.

55. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403.9(i)). The Applicant will make the following contributions:

- a. Contribute \$20,000 to Bread for the City to support its feeding program and provide monthly grocery bags for seniors and low-income families. Bread for the City provides vulnerable District residents with comprehensive services, including food, clothing, medical care, and legal and social services, in an atmosphere of dignity and respect. Bread for the City promotes the mutual collaboration of clients, volunteers, donors, staff, and other community partners to alleviate the suffering caused by poverty and to rectify the conditions that perpetuate it;
- b. Contribute \$15,000 to New Endeavors by Women to support its programs providing women and families with supportive services and transitional housing.



New Endeavors by Women is a program located in the same ANC Single Member District (6E03) as the PUD Site. The program is intended to transform lives by providing housing, fostering the development of life skills, and promoting education and employment to end the cycle of homelessness.

- c. Contribute \$15,000 to Emmaus Services for the Aging for 20 iPads to support the workforce development program for seniors age 55 and over. Emmaus Services is a social justice, not-for-profit organization that provides educational, nutritional, advocacy services, and social programs to older adults (55+) in Washington, DC. Emmaus' mission is to help seniors remain active, respected, independent and vital members of their community;
- d. Contribute \$15,000 to the Family Life Center Foundation ("FLCF") to support its Champion for Children anti-human trafficking awareness program. FLCF is a not-for-profit public charity that benefits the under-served by strengthening and nurturing them regardless of age, race, socioeconomic status, culture, or background. FLCF has a variety of diverse community outreach programs for persons living under the shadows of violence, substance abuse, and other pathological conditions;
- e. Contribute \$15,000 to DC Artspace for materials, framing, staffing, and other costs for its after-school youth arts program, in association with the Touchstone Foundation. DC ArtSpace was created as an artistic extension of the New Community Church, serving the Shaw and surrounding neighborhoods with art programs, workshops, and seminars. ArtSpace provides an affordable avenue for artists of all ages and walks of life to express themselves, share skills, create economic opportunities, and find common ground through art while adding significant value to the renewal of the Shaw neighborhood;
- f. Contribute \$15,000 to Banneker City Little League ("BCLL") for equipment for the T-ball league, including but not limited to bats, baseballs, helmets, gloves, pitching machines, pop-up nets, tees, batting cages. BCLL was founded to help children learn healthy competition, sportsmanship, work ethic, teamwork, and conditioning fundamentals and provide a progressive continuum of that education in a healthy, safe and encouraging culture. The T-ball league is for children ages four through six;
- g. Contribute \$15,000 to Friends of Kennedy Playground, Inc. for uniforms for its youth basketball and football teams; and
- h. Contribute \$15,000 to Shaw Main Streets for training and employing ex-offenders to maintain public space along 7<sup>th</sup> and 9<sup>th</sup> Streets, N.W. as part of the Shaw Clean + Safe Team program. The Clean + Safe Team collects trash, abates graffiti, plants and waters tree boxes, and serves as 'eyes and ears' on the street seven days per week. Ex-offenders in the program receive comprehensive training and are paid a living wage.

56. In addition, the Applicant will expend up to \$500,394 to install the streetscape improvements on 9<sup>th</sup> and O Streets, N.W., as shown on Sheet L01 of the Plans and subject to DDOT approval. The \$500,943 figure exceeds DDOT's minimum requirements by approximately \$255,000 and includes undergrounding of some utilities.
57. The Applicant will install two 240-volt electric car charging stations in the below-grade parking garage.

### **Comprehensive Plan**

58. 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 through the provision of a high-quality residential development with ground-floor retail on the PUD Site, without generating any adverse impacts. The Project will create new neighborhood-serving retail opportunities to meet the demand for basic goods and services, and will promote the vitality, diversity, and economic development of the surrounding area.
59. The District of Columbia Comprehensive Plan Future Land Use Map designates the PUD as mixed-use: Medium-Density Commercial and Medium-Density Residential.
60. 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.)
61. 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.)
62. The Applicant's proposal to rezone the PUD Site from the C-2-A District to the C-2-B District in order to construct the mixed-use Project with significant new housing, affordable housing, and neighborhood-serving retail is consistent with the Comprehensive Plan's designation of the PUD Site, particularly given the fact that the C-2-B Zone District is specifically identified as a corresponding zone district in the Medium- Density Commercial category.

63. The District of Columbia Comprehensive Plan Generalized Policy Map designates the PUD Site in the Neighborhood Commercial Center category. Neighborhood Commercial Centers are intended to meet the day-to-day needs of residents and workers in the adjacent neighborhoods. Their service area is usually less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and child care. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. (10A DCMR § 223.15.)
64. The Commission finds that the proposed rezoning and PUD redevelopment of the PUD Site is consistent with the policies indicated in the Neighborhood Commercial Center category, since the Project will provide community-serving retail that will meet the day-to-day needs of residents and workers in the proposed building.
65. The Commission finds that the PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as discussed in the findings below.
66. ***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. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors are an important part of reinvigorating and enhancing neighborhoods. The Commission finds that the Project is fully consistent with each of these goals. Redeveloping the PUD Site as a vibrant mixed-use building with residential and retail uses will further the revitalization of the surrounding neighborhood. The proposed retail spaces will create new jobs for District residents, further increase the city's tax base, and help reinvigorate the existing neighborhood fabric.
67. ***Creating Successful Neighborhoods.*** One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development from development of the Comprehensive Plan to implementation of the plan's elements. The Project furthers this goal, since as part of the PUD process the Applicant worked closely with ANC 6E to ensure that the Project has a positive impact on the immediate neighborhood and to develop public benefits and amenities that are specifically needed and requested by the community.
68. ***Building Green and Healthy Communities.*** A major objective for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. As discussed above, the Project will include a substantial number of sustainable design features and will achieve LEED-Gold certification.

69. The Commission also finds that the PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements, as set forth in the Applicant's Statement in Support and in the OP setdown and hearing reports. (Ex. 3, 13, 26.)

### Office of Planning Reports

70. On June 3, 2016, OP submitted a report recommending setdown of the application. (Ex. 13.) The OP report stated that the Project is not inconsistent with the Comprehensive Plan Future Land Use and Policy Maps and written elements, and that the "requested C-2-B zone, eight stories and 6.0 FAR are well within even the by-right parameters of the medium density commercial category noted in § 225 of the Comprehensive Plan's Citywide Element." (Ex. 13, p. 3.) The OP report also noted that the Project would be "not inconsistent with written elements of the Comprehensive Plan," and that "the Guiding Principles, and the Land Use, Transportation, Housing, Environmental, Urban Design and the Near Northwest Area Elements include policies and recommended actions with which the proposal is congruent." (*Id.* at pp. 3-4.)
71. On October 14, 2016, OP submitted a second report (Ex. 26), which stated that OP could not yet make a recommendation on the application due to the following outstanding concerns: (i) whether the Project's benefits and amenities are commensurate with the flexibility requested; (ii) whether the Applicant properly identified which transportation and public space-related items are required TDM or mitigation measures and which are proffered public benefits; and (iii) whether the Applicant provided consistent numbers regarding square footages, units, and parking spaces for the Project. (Ex. 26, p. 11.) The OP report restated that the Project is "not inconsistent with the Comprehensive Plan's Future Land Use Map designation for medium-density residential and medium-density commercial uses; with the Policy Map; and with written elements." (Ex. 26, p. 3.) The OP report also noted that the Applicant had addressed a number of issues since the setdown meeting, including identifying "additional benefits, amenities, and proffers and add[ing] detail to better substantiate what had previously been listed." (Ex. 26, p. 7.)
72. On October 20, 2016, the Applicant submitted materials responding to the OP hearing report and also provided further testimony regarding the proffered public benefits at the public hearing. (Ex. 29-29A.) The Applicant reiterated that the Comprehensive Plan designates the PUD Site mixed-use, medium-density commercial and medium-density residential, and that the existing C-2-A Zone District on the PUD Site is a low- to moderate-density commercial designation, which is a lower designation than medium-density designation. Thus, the Commission finds that the proposed Zoning Map amendment from the C-2-A Zone District to the C-2-B Zone District (which is the lowest zone district within the medium density commercial designation), will bring the PUD Site's zoning into alignment with the Comprehensive Plan.
73. Moreover, the Commission finds that when evaluating a PUD and Zoning Map amendment application, the Commission compares the zone districts that are consistent with the Comprehensive Plan designation for what the subject site should be, to the zone districts that are consistent with the Comprehensive Plan designation for what the Site is

proposed to be. (See D.C. Code §§ 6-641.01 et seq.) The range of zone districts that are consistent with the medium density designation ranges from C-2-B to C-3-B. (See 10A DCMR § 225.10.) Thus, the Commission finds that in this case the PUD Site should be zoned C-2-B based upon the PUD Site's medium-density designation, and the Applicant's proposal to develop the PUD Site in accordance with the C-2-B PUD standards is directly consistent with the Comprehensive Plan designation for the PUD Site.

74. Furthermore, pursuant to 11 DCMR § 2403.8, in deciding a PUD application, the Commission is required to "judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case." In this case, the Applicant has provided substantial project amenities and public benefits, which are commensurate to the degree of development incentives requested. At the public hearing, the Applicant also agreed to additional public benefits, including: (i) certifying the project as LEED-Gold with the USGBC (approximately \$100,000 proffer); (ii) removing the previously proposed \$80,000 cap on the contribution for the installation and one year's maintenance of a new Capital Bikeshare station; and (iii) increasing the affordable housing proffer. In response to OP's hearing report, the Applicant also asserted that given that no parking relief is being requested in this case, all of the proposed TDM measures should be credited as public benefits for the project.
75. Therefore, based on the analysis above and the additional public benefits proffered by the Applicant, the Commission concludes that the public benefits and project amenities are adequately balanced with the degree of development incentives requested, as required by 11 DCMR § 2403.8.
76. On November 9, 2016, OP submitted a supplemental report. (Ex. 36). The report stated that the Applicant has included a request for additional penthouse relief at the hearing, and that OP had not had an opportunity to evaluate the requested relief in its hearing report. OP stated that it believed the Applicant's justification for the relief was aesthetic, and that it therefore did not support the request for the relief. The report further stated noted two issues with the Applicant's affordable housing calculations. The Applicant subsequently modified its affordable housing proffer.

## **DDOT Report**

77. On October 14, 2016, DDOT submitted a report indicating that it had no objection to the application with the following conditions: (i) the Applicant fund the installation and first year's operation expenses of a new Capital Bikeshare station located within the boundaries of ANC 6E; (ii) the Applicant provide a TransitScreen in the residential lobby; (iii) the Applicant unbundle parking from leases of all units and charge market rate, defined as the average cost for parking within a quarter mile of the site on a weekday; and (iv) the Applicant provide six short-term bicycle parking spaces (three racks). (Ex. 27.) At the public hearing, the Applicant agreed to all of DDOT's conditions,



but noted that the units in the Project would be for-sale condominiums, and thus the condition related to unbundling the cost of parking from leases was inapplicable.

## **ANC Report**

78. By letter dated September 22, 2016, ANC 6E noted that at its duly noticed, regularly scheduled meeting of June 7, 2016, at which a quorum of Commissioners and the public were present, ANC 6E voted 5-0-1 to support the application. (Ex. 28.) The ANC letter listed the public benefits and amenities proposed for the Project, and asserted that “no objections to supporting the application were raised by the public prior to or at the Commission’s meeting.” (Ex. 28, p. 2.)

## **Post-Hearing Submissions**

79. On October 31, 2016, the Applicant submitted a post-hearing submission, which included the following materials and information requested by the Commission at the public hearing: (i) updated architectural drawing sheets; (ii) confirmation of Project numbers; (iii) confirmation of the Project’s proposed benefits and amenities and TDM measures; (iv) a response to an email in opposition to the Project, submitted during the October 25, 2016 public hearing; and (v) draft findings of fact and conclusions of law. (Ex. 35-35B.)
80. On November 21, 2016, the Applicant submitted supplemental penthouse plans and sections that show a revised penthouse that does not required the previously requested setback relief, an updated affordable housing proffer, and its list of proffers and proposed conditions. (Ex. 38-38B.)
81. On December 16, 2016, the Applicant submitted its revised list of proffers and draft conditions that incorporated comments received from the Office of the Attorney General. (Ex. 39-39A.)
82. On December 22, 2016, the Applicant submitted a further revised list of proffers and draft conditions. The revised list incorporated a change suggested by ANC 6E. (Ex. 40-40A.)

## **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, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mixed uses for the Project are appropriate for the PUD Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.
5. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
6. The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the Project's benefits and amenities are reasonable tradeoffs for the requested development flexibility.
8. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and testimony at the public hearing and finds its recommendation to grant the applications persuasive.
10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the ANC 6E'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 applications for consolidated review and approval of a planned unit development and related Zoning Map amendment from the C-2-A Zone District to the C-2-B Zone District for property located at 810 O Street, N.W. (Square 399, Lot 66). The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

### **A. Project Development**

1. The Project shall be developed in accordance with the Architectural Plans and Elevations dated October 4, 2016 (Ex. 24A) as modified by the supplemental architectural drawings submitted on October 31, 2016 (Ex. 35A), and as further modified by the additional supplemental architectural drawings submitted on November 21, 2016 (Ex. 38A) (together, the “Plans”), and as modified by the guidelines, conditions, and standards of this Order.
2. In accordance with the Plans, the Project shall be a mixed-use building with approximately 90,558 square feet of gross floor area (6.0 FAR) and a maximum building height of 90 feet. Approximately 83,658 square feet of gross floor area shall be devoted to residential use in the main building (62 units), plus 4,822 square feet of gross floor area devoted to residential use in the penthouse (four units), for a total of 66 residential units, plus or minus 10%. In addition, approximately 6,900 square feet of gross floor area shall be devoted to ground-floor retail use. The Project shall provide a minimum of 56 zoning-compliant parking spaces.
3. The Applicant is granted flexibility from the loading requirements of 11 DCMR § 2201.1, consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.
4. The Applicant shall also have 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%;
  - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure;

- c. To vary the sustainable design features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the LEED-Gold designation;
- d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, including window frames, doorways, railings, and trim; and other changes to comply with applicable District of Columbia laws and regulations that are necessary to obtain a final building permit;
- e. To be able to select among a range of grill motifs for the ornamental metal railings and the brick balcony dividers;
- f. In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area; and
- g. To vary the features, means and methods of achieving (i) the code-required GAR of 0.3; and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.

## **B. Public Benefits**

1. **Prior to issuance of a Certificate of Occupancy and for the life of the Project,** the Applicant shall demonstrate to the Zoning Administrator the following:
  - a. **For the life of the Project,** the Applicant shall:
    - (i) Provide a total of approximately 82,403 square feet (“sq. ft.”) of residential Gross Floor Area (“GFA”) of housing;
    - (ii) Set aside no less than eight percent of the residential GFA, equaling not less than 6,997 sq. ft. as inclusionary units pursuant to 11-C DCMR Chapter 10;
    - (iii) Set aside no less than four units (66% of the inclusionary units) comprising at least 4,610 sq. ft. of GFA as inclusionary units for households earning equal to or less than 50% of the MFI (“50% MFI Units”); and

(iv) Set aside no less than two units (33% of the inclusionary units) comprising at least 2,387 sq. ft. of GFA as inclusionary units for households earning equal to or less than 80% of the MFI (“80% MFI Units”);

b. **For the life of the Project**, the 50% MFI Units shall include a one-bedroom unit with 1,101 sq. ft. of GFA, a one-bedroom unit with 1,156 sq. ft. of GFA, and a three-bedroom with 1,156 sq. ft. of GFA; and the 80% MFI Units shall include a one-bedroom unit with 1,190 sq. ft. of GFA;

c. The distribution of the affordable housing units shall be in accordance with Sheet A1 of the Plans submitted on November 21, 2016, marked as Exhibit 38A of the record, and in accordance with the following chart; and

	GFA Required	Units	Income Type	Affordable Control Period	Affordable Unit Type	Required Set-aside percentage	Required AMI
<b>Total Residential GFA within Main Building</b>	82,403 sf GFA (100% of building)	62	Market rate + IZ	NA	NA	NA	NA
<b>Market Rate within Main Building</b>	75,811 sf GFA (92% of building)	56	Market rate	NA	NA	NA	NA
<b>IZ within Main Building</b>	6,592_sf GFA from main bldg (8% of main building)	5	80% AMI	For the life of the Project	For-sale	8% of residential GFA	80% AMI
	<u>PLUS</u> 386 sf GFA from penthouse (8% of habitable space)	1	50% AMI				
	= <b>TOTAL IZ REQ'D:</b> 6,978 sf GFA in main bldg	= 6					
	<b>TOTAL IZ PROVIDED:</b> 80% AMI: 2,387 sf GFA <u>PLUS</u> 50% AMI: 4,610 sf GFA Total: 6,997 sf GFA	2  4 = 6	80% AMI  50% AMI	For the life of the Project	For-sale		
<b>Total Penthouse Habitable GFA</b>	4,822 sf habitable GFA (100% of penthouse habitable space will be market rate)	4	Market rate	NA	NA	8% of penthouse habitable space	50% AMI



	GFA Required	Units	Income Type	Affordable Control Period	Affordable Unit Type	Required Set-aside percentage	Required AMI
<b>IZ within Penthouse</b>	0 sf. Generates 386 sf of habitable GFA to be located in main building (314 sf net habitable) (8% of penthouse habitable space)	0  Generates 1 required IZ unit located in Main Building	50% AMI	For the life of the Project	For-sale	0	NA
<b>Total</b>	87,225 sf GFA (71,106 net) <i>includes penthouse habitable space</i>	66	Market rate + IZ	All IZ units: for the life of the Project	For-sale	8% residential GFA in main building and penthouse	80% (main building) 50% (penthouse)

- d. The Inclusionary Zoning Covenant required by D.C. Official Code §§6-1041.05(A)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with all the terms of this condition.
2. **Prior to issuance of a Certificate of Occupancy**, the Applicant shall demonstrate to the Zoning Administrator that it has:
    - a. Incorporated street tree planting, landscaping, energy and water efficient systems, construction waste management techniques, stormwater management features, and bicycle parking, consistent with Sheets L01-L04, C0.01-C7.02, and G.01 of the Plans (Ex. 24A); and
    - b. Registered the Project with the USGBC to commence the LEED certification process under the USGBC's LEED-2009 for New Construction rating system. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall also furnish a copy of its LEED certification application submitted to the USGBC to the Zoning Administrator. The application shall indicate that the building has been designed to include at least the minimum number of points necessary to achieve LEED-Gold certification under the USGBC's LEED for New Construction v2009 standards.
  3. **Prior to issuance of a Certificate of Occupancy**, the Applicant shall demonstrate to the Zoning Administrator that it has:
    - a. Provided funding to DDOT for the installation and first year's operation expenses of a new Capital Bikeshare station, to be located within the boundaries of ANC 6E and in a mutually acceptable location to the Applicant and DDOT. The fee for the installation and first year's operation costs shall be determined at the time of issuance of a Certificate of Occupancy for the Project;

- b. Installed a minimum of 56 zoning-complaint parking spaces and three tandem spaces in the below-grade parking garage; and
  - c. Applied to DDOT for approval of the installation of 12 vault spaces adjacent to the PUD Site.
- 4. **Prior to issuance of a Building Permit**, the Applicant shall demonstrate to the Zoning Administrator that it has executed and submitted a First Source Employment Agreement to DOES, consistent with the First Source Employment Agreement Act of 1984.
- 5. **Prior to issuance of a Certificate of Occupancy**, the Applicant shall demonstrate to the Zoning Administrator that it has done the following:
  - a. Contributed \$20,000 to Bread for the City to support its feeding program and provide monthly grocery bags for seniors and low-income families, and provide proof to the Zoning Administrator that the feeding program services are being provided and the grocery bags have been purchased;
  - b. Contributed \$15,000 to New Endeavors by Women to support its programs providing women and families with supportive services and transitional housing at 611 N Street, N.W.;
  - c. Contributed \$15,000 to Emmaus Services for the Aging for 20 iPads to support the workforce development program for seniors age 55 and over, and provide proof to the Zoning Administrator that the iPads have been purchased;
  - d. Contributed \$15,000 to FLCF to support its Champion for Children anti-human trafficking awareness program, and provide proof to the Zoning Administrator that the contribution is being used to further development and activities within the Champion for Children program;
  - e. Contributed \$15,000 to DC Artspace for materials, framing, staffing, and other costs for its after-school youth arts program, and provide proof to the Zoning Administrator that materials have been purchased and that the contribution is being provided to staff and generally improve the youth arts program;
  - f. Contributed \$15,000 to BCLL for equipment for the T-ball league, including but not limited to bats, baseballs, helmets, gloves, pitching machines, pop-up nets, tees, batting cages, and provide proof to the Zoning Administrator that the equipment has been purchased;

- g. Contributed \$15,000 to Friends of Kennedy Playground, Inc. for uniforms for its youth basketball and football teams, and provide proof to the Zoning Administrator that the uniforms have been purchased;
  - h. Contributed \$15,000 to Shaw Main Streets for training and employing ex-offenders to maintain public space along 7<sup>th</sup> and 9<sup>th</sup> Streets, N.W. as part of the Shaw Clean + Safe Team program, and provide proof to the Zoning Administrator that the contribution is being provided to train and employ ex-offenders; and
  - i. Expended up to \$500,394 to install the streetscape improvements on 9<sup>th</sup> and O Streets, N.W., as shown on Sheet L01 of the Plans, subject to DDOT approval, and provide proof to the Zoning Administrator that the improvements have been installed.
6. **Prior to issuance of a Certificate of Occupancy**, the Applicant shall demonstrate to the Zoning Administrator that it has installed two 240-volt electric car charging stations in the below-grade parking garage.
7. **Prior to issuance of a Certificate of Occupancy**, the Applicant shall demonstrate to the Zoning Administrator that it has undertaken the following actions with respect to implementation of the TDM plan:
- a. Installed bicycle parking facilities for at least 23 long-term bicycles (secure, interior) and at least six short-term bicycles (exterior), as shown on Sheets A14 and L01 of the Plans;
  - b. Identified TDM leaders for planning, construction, and operations of the PUD. The TDM leaders shall work with residents and employees of the building to distribute materials and market various transportation alternatives and options;
  - c. Prepared TDM materials to distribute to new residents in the Residential Welcome Package;
  - d. Installed a bicycle repair station in the bicycle storage room;
  - e. Installed a bicycle cleaning facility in the bicycle storage room;
  - f. Purchased a cargo bicycle for use by residents of the building;
  - g. Installed a TransitScreen in the residential lobby area; and
  - h. If any units within the PUD are rental units, unbundle the cost of the associated parking space from the cost of the residential lease.

8. **For the first year of operation of the Project**, the Applicant shall offer each unit's incoming residents a one-year membership to Capital Bikeshare.
9. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall develop the public space improvements on O and 9<sup>th</sup> Streets in accordance with Sheet L01 of the Plans, and shall include new street trees, groundcover, and ornamental plantings; raised metal planters; a low wall for seating with decorative coping and LED lighting on O Street; lighting; bicycle racks; permeable paving and granite curbs; decorative stone unit pavers; and ADA-compliant curb ramps with detectable warning pavers.

**C. Miscellaneous**

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 16-07. 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 November 14, 2016, upon the motion of Vice Chairman Miller, as seconded by Chairman Hood, the Zoning Commission took **PROPOSED 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).

On January 9, 2017, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter Shapiro, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on March 10, 2017.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

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

  
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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
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SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING