

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 17-14**  
**Z.C. Case No. 17-14**  
**UM 500 Penn Street NE, LLC & UDR, Inc.**  
**(Consolidated Planned Unit Development and Related Zoning Map Amendment**  
**@ Square 3594, Lot 5)**  
**September 17, 2018**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on June 14, 2018 to consider an application of UM 500 Penn Street N.E., LLC and UDR, Inc. (together, the “Applicant”) for the review and approval of a consolidated planned unit development (“PUD”) and a related Zoning Map amendment (“Application”). The Commission considered the Application pursuant to Chapters 3 and 5 of the District of Columbia Zoning Regulations, Title 11-X of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11-Z DCMR Chapter 4. The Commission approves the Application, subject to the conditions below.

**FINDINGS OF FACT**

**Application, Parties, and Hearing**

1. The property that is the subject of the Application is located in Square 3594, Lot 5, with an address of 500 Penn Street, N.E. (“Property”).
2. On June 22, 2017, the Applicant filed the Application. With the Application, the Applicant sought approval to develop a mixed-use 12-story building. (Exhibits [“Ex.”] 1, 1A-1E.)
3. On February 16, 2018, the Office of Planning (“OP”) filed a report recommending that the Application be set down for a public hearing. (Ex. 12.)
4. During its public meeting on February 26, 2018, the Commission voted to set down the Application for a public hearing. At the public meeting, the Commission requested that the Applicant provide the following: more refined and detailed drawings; additional perspective drawings; detailed signage plan; additional drawings of the penthouse and roof; information about the penthouse adjacent to the court on the east side of the building; a rendering of the alley; site plan showing access to parks and open space; include solar panels; information about the LEED-Gold version; information about coordination with DOEE for stormwater requirements, incorporating energy efficiency into building, and recycling initiatives; analysis of traffic and loading in the alley; elements of the transportation demand management plan that exceed mitigations; detailed

streetscape plans; provision of more permanent of PDR uses; information about the continued use of the Property for PDR activities; more information about the Maurice Office; more information about future PUDs and PDR proffers; definition of PDR to include food hubs and incubators; more information about how the project will further the Ward 5 Works Study; more information about the public benefits and amenities; more information about potential rooftop community gardens; more information about the lot; more information about the design's compliance with deaf design principles; and clarification if residential units are rental or for sale. (2/26/18 Transcript ["Tr."] at pp. 29-35.)

5. On April 6, 2018, the Applicant filed its pre-hearing submission responding to the issues raised by the Commission at its public meeting and requested the scheduling of a public hearing. The Applicant updated its Application with a supplemental submission filed on May 25, 2018. (Ex. 14, 14A, 14B, 27, 27A, 27B, 27C.)
6. Notice of the public hearing was mailed to Advisory Neighborhood Commission ("ANC") 5D and to owners of property within 200 feet of the Property on April 18, 2018 and was published in the *D.C. Register* on April 27, 2018. (Ex. 19.)
7. The Commission held a public hearing on the Application on June 14, 2018. On behalf of the Applicant, the Commission accepted Eric Colbert as an expert in architecture and Jami Milanovich as an expert in traffic engineering. The Applicant provided testimony from these experts as well as from others.
8. In addition to the Applicant, ANC 5D was automatically a party in this proceeding. There were no other parties in the proceeding.
9. At the hearing, the Commission heard testimony from OP and the District Department of Transportation ("DDOT") regarding the Application.
10. No persons or parties testified either in support of or opposition to the Application at the public hearing.
11. At the close of the public hearing, the Commission requested that the Applicant provide more information about the following: architectural treatment of existing building façade as a continuation of new building; inclusionary zoning ("IZ") unit commitment derived from the penthouse; proposed IZ unit distribution; up-lighting on the penthouse; reconfiguring loading and parking access on ground floor; additional detail regarding the existing Maurice Electric sign; constructing a sidewalk adjacent to a nearby site (response to DDOT); increase the time commitment for PDR/Maker uses (response to OP); master utility plan for DC Water (response to OP); specify how funds to the Department of Parks and Recreation ("DPR") will be used; and allowing access to the alley through project site for the adjacent site to the east (response to DDOT).
12. On June 21, 2018, the Applicant filed its post-hearing submission addressing the Commission's requests described above. (Ex. 35, 35A-35E.)

13. On June 28, 2018, OP and DDOT filed responses to the Applicant's post-hearing submission. (Ex. 36, 37, 37A.)
14. At its public meeting on July 9, 2018, the Commission took proposed action to approve the Application.
15. On July 31, 2018, the Applicant submitted its list of proffers and draft conditions pursuant to Subtitle X § 308.8, and on August 9, 2018, the Applicant submitted its final list of proffers and draft conditions pursuant to Subtitle X § 308.12. (Ex. 41, 42.)
16. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. NCPC's Executive Director, by delegated action dated September 17, 2018, found that the proposed PUD would not be not inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests.
17. The Commission took final action to approve the Application on September 17, 2018.

### **Overview of the Property**

18. The Property is located at the northern end of the Union Market District in Ward 5. The Property is currently zoned PDR-1.
19. The Property contains a total of approximately 37,450 square feet of land area. The Property is irregular in shape. (Ex. 1, 1E.)
20. The Property is primarily bounded by an eight-story hotel to the north; Penn Street, N.E. to the south; the remaining portion of a two-story former showroom building (now used as offices, known as Maurice Office) to the east; a 20-foot-wide public alley to the west; and the intersection of Penn Street, N.E. and 4<sup>th</sup> Street, N.E. to the southwest. Another 11-story hotel with arts space is planned for the parcel immediately across the alley from the Property. A small commercial building located at the corner of 4<sup>th</sup> Street and New York Avenue is also located across the alley from the Property. New York Avenue, N.E., which is a gateway into the Union Market District, is located approximately 210 feet to the northwest of the Property. (Ex. 1, 1E.)
21. The mix of uses and buildings surrounding the Property is eclectic. To the east of Maurice Office are re-purposed warehouses containing a movie theater and a gelato factory and retail space. Directly south of the Property across Penn Street are a motel and a surface parking lot. The Union Market Historic District is located further south of those two uses. Further to the east are a National Park Service maintenance facility and Brentwood Park, and Gallaudet University is located beyond that. Across New York Avenue to the north and west, the neighborhood is largely industrial with train tracks occupying most of the land. (Ex. 1, 1E.)

22. To the south of the Property in the Union Market District, many high-density mixed-use residential and/or commercial projects are planned, approved as PUDs, or under construction. (Ex. 1, 1E.)
23. The immediate neighborhood includes a mixture of zones. Most properties immediately surrounding the Property are zoned PDR-1, but most of the new nearby projects in the Union Market District have been rezoned to C-3-C (MU-9) as components of their PUD approvals. The National Park Service area and park to the east are zoned RF-1. (Ex. 1, 1E.)
24. The Property contains part of a one- and two-story brick building formerly used by the Maurice Electric Supply Company (“Maurice Electric”). The one-story portion of the building functioned as the warehouse for the Maurice Electric Supply Company and was constructed as a later addition to the two-story showroom building. Part of the showroom building is on the Property and part of it is on the adjacent property to the east. The warehouse portion of the building will be demolished for the proposed project. (Ex. 1, 1E.)

### **The Project**

25. The proposed project will be a 12-story mixed-use building with residential use on the upper 11 stories, a habitable penthouse, retail/PDR/Maker uses at the ground floor, three levels of below-grade parking, and at-grade loading (“Project”). The Project will be achieved by rezoning the Property to MU-9, as requested in this Application. (Ex. 1, 27B, 35, 35A-E.)
26. The total gross floor area included in the Project will be approximately 314,724 square feet (equivalent to density of 8.4 floor area ratio [“FAR”]). The Project will have a maximum height of 130 feet and a maximum lot occupancy of approximately 73.9% for the residential portion of the Project. (Ex. 27B.)
27. At its ground floor, the Project will include approximately 22,714 square feet of retail/PDR/Maker space, a residential lobby, and back-of-house functions. The retail/PDR/Maker area will be comprised of two spaces separated by the residential lobby. Each retail/PDR/Maker space will have the ability to be further divided if warranted by particular tenants. The residential lobby will contain a front desk, package rooms, a mail room, and the elevator lobby. The trash room, loading area, and entrance to the parking area will all be located at the rear of the ground floor. The trash room and loading area will also be directly accessible from the retail/PDR/Maker spaces and the residential lobby. (Ex. 27B, 35E.)
28. The ground-floor retail/PDR/Maker space will contribute to the pedestrian-oriented street-activation throughout the Union Market District. At least five percent of the non-residential gross floor area of the ground floor will be reserved for “PDR/Maker” uses (defined below) for a term of five years. In addition, at least 50% of the ground

floor shall be constructed to “PDR/Maker Specifications” (defined below). (Ex. 11A, 27B, 35E.)

29. Above the ground floor will be 11 stories of residential plus a habitable penthouse and roof deck. This residential portion of the building will be a “T” shape, in plan view, with large courts along both the east and west sides of the building to provide ample light and air to the residential units. These courts, which will be on the roof of the ground floor, will be partially accessible as outdoor space from the second floor. Unit types will be studios, one-bedrooms, one-bedrooms plus den, two-bedrooms, and three-bedrooms. In total, the Project will contain 295-325 residential units. (Ex. 27B, 35B.)
30. The entrances to the loading area and the parking garage will be at the rear of the ground floor on the building’s west side from the alley. Within the building, the parking entrance will be a ramp to the parking spaces below grade. The loading facilities will be adjacent to the parking entrance on the ground floor. The parking will be located in three below-grade levels to serve both the residential and retail/PDR/Maker uses. The residential spaces will be access controlled, but the non-residential spaces will be available to the public. The total number of parking spaces will be between 145-230. In addition, the first below-grade level will include secure bicycle storage rooms for at least 103 total long-term bicycle spaces. Included in this total is bicycle parking for the non-residential uses (employees). The bicycle storage rooms will be accessed via the parking ramp from the alley. (Ex. 27B, 35.)
31. The composition of the Penn Street façade will include two central projecting bays with a setback center portion that will punctuate the residential lobby below. These central glass bays will divide the façade into two segments. On the east side, the first and second floors will contain the existing façade from the Maurice Electric showroom, which will preserve and enhance the existing nearby Union Market District structures with new construction that captures the feeling of and complements the existing industrial fabric. The new structure above the Maurice Electric façade will be set back to enhance the presence of this existing industrial edifice. On the west side of the central bays will be a double height masonry façade element that will balance the old Maurice Electric façade on the east side and will have the appearance five retail/PDR/Maker bays to create better a pedestrian scale. The building’s retail/PDR/Maker base will be primarily comprised of brick, steel and concrete, which will underscore the industrial/commercial feel of the Union Market District. The retail/PDR/Maker portion of the façades will include dramatic industrial canopies along with substantial green wall elements. Above the second floor, generous balconies for the residential units will provide depth to the façade and will capitalize on the excellent views to the south. (Ex. 1, 27B, 35A.)
32. The Project will incorporate a series of sustainable features that will reduce the impact of the redevelopment, including an extensive green roof. The Project will attain LEED-Gold certification under the v2009 standard and will include solar panels on the roof that will provide at least one percent of the energy for the residential portion of the Project. (Ex. 14, 27B, 42.)

33. As part of the Project, the Applicant will construct improvements in public space to promote pedestrian activity and enliven the streetscape. The public space improvements along the Project's frontage will conform to the Union Market Streetscape Guidelines. (Ex. 1, 27B.)
34. The Applicant will implement mitigation measures to offset the Project's impacts on the surrounding transportation network. These mitigation measures will include a comprehensive transportation demand management ("TDM") plan, a loading management plan, paying the cost of a new Capital Bikeshare station, signalization of the intersection of 4<sup>th</sup> and Penn Streets, wayfinding signage, pedestrian improvements at nearby intersections and on nearby streets, and others. (Ex. 22, 32.)

#### PUD Flexibility

35. The Applicant requested flexibility from the rear yard requirement in Subtitle G § 405.3. The Property is irregularly shaped and narrows to the rear. If a rear yard is provided, then this condition does not allow for a design that provides a significant amount of light and air to all units and to surrounding properties. As proposed, one bar of the Project will extend northeast to the rear property line. This allows for a "T"-shaped building layout that will allow for more light and air to both the Project and to the surrounding buildings from large open spaces. As designed, the building will have generous courts on both its east and west sides that allow for much more open space than if the building were designed to the side property lines with a rear yard. The resulting court on the east side of the building will be approximately 126 feet long and 32 feet wide, and the court on the west side will be approximately 126 feet long and 63 feet wide at its deepest point. In addition, the Project density and residential lot occupancy will be well below what is allowed and provide for the significant open space. Thus, the requested relief will not result in greater bulk or density but allows for a better design with more open space than a building with a conforming rear yard might otherwise have.
36. The Applicant also requested flexibility with respect to the design of the Project, which is described in the conditions of approval below.

#### Project Amenities and Public Benefits

37. With the Project, the Applicant will provide specific benefits and amenities commensurate with and proportional to the additional density and height gained through PUD and Zoning Map amendment.
38. As detailed in the Applicant's testimony and written submissions, the proposed Project will include the following project amenities and public benefits:
  - a. Superior urban design and architecture, and landscaping, including use of high-quality materials, building articulation and modulation, preservation of the Maurice Electric showroom façade, green elements on the façade, and context-specific design features that will distinguish this building from typical

residential development. The Project will deliver a signature mixed-use building with active ground-floor retail/PDR/Maker uses near the northwest entrance to the Union Market District;

- b. Site planning, and efficient land utilization, through the creation of a new mixed-use development on an underutilized site in a transit-oriented location specifically targeted for such uses. The Project will capitalize on its location near a Metrorail station, New York Avenue, and myriad (planned) services and retailers to provide a mix of residential and retail uses of appropriate higher levels of height and density that the District has identified as goals for this neighborhood. Thus, the Project will efficiently use the land in the Union Market District to provide an appropriate amount of residential and retail/PDR/Maker density that will support the continued growth of the neighborhood;
- c. Streetscape and public realm improvements along Penn Street in accordance with the approved standards in the Union Market Streetscape Guidelines;
- d. For the life of the Project, the Applicant will provide at least 15 three-bedroom units, and at least one of the three-bedroom units will be affordable;
- e. For the life of the Project, the Applicant will reserve 12% of the residential floor area (excluding the penthouse and core and common areas) for inclusionary zoning units. Seventy percent of the IZ floor area shall be reserved for households earning up to 60% of the median family income (“MFI”), and 30% of the IZ floor area shall be reserved for households earning up to 50% of the MFI. At least one of the IZ units shall be a three-bedroom unit;
- f. Environmental and sustainable features, including certification of the Project at the LEED-Gold level (v2009). Also, the Project will include environmentally-sustainable features such as a green roof, green walls, electric vehicle charging stations, and solar panels to provide at least one percent of the energy for the residential portion;
- g. The Applicant will contribute \$30,000 to Jubilee Jobs for the establishment of a jobs readiness program targeting ANC 5D residents. Ten thousand dollars of the contribution shall be for program administration and job readiness skills, \$10,000 shall be for scholarships targeted at ANC 5D residents for construction trades, and \$10,000 shall be for SmarTrip cards for program participants who are placed and maintain employment through Jubilee Jobs; and
- h. Uses of special value to the neighborhood, including the following:
  - i. “Life Quality Enhancement Fund” – The Applicant will contribute \$25,000 per year for three years to provide enhanced street cleaning and security for the Union Market District prior to the formation of a formal Business Improvement District;

- ii. Art Display – For a period of 10 years, the Applicant will display art in an area of at least 80 square feet in the residential lobby. In selecting the art for this display, the Applicant shall give preference to local artists;
- iii. Contribution to DPR – Contribute \$10,000 to DPR for the purchase of new computers for the Trinidad Recreation Center computer lab; and
- iv. PDR/Maker Use Commitment – Commit at least five percent of the non-residential ground floor gross floor area to PDR/Maker uses (defined below) for five years from the initial certificate of occupancy for the ground-floor retail/PDR/Maker space, and at least 50% of the non-residential ground floor gross floor area will be built to PDR/Maker Specifications (defined below). In addition, the Applicant will preserve and commit 20,000 square feet in Maurice Office for PDR/Maker uses commencing on the effective date of this order and continuing until March 1, 2023.

**Compliance with the Comprehensive Plan and Other Planning Guidance**

- 39. The Project will be not inconsistent with the Comprehensive Plan (“Plan”), including the Future Land Use Map (“FLUM”), Generalized Policy Map (“GPM”), and multiple written policies as further described below.
- 40. The Property is located in the Mixed-Use High-Density Residential/High-Density Commercial/Production, Distribution, and Repair land use categories on the FLUM. As described in detail below in the Conclusions of Law, the MU-9 zone and the Project are not inconsistent with this FLUM designation.
- 41. The Property is located in the Multi-Neighborhood Center category on the GPM, which encourages the provision of new retail and service uses, and additional housing and job opportunities. The Construction of a new 12-story mixed-use building with multifamily residential use and ground-floor retail/PDR/Maker uses where there currently is no such use is consistent with this category on the GPM.
- 42. As found by OP, the Project will advance the following policies from the Land Use Element of the Plan:
  - a. **Policy LU-1.3.1: Station Areas as Neighborhood Centers** – Encourage the development of Metro stations as anchors for economic and civic development in locations that currently lack adequate neighborhood shopping opportunities and employment. The establishment and growth of mixed use centers at Metrorail stations should be supported as a way to reduce automobile congestion, improve air quality, increase jobs, provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide. This policy



should not be interpreted to outweigh other land use policies which call for neighborhood conservation. Each Metro station area is unique and must be treated as such in planning and development decisions. The Future Land Use Map expresses the desired intensity and mix of uses around each station, and the Area Elements (and in some cases Small Area Plans) provide more detailed direction for each station area;

- b. **Policy LU-1.3.3: Housing Around Metrorail Stations** – Recognize the opportunity to build senior housing and more affordable “starter” housing for first-time homebuyers adjacent to Metrorail stations, given the reduced necessity of auto ownership (and related reduction in household expenses) in such locations;
- c. **Policy LU-1.3.6: Parking Near Metro Stations** – Encourage the creative management of parking around transit stations, ensuring that automobile needs are balanced with transit, pedestrian, and bicycle travel needs. New parking should generally be set behind or underneath buildings and geared toward short-term users rather than all-day commuters;
- d. **Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods** – Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to “create successful neighborhoods” in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others;
- e. **Policy LU-2.1.4: Rehabilitation Before Demolition** – In redeveloping areas characterized by vacant, abandoned, and underutilized older buildings, generally encourage rehabilitation and adaptive reuse of existing buildings rather than demolition;
- f. **Policy LU-2.2.4: Neighborhood Beautification** – Encourage projects which improve the visual quality of the District’s neighborhoods, including landscaping and tree planting, facade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements;
- g. **Policy LU-2.2.7: Alley Closings** Discourage the conversion of alleys to private yards or developable land when the alleys are part of the historic fabric of the neighborhood and would otherwise continue to perform their intended functions, such as access to rear garages and service areas for trash collection;
- h. **Policy LU-2.4.1: Promotion of Commercial Centers** – Promote the vitality of the District’s commercial centers and provide for the continued growth of

commercial land uses to meet the needs of District residents, expand employment opportunities for District residents, and sustain the city’s role as the center of the metropolitan area. Commercial centers should be inviting and attractive places, and should support social interaction and ease of access for nearby residents;

- i. **Policy LU-2.4.5: Encouraging Nodal Development** – Discourage auto-oriented commercial “strip” development and instead encourage pedestrian-oriented “nodes” of commercial development at key locations along major corridors. Zoning and design standards should ensure that the height, mass, and scale of development within nodes respects the integrity and character of surrounding residential areas and does not unreasonably impact them;
  - j. **Policy LU-2.4.10: Use of Public Space within Commercial Centers** – Carefully manage the use of sidewalks and other public spaces within commercial districts to avoid pedestrian obstructions and to provide an attractive and accessible environment for shoppers. Where feasible, the development of outdoor sidewalks cafes, flower stands, and similar uses which “animate” the street should be encouraged. Conversely, the enclosure of outdoor sidewalk space with permanent structures should generally be discouraged;
  - k. **Policy LU-3.1.4: Rezoning of Industrial Areas** – Allow the rezoning of industrial land for non-industrial purposes only when the land can no longer viably support industrial or PDR activities or is located such that industry cannot co-exist adequately with adjacent existing uses. Examples include land in the immediate vicinity of Metrorail stations, sites within historic districts, and small sites in the midst of stable residential neighborhoods. In the event such rezoning results in the displacement of active uses, assist these uses in relocating to designated PDR areas; and
  - l. **Policy LU-3.1.5: Mitigating Industrial Land Use Impacts** – Mitigate the adverse impacts created by industrial uses through a variety of measures, including buffering, site planning and design, strict environmental controls, performance standards, and the use of a range of industrial zones that reflect the varying impacts of different kinds of industrial uses.
43. As found by OP, the Project will advance the following policies of the Transportation Element of the Plan:
- a. **Policy T-1-1.3: Context-Sensitive Transportation** – Design transportation infrastructure to support current land uses as well as land use goals for compact, accessible neighborhoods. Make the design and scale of transportation facilities compatible with planned land uses;

- b. **Policy T-1.1.4: Transit-Oriented Development** – Support transit-oriented development by investing in pedestrian-oriented transportation improvements at or around transit stations, major bus corridors, and transfer points;
  - c. **Policy T-2.3.3: Bicycle Safety** – Increase bicycle safety through traffic-calming measures, provision of public bicycle parking, enforcement of regulations requiring private bicycle parking, and improving bicycle access where barriers to bicycle travel now exist;
  - d. **Policy T-2.4.2: Pedestrian Safety** – Improve safety and security at key pedestrian nodes throughout the city. Use a variety of techniques to improve pedestrian safety, including textured or clearly marked and raised pedestrian crossings, pedestrian-actuated signal push buttons, and pedestrian count-down signals;
  - e. **Policy T-2.4.4: Sidewalk Obstructions** – Locate sidewalk cafes and other intrusions into the sidewalk so that they do not present impediments to safe and efficient pedestrian passage. Maintain sidewalk surfaces and elevations so that disabled or elderly pedestrians can safely use them;
  - f. **Policy T-2.6.1: Special Needs** – Address the transportation needs of all District residents, including those with special physical requirements and trip needs, such as access to medical centers or senior centers;
  - g. **Policy T-3.1.1: Transportation Demand Management (TDM) Programs** – Provide, support, and promote programs and strategies aimed at reducing the number of car trips and miles driven (for work and non-work purposes) to increase the efficiency of the transportation system; and
  - h. **Policy T-3.2.1: Parking Duration in Commercial Areas** – Encourage the supply and management of public parking in commercial areas to afford priority to customers and others on business errands, and discourage the use of these spaces by all-day parkers, including establishment employees.
44. As found by OP, the Project will advance the following policies of the Housing Element of the Plan:
- a. **Policy H-1.1.1: Private Sector Support** – Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives;
  - b. **Policy H-1.1.4: Mixed Use Development** – Promote mixed use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations;

- c. **Policy H-1.1.5: Housing Quality** – Require the design of affordable housing to meet the same high-quality architectural standards required of market-rate housing. Regardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance and should address the need for open space and recreational amenities, and respect the design integrity of adjacent properties and the surrounding neighborhood;
  - d. **Policy H-1.2.3: Mixed Housing** – Focus investment strategies and affordable housing programs to distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing;
  - e. **Policy H-1.2.7: Density Bonuses for Affordable Housing** – Support the activities of the District’s Housing Finance Agency to finance new construction and rehabilitation of affordable rental and owner units, including vacant and abandoned units;
  - f. **Policy H-1.3.1: Housing for Families** – Provide a larger number of housing units for families with children by encouraging new and retaining existing single family homes, duplexes, row houses, and three- and four-bedroom apartments; and
  - g. **Policy H-1.3.2: Tenure Diversity** – Encourage the production of both renter-occupied and owner-occupied housing.
45. As found by OP, the Project will advance the following policies of the Environmental Protection Element of the Plan:
- a. **Policy E-1.1.1: Street Tree Planting and Maintenance** – Plant and maintain street trees in all parts of the city, particularly in areas where existing tree cover has been reduced over the last 30 years. Recognize the importance of trees in providing shade, reducing energy costs, improving air and water quality, providing urban habitat, absorbing noise, and creating economic and aesthetic value in the District’s neighborhoods;
  - b. **Policy E-1.1.2: Tree Requirements in New Development** – Use planning, zoning, and building regulations to ensure that trees are retained and planted when new development occurs, and that dying trees are removed and replaced. If tree planting and landscaping are required as a condition of permit approval, also require provisions for ongoing maintenance;
  - c. **Policy E-1.1.3: Landscaping** – Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity;

- d. **Policy E-2.1.1: Promoting Water Conservation** – Promote the efficient use of existing water supplies through a variety of water conservation measures, including the use of plumbing fixtures designed for water efficiency, drought-tolerant landscaping, and irrigation systems designed to conserve water;
- e. **Policy E-2.2.1: Energy Efficiency** – Promote the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses. The overarching objective should be to achieve reductions in per capita energy consumption by DC residents and employees;
- f. **Policy E-2.2.2: Energy Availability** – Improve energy availability and buffer District consumers from fluctuations in energy supply and prices. This should be achieved through the District’s energy purchasing policies, financial assistance programs for lower income customers, incentives for “green” power, and regulatory changes that ensure that local energy markets are operating efficiently;
- g. **Policy E-2.2.4: Alternative Energy Sources** – Support the development and application of renewable energy technologies such as active, passive, and photovoltaic solar energy, fuel cells, and other sustainable sources. Such technology should be used to reduce the dependence on imported energy, provide opportunities for economic and community development, and benefit environmental quality. A key goal is the continued availability and access to unobstructed, direct sunlight for distributed-energy generators and passive-solar homes relying on the sun as a primary energy source;
- h. **Policy E-2.2.5: Energy Efficient Building and Site Planning** – Include provisions for energy efficiency and for the use of alternative energy sources in the District’s planning, zoning, and building standards. The planning and design of new development should contribute to energy efficiency goals;
- i. **Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff** – Promote an increase in tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction and adaptive reuse, and the application of tree and landscaping standards for parking lots and other large paved surfaces;
- j. **Policy E-3.1.3: Green Engineering** – Promote green engineering practices for water and wastewater systems. These practices include design techniques, operational methods, and technology to reduce environmental damage and the toxicity of waste generated;
- k. **Policy E-3.2.1: Support for Green Building** – Encourage the use of green building methods in new construction and rehabilitation projects, and develop green building methods for operation and maintenance activities; and

1. **Policy E-3.4.1: Mitigating Development Impacts** – Take measures to ensure that future development mitigates impacts on the natural environment and results in environmental improvements wherever feasible. Construction practices which result in unstable soil and hillside conditions or which degrade natural resources without mitigation shall be prohibited.
46. As found by OP, the Project will advance the following policies of the Economic Development Element of the Plan:
- a. **Policy ED-1.1.3: Diversification** – Diversify the District’s economy by targeting industries with the greatest potential for growth, particularly technology-based and creative industries, retail, international business, and the building trades;
  - b. **Policy ED-2.2.1: Expanding the Retail Sector** – Pursue a retail strategy that will allow the District to fully capitalize on the spending power of residents, workers and visitors, and that will meet the retail needs of underserved areas;
  - c. **Policy ED 2.2.3: Neighborhood Shopping** – Create additional shopping opportunities in Washington’s neighborhood commercial districts to better meet the demand for basic goods and services. Reuse of vacant buildings in these districts should be encouraged, along with appropriately-scaled retail infill development on vacant and underutilized sites. Promote the creation of locally-owned, non-chain establishments because of their role in creating unique shopping experiences;
  - d. **Policy ED-2.2.4: Destination Retailing** – Continue to encourage “destination” retail districts that specialize in unique goods and services, such as furniture districts, arts districts, high-end specialty shopping districts, and wholesale markets. Support the creative efforts of local entrepreneurs who seek to enhance the District’s destination retailing base;
  - e. **Policy ED-2.2.7: Planning For Retail** – Coordinate neighborhood planning efforts with the District’s economic development planning and implementation programs in order to improve retail offerings in local commercial centers;
  - f. **Policy ED-3.1.1: Neighborhood Commercial Vitality** – Promote the vitality and diversity of Washington’s neighborhood commercial areas by retaining existing businesses, attracting new businesses, and improving the mix of goods and services available to residents;
  - g. **Policy ED-3.1.3: Commercial District Associations** – Encourage business improvement districts, merchant associations, Main Street organizations, and other commercial associations that enhance economic development and commercial revitalization efforts, particularly in underserved and/or rapidly gentrifying neighborhoods;

- h. **Policy ED-4.2.1: Linking Residents to Jobs** – Promote measures which increase the number of District jobs held by District residents. According to the 2000 Census, 71 percent of the jobs in the city were held by non-residents, up from 67 percent in 1990. While recognizing that some imbalance is inevitable due to the relatively large number of jobs and small number of residents in the city, the District should work to increase the percentage of resident workers through its job training and placement programs; and
  - i. **Policy ED-4.2.6: Entry-Level Opportunities** – Support the creation of entry level career opportunities, particularly for lower income youth and adults, and persons with special needs. Recognize the need for complementary efforts to provide affordable child care options, transportation, counseling, and other supportive services.
47. As found by OP, the Project will advance the following policies of the Parks, Recreation, and Open Space Element of the Plan:
- a. **Policy PROS-1.2.2: Improving Access** – Improve access to the major park and open space areas within the city through pedestrian safety and street crossing improvements, bike lanes and storage areas, and adjustments to bus routes; and
  - b. **Policy PROS-4.3.3: Common Open Space in New Development** – Provide incentives for new and rehabilitated buildings to include “green roofs,” rain gardens, landscaped open areas, and other common open space areas that provide visual relief and aesthetic balance.
48. As found by OP, the Project will advance the following policies of the Urban Design Element of the Plan:
- a. **Policy UD-2.2.5: Creating Attractive Façades** – Create visual interest through well-designed building facades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street;
  - b. **Policy UD-2.2.6: Maintaining Façade Lines** – Generally maintain the established facade lines of neighborhood streets by aligning the front walls of new construction with the prevailing façades of adjacent buildings. Avoid violating this pattern by placing new construction in front of the historic façade line, or by placing buildings at odd angles to the street, unless the streetscape is already characterized by such variations. Where existing façades are characterized by recurring placement of windows and doors, new construction should complement the established rhythm;
  - c. **Policy UD-2.3.5: Incorporating Existing Assets in Large Site Design** – Incorporate existing assets such as historic buildings, significant natural landscapes, and panoramic vistas in the design of redeveloped large sites. For

sites that were originally planned as integrated complexes of multiple buildings, historic groupings of structures should be conserved where possible;

- d. **Policy UD-3.1.1: Improving Streetscape Design** – Improve the appearance and identity of the District’s streets through the design of street lights, paved surfaces, landscaped areas, bus shelters, street “furniture”, and adjacent building façades;
- e. **Policy UD-3.1.2: Management of Sidewalk Space** – Preserve the characteristically wide sidewalks of Washington’s commercial districts. Sidewalk space should be managed in a way that promotes pedestrian safety, efficiency, comfort, and provides adequate space for tree boxes. Sidewalks should enhance the visual character of streets, with landscaping and buffer planting used to reduce the impacts of vehicle traffic;
- f. **Policy UD-3.1.4: Street Lighting** – Provide street lighting that improves public safety while also contributing to neighborhood character and image;
- g. **Policy UD-3.1.5: Streetscape and Mobility** – Ensure that the design of public space facilitates connections between different modes of travel, including walking, public transit, bicycling, and driving. Transit shelters, benches, bicycle parking, safe pedestrian connections, and clear way-finding signage should be provided to facilitate multi-modal travel;
- h. **Policy UD-3.1.6: Enhanced Streetwalls** – Promote a higher standard of storefront design and architectural detail along the District’s commercial streets. Along walkable shopping streets, create street walls with relatively continuous facades built to the front lot line in order to provide a sense of enclosure and improve pedestrian comfort;
- i. **Policy UD-3.1.7: Improving the Street Environment** – Create attractive and interesting commercial streetscapes by promoting ground level retail and desirable street activities, making walking more comfortable and convenient, ensuring that sidewalks are wide enough to accommodate pedestrian traffic, minimizing curb cuts and driveways, and avoiding windowless façades and gaps in the street wall;
- j. **Policy UD-3.1.8: Neighborhood Public Space** – Provide urban squares, public plazas, and similar areas that stimulate vibrant pedestrian street life and provide a focus for community activities. Encourage the “activation” of such spaces through the design of adjacent structures; for example, through the location of shop entrances, window displays, awnings, and outdoor dining areas;
- k. **Policy UD-3.1.11: Private Sector Streetscape Improvements** – As appropriate and necessary, require streetscape improvements by the private sector in conjunction with development or renovation of adjacent properties; and



1. **Policy UD-3.1.13: Signage** – Encourage high standards of signage throughout the District, particularly for signs that designate landmarks, historic districts, and other areas of civic importance.
49. As found by OP, the Project will advance the following policies of the Arts and Culture Element of the Plan:
- a. **Policy AC-2.2.1: Using Art to Create Identity** – Use art as a way to help neighborhoods express unique and diverse identities, promoting each community’s individual character and sense of place; and
  - b. **Policy AC-4.2.1: Private Sector Partnerships** – Develop partnerships with the private sector to encourage monetary and non-monetary support for the arts, as well as sponsorships of arts organizations and events.
50. As found by OP, the Project will advance the following policies of the Upper Northeast Area Element of the Plan:
- a. **Policy UNE-1.1.6: Neighborhood Shopping** – Improve neighborhood shopping areas throughout Upper Northeast. Continue to enhance 12<sup>th</sup> Street, N.E. in Brookland as a walkable neighborhood shopping street and encourage similar pedestrian-oriented retail development along Rhode Island Avenue, Bladensburg Road, South Dakota Avenue, West Virginia Avenue, Florida Avenue, and Benning Road. New pedestrian-oriented retail activity also should be encouraged around the area’s Metro stations;
  - b. **Policy UNE-1.1.8: Untapped Economic Development Potential** – Recognize the significant potential of the area’s commercially and industrially-zoned lands, particularly along the New York Avenue corridor, V Street, N.E., and Bladensburg Road, and around the Capital City Market, to generate jobs, provide new shopping opportunities, enhance existing businesses, create new business ownership opportunities, and promote the vitality and economic well-being of the Upper Northeast community. The uses, height, and bulk permitted under the existing M and CM-1 zones are expected to remain for the foreseeable future;
  - c. **Policy UNE-1.1.9: Production, Distribution, and Repair Uses** – Retain the existing concentration of production, distribution, and repair (PDR) uses in Upper Northeast, but encourage the upgrading of these uses through higher design standards, landscaping, and improved screening and buffering. Emphasize new uses, including retail and office space, that create jobs for Upper Northeast area residents, and that minimize off-site impacts on the surrounding residential areas;
  - d. **Policy UNE-1.2.1: Streetscape Improvements** – Improve the visual quality of streets in Upper Northeast, especially along North Capitol Street, Rhode Island Avenue, Bladensburg Road, Eastern Avenue, Michigan Avenue, Maryland Avenue, Florida Avenue, and Benning Road. Landscaping, street tree planting,

street lighting, and other improvements should make these streets more attractive community gateways;

- e. **Policy UNE-1.2.4: Linking Residents to Jobs** – Improve linkages between residents and jobs within Upper Northeast so that more of the area’s 40,000 working age adults fill the approximately 40,000 jobs located within the Planning Area. Achieve this linkage by developing additional vocational and trade schools within Upper Northeast, encouraging apprenticeships and internships, and creating new partnerships between the area’s major employers the District, the public and charter schools, local churches, and major institutions;
  - f. **Policy UNE-1.2.5: Increasing Economic Opportunity** – Create new opportunities for small, local, and minority businesses within the Planning Area, and additional community equity investment opportunities as development takes place along New York Avenue, Bladensburg Road, Benning Road, and around the Metro Stations; and
  - g. **Policy UNE-2.1.2: Capital City Market** – Redevelop the Capital City Market into a regional destination that may include residential, dining, entertainment, office, hotel, and wholesale food uses. The wholesale market and the adjacent DC Farmers Market are important but undervalued amenities that should be preserved, upgraded, and more effectively marketed.
51. As found by OP and described by the Applicant, the Project will be consistent with and will advance goals and polices from the Florida Avenue Market Small Area Plan (“FAMSAP”). The Project’s height will be consistent with the greater heights north of Penn Street identified in the FAMSAP. The Project will contribute to the goal of a mixed-use neighborhood that serves a variety of purposes, including the creation of a unique retail/PDR/Maker and residential neighborhood. The Project will advance the goal of expanding the number and variety of retail/PDR/Maker business, which are likely to be food or food-related. The design of the Project will complement the “new, modern-style” of buildings constructed or anticipated in the vicinity, but it will incorporate an element – preservation of an existing façade – that will tie it to the Market’s history. The LEED-Gold design will promote the goal of sustainability. Furthermore, the Project’s program and contemporary architecture with street-activating features, such as extensive ground floor glazing, will promote polices for high density development, appropriate urban design, and a vibrant public realm. The Project will promote the goals of neighborhood connectedness and creating a mix of uses in a neighborhood that is and will continue to grow as a hub of commerce and activity. Finally, the public realm adjacent to the Project will be improved consistent with the Union Market Streetscape Guidelines that will implement the guidance for Penn Street in the FAMSAP. (Ex. 1, 28.)
52. The Project will be consistent with and advance the goals of the *Ward 5 Works Industrial Land Transformation Study* (“Ward 5 Works Study”). The Project will further the Ward

5 Works Study by honoring the industrial character and heritage of the site, provide numerous new jobs in Ward 5 and the Union Market District and will specifically support a vibrant and diverse commercial market with particular attention and value placed on PDR/Maker uses. In addition, the project will advance multiple specific goals and objectives in the Ward 5 Works Study as follows: creating “great spaces” within Ward 5 by improving the physical appearance and enhancing connectivity of the site; encouraging the Florida Avenue Market as a creative hub by providing retail and supporting PDR/Maker uses; providing community amenities; and by providing retail outlets in industrial areas. (Ex. 14, 28.)

### **Agency Reports**

53. By report dated June 4, 2018, and by testimony at the public hearing, OP recommended approval of the consolidated PUD and related Zoning Map amendment with a request for additional information and conditions on five topics. OP requested floor plans for the ground-floor PDR/Maker space; a commitment from the Applicant for PDR/Maker space for the life of the Project or a significant period of time; the provision of a complete Master Utility Plan to DC Water; details about how the proffered \$10,000 to DPR will be used; and concurrence with DDOT’s conditions. OP made additional recommendations in its report. At the public hearing, the Applicant provided responses to OP’s requested information and OP’s recommendations regarding the following: PDR/Maker space floor plans; proposed sign placement area; certification of LEED-Gold under v4; time commitment for the PDR/Maker uses in Maurice Office; description of elements of the Project that are superior architecture and urban design; a commitment that the Jubilee Jobs program spend half of the funds ANC 5D residents that are returning citizens; providing PDR/Maker space at no cost to community groups when the space is vacant; a commitment to provide at least 17 three-bedroom units; offering the PDR/Maker space at below-market rents; and a larger contribution to the artist community. OP and the Commission found the Applicant’s responses to be acceptable. Also, after the hearing, the Applicant indicated that the \$10,000 proffer to DPR will be used for new computers at the Trinidad Recreation Center. Otherwise, the Applicant’s responses to OP’s requests are described in the “Contested Issues” section below. (Ex. 28, 35; 6/14/18 Tr. at 71-74.)
54. By its June 4, 2018 report and testimony at the public hearing, OP found the relief from the Zoning Regulations and design flexibility that the Applicant requested to be acceptable. Except for the PDR/Maker clarification described below in the “Contested Issues,” OP concluded that the consolidated PUD and Zoning Map amendment to the MU-9 zone would be not inconsistent with the Comprehensive Plan, including the FLUM and GPM, and would further the objectives of the Land Use, Transportation, Housing, Environmental Protection, Economic Development, Parks Recreation and Open Space, Urban Design, Infrastructure, Arts and Culture, and Upper Northeast elements. OP further found that the Project would advance policies in the Ward 5 Works Study and the FAMSAP. OP evaluated the Application under the standards set forth in Subtitle X, Chapter 3 of the Zoning Regulations and concluded that the Project satisfies the

standards. OP found that the benefits and amenities proffered for the Project are commensurate with the amount of development and flexibility sought by the Project. (Ex. 28; 6/14/18 Tr. at 71-74.)

55. OP stated that it coordinated an interagency meeting with DC Water, the Department of Energy and the Environment ("DOEE"), Fire and EMS ("FEMS"), Department of Housing and Community Development ("DHCD"), DPR, and DDOT in attendance.<sup>1</sup> Each of these agencies provided comments to which the Applicant responded in a written submission. Except for the request from DC Water for the Mater Utility Plan, OP and the Commission found the Applicant's responses sufficient to address agency concerns and requests. (Ex. 28, 27A.)
56. By report dated June 4, 2018 and testimony at the public hearing, DDOT found that the conclusions and analysis in the Applicant's comprehensive transportation review ("CTR") were sound with respect to site design and travel assumptions and stated that it did not object to the Application, with conditions for additional mitigation. DDOT concluded that the Project will generate a disproportionately high number of vehicle trips that will lead to congestion due to the amount of parking in the Project. DDOT agreed with the Applicant's TDM plan and loading management plan but found that those plans would be insufficient to fully mitigate adverse traffic impacts. However, DDOT stated that, with the Applicant's adoption of DDOT's additional seven conditions, the Project's adverse traffic impacts would be fully mitigated. DDOT also recommended further coordination of the design for improvements in public space adjacent to the Project site, development of a curbside management plan, and location of electric vehicle charging stations. At the public hearing, the Applicant agreed to all of DDOT's conditions except constructing the missing sidewalk along the west side of 4<sup>th</sup> Street, to charge market rate for retail/PDR/Maker parking, and to provide access to the alley through the Property for future development on the site to the east. A discussion of the resolution of these issues is discussed below in the "Contested Issues" section. (Ex. 29; 6/14/18 Tr. At 15-20, 79-84.)

### **ANC 5D Report**

57. By report dated May 17, 2018, ANC 5D indicated its enthusiastic support for the Application. In particular, the ANC stated its support for the Project's design, program, unit mix (including three-bedroom units), number of parking spaces, and ground floor uses. In addition, the ANC lauded the Project's proffered benefits and amenities, including the affordable units and the employment program, as particularly responsive to the community's needs. The ANC also noted the extensive community engagement by the Applicant and the improvement that the Project will bring to the Union Market District. (Ex. 26.)

### **Testimony in Support**

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<sup>1</sup> In addition to the attendees, OP invited the following agencies to attend the interagency meeting: Metropolitan Police Department, Department of Employment Services, D.C. Public Schools, Deputy Mayor for Planning and Economic Development, and the Mayor's Office.

58. Vasudav, Inc., the owner the adjacent property to the north of the Property, filed a letter in support of the Application. In particular, the letter stated that the adjacent property owner, which is the most affected, is comfortable with the Applicant's request for flexibility from the rear yard requirement. (Ex. 33.)

### **Contested Issues**

#### **Maurice Electric Façade Treatment**

59. The Commission requested that the Applicant study how to provide a treatment to the Maurice Electric façade/entrance to continue the building eastern edge line of new construction. The Applicant provided additional information about how the Project's design responds to the condition of continuing the line of the new construction to the façade of Maurice Electric. The Applicant described how the most elegant method to extend the eastern edge of the new building to the ground is to remove the existing white cinder block column on the Maurice Electric façade, and treat it similar to the metal panel edge of the new building. The Commission's response was that the Applicant's proposed design treatment was acceptable. (Ex. 35, 35A.)

#### **IZ Unit Distribution Plan**

60. The Commission requested that the proposed IZ unit distribution plan be more random and evenly distributed throughout the building. The Applicant responded by providing a revised draft IZ unit distribution plan that is more random and places IZ units in more areas of the building. The Commission's response was that this was acceptable. (Ex. 35, 35B.)

#### **Up-Lighting on Penthouse**

61. The Commission requested that the Applicant confirm that the penthouse not have any up-lighting. The Applicant confirmed that the penthouse would not have any up-lighting unless required by applicable building, fire, or life safety codes. The Commission's response was that this was acceptable. (Ex. 35.)

#### **Loading and Parking Access on Ground Floor**

62. The Commission requested that the Applicant study loading and parking access on the ground floor so that they are not both through the same entrance from the alley. The Applicant responded that it studied multiple parking ramp and access layouts to the building and that the solution proposed in the Project is the best. The Applicant explained that it had to contend with multiple constraints in designing the ground-floor parking and loading access, including the following: avoiding conflicts with the back-in loading movements for the building across the alley; maintaining adequate room for front-in and out loading movements; and limiting the number of egress points on the alley. The Applicant found that the proposed design of shared access is the most efficient at responding to these constraints to provide the greatest safety, avoid conflicts with

loading movements at other buildings, avoid losing retail/PDR/Maker space on the ground floor, and is consistent with other projects in the District. The Commission's response was that this was acceptable. (6/14/18 Tr. at 47-48; Ex. 35.)

### Maurice Electric Sign

63. The Commission requested that the Applicant provide more information about the existing Maurice Electric sign. The Applicant responded that the sign would be retained in its existing location as part of the Project and included updated drawings illustrating its location. The Commission's response was that this was acceptable. (Ex. 35, 35C.)

### Transportation Issues

64. DDOT requested that, as a mitigation condition, the Applicant construct the continuation of the sidewalk along the west side of 4<sup>th</sup> Street adjacent to the PNC Bank property. The Applicant responded that it will install multiple improvements to increase pedestrian safety along 4<sup>th</sup> Street and generally in the vicinity of the Project. It will install a high-visibility crosswalk running north to south across 4<sup>th</sup> Street at its intersection with New York Avenue. In addition, the Applicant will install a sidewalk commencing at the southeast corner of New York Avenue and 4<sup>th</sup> Street, and running southeasterly approximately 120 feet to the existing ramp at the southwest corner of 4<sup>th</sup> Street and Penn Street. The curb ramps at the southeast corner of 4<sup>th</sup> and Penn Streets shall be ADA-compliant in accordance with DDOT's recommendation. Further, the Applicant will install a pedestrian crosswalk running east to west across 4<sup>th</sup> Street and north to south across Penn Street, N.E. The Applicant will install ADA compliant curb ramps for the west leg of the intersection of 5<sup>th</sup> and Penn Streets, provided no relocation of utilities is required. Finally, the Applicant will design and install a traffic signal at the intersection of Penn Street and 4<sup>th</sup> Street. DDOT and the Applicant agreed that the ADA ramps at the southeast corner of 4<sup>th</sup> Street and Penn Street, and at the southwest corner of 5<sup>th</sup> Street and Penn Street, to be constructed by the Applicant shall be constructed in a manner which avoids any utilities or public infrastructure and is subject to existing site constraints, and as such, may not comply with all standard dimensions. DDOT responded that it found the Applicant's alternative proposal acceptable provided the installation of a sidewalk commencing at the southeast corner of New York Avenue and 4<sup>th</sup> Street, and running southeasterly approximately 120 feet to the existing ramp at the southwest corner of 4<sup>th</sup> Street and Penn Street was if it was built to DDOT standards, including six-foot-wide sidewalks and a four-foot tree box. The Applicant agreed to this stipulation. (Ex. 35, 35D, 36.)
65. DDOT requested that, as a mitigation condition, the Applicant confirm that retail/PDR/Maker parking in the Project should be priced at market rates. The Applicant responded that affordable parking is critical to the access of the retail/PDR/Maker in the Project and the Union Market District, especially given the Project's proximity to major arterial streets. DDOT responded that it continued to believe market rate pricing was an important mitigation. (Ex. 35.)

66. DDOT requested that, as a mitigation condition, the Applicant agree to provide access through the Property to the alley for the adjacent site to the east. In response, the Applicant agreed to provide a knock-out panel on the east side of the Project's parking/loading entrance area to accommodate potential future vehicular access to and from the alley for the parcel to the east. The Applicant stated that if such access is feasible with a future project on the adjacent site, then any easement related to such access will be reviewed and discussed at that time. DDOT's response was that the Applicant's proposal was sufficient. (Ex. 35.)
67. The Commission finds that the Project will not impose adverse or objectionable impacts on the surrounding transportation and pedestrian network. The Commission credits the findings of the Applicant's traffic expert that the Project will not create any adverse impacts when compared with future background conditions and when appropriately mitigated with the proposed transportation improvements. The Commission finds that the scope and methodology of the transportation study, including the identified impacted intersections, was adequate.
68. Based on the testimony from the Applicant's transportation expert and DDOT, the Commission finds that the Applicant's proposed mitigation measures, including the TDM plan, loading plan, and signalization of 4<sup>th</sup> and Penn Streets, and agreement to nearly all of DDOT's conditions, should sufficiently offset the adverse impacts of the Project and adequately address all of DDOT's concerns regarding the necessity of further mitigation.

#### Master Utility Plan

69. OP requested, on behalf of DC Water, that the Applicant provide a Master Utility Plan ("MUP") for the entire Union Market District. The Applicant responded that the MUP is developed in coordination with multiple property owners and all utilities, including DC Water. The Applicant also stated that the MUP is an area-wide plan that will support the needs of the entire Union Market District and not a specific individual project or PUD site; as such, significant coordination between the various owners, agencies, stakeholders, and utilities is required. The Applicant stated that no single developer or property owner has control over the MUP's development and progression, so it cannot be tied to one individual project. The Applicant confirmed that the MUP is at 30% design and has been provided to DC Water and that it will continue to work on developing the MUP with the other stakeholders. Further, the Applicant stated that even though the existing utilities have the capacity to service this Project, the Applicant will work with the utility providers to incorporate specific upgrades along the Project site's frontage based on age and condition of the existing infrastructure, and to align with the upgrades recommended in the MUP. OP responded that it had contacted DC Water for comments in response to the Applicant's assertions regarding the MUP, but that DC Water did not respond, and that it encourages the Applicant to continue to work with DC Water to provide the requisite information. Accordingly, the Commission finds that the Applicant has adequately addressed its own, current obligations with respect to the MUP. The

Commission encourages the Applicant to continue to work with DC Water to provide the requisite information. (Ex. 35.)

PDR/Maker Use Commitment

70. OP requested that the Applicant provide a more significant commitment for PDR/Maker uses in the Project and stated that without it, the Project would be inconsistent with the FLUM. Both in written submissions and with testimony at the public hearing, the Applicant responded that it is unable to increase its commitment but that the Project's commitments with respect to PDR/Maker uses are not inconsistent with the FLUM, satisfy the goals of street activation, and are necessary for the success of the ground floor uses. In particular, the Applicant stated that, in accordance with the Framework Element of the Plan, the mix of uses on the FLUM are "encouraged" and "desired," so the Applicant's proffers of PDR/Maker use for five years and the build-out of at least 50% of the retail/PDR/Maker space to PDR/Maker Specifications satisfies that goal. Also, the Applicant stated, that under the terms of the Framework Element of the Plan, the FLUM is not parcel-specific and does not require designated uses on every site. Further, the Applicant described its long history in the Union Market District and its success in assisting and delivering a significant amount of PDR/Maker uses, and it described the market challenges risk to the Union Market District's success that would accompany mandating too much PDR/Maker use in the area. OP responded that it met with the Applicant, and the Applicant made certain commitments with respect to the PDR uses and maker spaces, namely, that it would commit at least five percent of the non-residential ground-floor gross floor area to PDR/Maker uses (defined below) for five years from the initial certificate of occupancy for the ground-floor retail/PDR/Maker space, and at least 50% of the non-residential ground floor gross floor area will be built to PDR/Maker Specifications (defined below). In addition, the Applicant will preserve and commit 20,000 square feet in Maurice Office for PDR/Maker uses for five years, beginning on March 1, 2018. OP stated that it supported the commitments. Accordingly, the Commission finds this acceptable. As described below in the Conclusions of Law, the Commission finds that the Project, and the PDR/Maker proffer in particular, are not inconsistent with the FLUM or the Comprehensive Plan. (Ex. 35E.)

**CONCLUSIONS OF LAW**

1. The Applicant requested approval, pursuant to Subtitle X, Chapter 3; Subtitle X, Chapter 5; and Subtitle Z, Chapter 3, of a consolidated PUD and related Zoning Map amendment. The Commission is authorized under the Zoning Act to approve a planned unit development and Zoning Map amendment consistent with the requirements set forth in Subtitle X §§ 304 & 500 of the Zoning Regulations.
2. The proposed PUD meets the minimum area requirements of Subtitle X § 301.1 of the Zoning Regulations.
3. Proper notice of the proposed PUD and Zoning Map amendment was provided in accordance with the requirements in Subtitle Z § 402 of the Zoning Regulations.



4. Based on the above Findings of Fact, the Commission concludes that the Applicant has satisfied the burden of proof for approval of the consolidated PUD under the PUD evaluation standards in Subtitle X § 304 of the Zoning Regulations. Approval of this Project will provide a high-quality development that provides specific public benefits and project amenities, does not result in unacceptable impacts that are capable of being mitigated and are acceptable given the quality of public benefits, and is not inconsistent with the Comprehensive Plan.
5. The Applicant has proposed a consolidated PUD and Zoning Map amendment that will rezone the Property to the MU-9 zone and increase the total density in the PUD by an additional approximately 4.9 FAR over the matter-of-right limit. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” The Commission finds that additional development incentives, flexibility, and related rezoning are appropriate and fully justified by the public benefits and project amenities proffered by the Applicant. In particular, the Commission credits the report of ANC 5D, which acknowledged the strength of the benefits and amenities provided by the Project.
6. In approving the PUD, the Commission may grant flexibility from the matter-of-right development standards pursuant to Subtitle X § 303.11 of the Zoning Regulations. Accordingly, the Commission concludes that the requested flexibility from the rear yard requirements can be granted without detriment to surrounding properties and without detriment to the Zone Plan or Map.
7. The development of this PUD will carry out the purposes stated in Subtitle X § 300 of the Zoning Regulations to encourage higher quality developments that will result in a project “superior to what would result from the matter-of-right standards,” offering “a commendable number or quality of public benefits” and by protecting and advancing “the public health, safety, welfare, and convenience.” The character, scale, mix of uses, and design of the proposed PUD will satisfy these purposes, and the proposed development is compatible with the citywide and area plans of the District of Columbia.
8. The Commission concludes that the Project will provide specific project benefits and public amenities that will benefit the surrounding neighborhood and the public in general to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design and architecture; three-bedroom units; significant affordable housing, site planning and economical land utilization; employment and training opportunities; environmentally sustainable elements; streetscape and public realm improvements; and uses of special value to the neighborhood, such as a contribution to DPR, all are significant public benefits that will be provided to a considerably greater extent than a matter-of-right development would.
9. The Commission finds that the Project will not result in unacceptable impacts on the surrounding area or on the operation of city services and facilities as follows:

- a. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant's transportation expert and DDOT and finds that the traffic, parking, pedestrian, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant as well as those proposed by DDOT and accepted by the Applicant; and the impacts are acceptable given the quality of the public benefits of the PUD. The Commission credits the findings of the Applicant's transportation expert that the Applicant's proposed and enhanced TDM plan, loading management plan, intersection signalization, roadway improvements, wayfinding signage, and pedestrian infrastructure improvements will mitigate vehicular and pedestrian impacts from the Project. The Commission was not persuaded by DDOT that the market-rate pricing of retail/PDR/Maker parking would have a material mitigating effect beyond what the Applicant proposed and agreed to; and
  - b. For the reasons described in this Order, the Commission credits the Applicant's testimony and finds that the public utility infrastructure impacts from the Project will be sufficiently addressed with the development of the MUP. The Commission credits the Applicant's testimony that there is sufficient utility capacity to support this project but that the MUP will continue to be developed with the input from all stakeholders, including the Applicant, and will be developed to address all utility infrastructure needs for the Union Market District. The Commission understands OP's and DC Water's request for the complete MUP now, but the Commission disagrees since the MUP is an area-wide plan with multiple stakeholders involved, so it is not possible or reasonable to tie it solely to this Project or to any single project.
10. The Commission concludes that approval of the PUD is not inconsistent with the Comprehensive Plan and other relevant planning guidance documents. The Commission agrees with the determination of OP and finds that the Project is not inconsistent with the Property's High-Density Commercial and High-Density Residential designations on the Future Land Use Map and its Multi-Neighborhood Center designation on the Generalized Policy Map, and that it will further numerous goals and policies of the Comprehensive Plan, Ward 5 Works Study, and FAMSAP, as described above.
  11. The Commission recognizes OP's testimony that the Project will be inconsistent with the PDR designation on the FLUM, but the Commission disagrees and credits the Applicant's testimony that the Project will be not inconsistent with the FLUM. The Framework Element of the Plan provides guidelines for using the FLUM and GPM. This Element states that the FLUM is not parcel-specific and should be interpreted "broadly." (10-A DCMR 226.1(a).) The mixed-use FLUM designation that includes PDR striping for the Project site encompasses a much larger area of the Union Market District. Accordingly, PDR use is not strictly required on this specific parcel for the Project to be not inconsistent with the FLUM, especially since PDR use will be provided by the Project for a term in any event, and PDR use will be provided in the broader area with the same FLUM designation. (*See Wisconsin-Newark Neighborhood Coalition v. D.C.*

*Zoning Comm'n*, 33 A.3d 382, 395-96 (D.C. 2011).) Further, the FLUM does not mandate or require all three designated uses on the Property in order for the Project to be not inconsistent with the FLUM. The Framework Element of the Comprehensive Plan states: “The [FLUM] indicates areas where the mixing of two or more land uses is encouraged. The particular combination of uses desired in a given area is depicted in striped patterns...” (10-A DCMR 225.18.) As long as the Project encourages such PDR uses and includes uses that are not inconsistent with the FLUM designation, the Project will be not inconsistent with the FLUM. The PDR/Maker commitments in the Project, as described above, will encourage such uses, and retail use is not inconsistent with the PDR designation since it is permitted in PDR zones. Notwithstanding the above, the Applicant is making a PDR use commitment in perpetuity by constructing at least 50% of the ground floor non-residential GFA to the PDR/Maker Specifications. Therefore, the Commission finds that the Applicant’s proffered PDR/Maker commitments are commensurate with the requirements for uses designated on the FLUM, and, ultimately, that the Project is not inconsistent with the FLUM and the Comprehensive Plan.

12. The Commission credits the determination of OP and concludes that the proposed PUD-related Zoning Map amendment from the PDR-1 to the MU-9 zone is not inconsistent with the Comprehensive Plan, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
13. The Commission has judged, balanced, and reconciled the relative value of the Project amenities and public benefits offered, the degree of development incentives and flexibility requested, and any potential adverse effects, and concludes approval is warranted.
14. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP’s recommendations. OP recommended approval, with certain requests and conditions. The Commission concludes that the Applicant adequately agreed to or responded to these requests and conditions as described above. Accordingly, the Application should be approved.
15. In accordance with § 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)), the Commission must give great weight to the written issues and concerns of the affected ANC. As noted by the Court of Appeals, the ANC Act “does not require the BZA to give ‘great weight’ to the ANC’s recommendation but requires the BZA to give great weight to any issues and concerns raised by the ANC in reaching its decision ... While it may be helpful to an applicant seeking a variance or a special exception to have the support of the local ANC, that body’s recommendation in favor of a project does not provide any substantial support to justify the BZA’s decision.” (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) In this case, ANC 5D recommended approval of the Application. The Commission fully credits the unique

vantage point that ANC 5D holds with respect to the impact of the Application on the ANC's constituents and includes the ANC's recommendation as a piece of the Commission's overall conclusion to approve the Application.

## **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia **ORDERS APPROVAL** of the Application for a consolidated PUD and a Zoning Map amendment. This approval is subject to the following guidelines, conditions, and standards of this Order:

### **A. Project Development**

1. The Project shall be developed in accordance with the plans marked as Exhibit 27B1-27B5 of the record, as modified by the plans marked as Exhibits 35A-35D of the record, and as modified by guidelines, conditions, and standards herein (collectively, the "Plans").
2. The Project shall have a total of approximately 314,724 square feet of gross floor area (excluding the penthouse area), equivalent to an 8.4 FAR. The Project shall include approximately 285,482 square feet of gross floor area devoted to residential use including approximately 13,828 feet of gross floor area of habitable penthouse space subject to such reductions in that space as are required based upon the final demising plan for the penthouse space and approximately 22,714 feet of ground floor gross floor area devoted to retail/PDR/Maker space. The Project shall have a maximum of height of 12 stories and 130 feet, plus an additional 20 feet for the penthouse, and a maximum lot occupancy of approximately 73.9% for the residential portion of the Project (i.e., floors two through 12).
3. The Property shall be rezoned from the PDR-1 zone to the MU-9 zone. Pursuant to 11-X DCMR § 311.4, the change in zoning shall be effective upon the recordation of the covenant discussed in Condition No. D.1.
4. The Project shall include a mixed-use building including uses permitted in the MU-9 zone, provided:
  - a. At least five percent of the non-residential ground floor gross floor area shall be reserved for PDR/Maker uses for a period of five years from the date of the first certificate of occupancy for the ground floor retail/PDR/Maker space as follows:
    - i. PDR/Maker uses shall be defined as the following: production, sale, and/or distribution of food and beverages (provided that the onsite consumption of food and beverages shall only be permitted

when associated with such production, sale, and/or distribution user); food incubators and food hubs; robotics and 3-D manufacturing; small-scale production, distribution or repair of goods and related accessory sales; curation and sale of small-scale production goods; or new and locally-owned small businesses as certified with the Department of Small and Local Business Development;

- ii. PDR/Maker uses also shall include “Creative economy” uses, which shall be defined as the following: incubators; graphic design; product or industrial design; engineering and design; technology design and production; design and product curation; fashion design; horticultural design; green businesses and sustainable design; specialty sports and recreation uses; media/communications production and distribution; and
  - iii. PDR/Maker uses further shall include “Arts” uses, which shall be defined as the following: arts, design and creation uses as defined in Subtitle B § 200.2(e) of the Zoning Regulations and entertainment, assembly and performing arts as defined in Subtitle B § 200.2(n) of the Zoning Regulations;
- b. At least 50% of the non-residential ground floor gross floor area shall be built to PDR/Maker Specifications, defined below. Compliance shall be demonstrated by self-certification to the Zoning Administrator prior to the issuance of the first certificate of occupancy for the ground-floor retail/PDR/Maker space:
- i. Structural Slab Load (Ground Floor) live load of 125 pounds per square inch;
  - ii. Clear height of approximately 16 feet from ground-floor slab to bottom of structure above;
  - iii. Electrical supply of 50 watts per square foot;
  - iv. Loading Dock will include a 48-inch raised loading dock and/or levelers;
  - v. Open floor plan layout;
  - vi. Sound attenuation for mixed-use that satisfies NC-25 minimum noise criteria and includes seven-inch-thick minimum concrete podium slab;
  - vii. HVAC designed for one ton per 300 square feet; and

- viii. Ventilation (Fresh Air/Make-Up Air) louvers at façade;
  - c. At least 15 of the residential units will be three-bedrooms; and
  - d. The east side of the Project's parking/loading entrance area shall include a knock-out panel to accommodate potential future vehicular access to and from the alley for the parcel to the east.
5. The Project shall have flexibility from the rear yard requirements of the Zoning Regulations, as shown on the Plans.
6. The Applicant shall have flexibility with the design of the PUD in the following areas:
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
  - b. To vary the final selection of the colors of exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Plans;
  - c. To make refinements to exterior materials, details and dimensions including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and spacing, or any other changes that do not substantially alter the exterior design shown on the Plans to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals;
  - d. To vary the final landscaping materials of the Project based on availability and suitability at the time of construction or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, Department of Energy and Environment, Department of Consumer and Regulatory Affairs, or other applicable regulatory body;
  - e. To vary the location and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy any permitting requirements;
  - f. To vary the final streetscape design and materials in the public right-of-way, including canopies, in response to direction received from District public space permitting authorities;

- g. To vary the final design of the retail/PDR/Maker storefronts and signage, including the number, size, design, and location of retail/PDR/Maker entrances, awnings, canopies, materials, and similar features, to accommodate the needs of specific retail/PDR/Maker tenants within the parameters set forth in Retail Signage Guidelines included in Exhibit 27B3 in the Record and provided that variations do not modify the building footprint or reduce the quality of the materials used on the exterior of the ground floor;
- h. To add openings to the ground-floor façade of the Project facing the alley to accommodate specific retail/PDR/Maker tenants;
- i. To vary the locations of the at-risk windows on the north elevation to accommodate interior configurations;
- j. To vary the number of automobile parking spaces from 145-230 and to remove one level or expand the third level of underground automobile parking;
- k. To vary the final number of residential units from 295-325; and
- l. To vary the distribution of residential unit types, provided the Applicant complies with the affordable housing conditions of this Order.

**B. Public Benefits**

- 1. Affordable Housing. Except as provided in B.1.c, the Project shall include the affordable housing in the following chart:

- a. Chart:

Residential Unit Type	GFA/Percentage of Total Residential GFA	Units	Reserved for household earning equal to or less than:	Affordable Control Period	Tenure (rental or sale)
Total	Approx. 285,482 sq. ft. of GFA + approx. 13,828 sq. ft. of penthouse habitable floor area/100%	Approx. 299	NA	NA	Rental
Market Rate	Approx. 250,118 sq. ft. of GFA + approx. 13,828 sq. ft. of penthouse habitable floor area/equivalent to 87.6% (base building) plus 100% (penthouse)	TBD	Market Rate	NA	Rental

Residential Unit Type	GFA/Percentage of Total Residential GFA	Units	Reserved for household earning equal to or less than:	Affordable Control Period	Tenure (rental or sale)
IZ	Approx. 11,383 sq. ft. of GFA/equivalent to no less than 3.6% (base building) plus 8% (penthouse)	TBD	50% MFI	Life of the project	Rental
IZ	Approximately 23,980 sq. ft. of GFA/no less than 8.4% (base building)	TBD	60% MFI	Life of the project	Rental

- b. At least one of the IZ units shall be a three-bedroom unit; and
- c. The Applicant is granted the flexibility to reduce the size of the penthouse habitable space based upon the final demising plan for the penthouse. If, as a result of any such reduction of the size of the habitable penthouse, the Zoning Administrator determines that the Project qualifies for the exemption from the set-aside required for penthouse habitable space pursuant to 11-C DCMR 1006.10(c), then the Applicant may either set aside the equivalent of at least eight percent of the penthouse habitable space for households earning equal to or less than 50% of the MFI or make a contribution to the housing trust fund, consistent with the provisions of Subtitle C §§ 1505.13 through 1505.16.
2. Three bedroom units. **For the life of the Project,** at least 15 of the residential units will be three-bedroom units, one of which shall be an Inclusionary Zoning unit.
  3. Jobs Readiness Program. **Prior to the issuance of the first Certificate of Occupancy for the Project that includes floors two-12,** the Applicant shall contribute \$30,000 to Jubilee Jobs for the establishment of a jobs readiness program targeting ANC 5D residents. Ten thousand dollars of the contribution shall be for program administration and job readiness skills, \$10,000 shall be for scholarships targeted at ANC 5D residents for construction trades, and \$10,000 shall be for SmarTrip cards for program participants who are placed and maintain employment through Jubilee Jobs. The Applicant shall demonstrate to the Zoning Administrator that: the Job Readiness program and the scholarships have been established and that the SmarTrip cards have been purchased.
  4. Recreation Improvements. **Prior to the issuance of the first Certificate of Occupancy for the Project that includes floors 2–12,** the Applicant shall contribute \$10,000 to DPR for the purchase of new computers for the Trinidad Recreation Center. Compliance with this condition shall be demonstrated by a letter from DPR evidencing that the contribution has been received and allocated for the purchase of the computers or that DPR has an established plan for the purchase of the computers.



5. Life Quality Enhancement Fund. Prior to the issuance of the first Certificate of Occupancy for the Project that includes floors two-12 and annually for two years thereafter (a total of three years), the Applicant will contribute \$25,000 (for a total payment of \$75,000 to “Union Market Coalition” (or other entity administering a Union Market District security and/or maintenance program) for enhanced street cleaning and security for the Union Market District and shall demonstrate to the Zoning Administrator that the enhanced street cleaning and security measures are being provided.
6. Sustainability Improvements. Prior to the issuance of the first Certificate of Occupancy for the Project that includes floors two-12, the Applicant shall:
  - a. Demonstrate to the Zoning Administrator that it has registered the Project with the USGBC to commence the LEED certification process;
  - b. 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 v2009 standard; and
  - c. Install solar panels on the roof of the Project sufficient to generate one percent of the projected energy for the residential portion of the Project.
7. Streetscape Improvements. Prior to the issuance of the first Certificate of Occupancy for the Project that includes floors two-12, the Applicant shall construct the streetscape improvements as shown on pages L-02 to L-06 in Exhibit 14A6 of the record, subject to the flexibility granted in Condition A(6)(f).
8. Art Display. Commencing on the issuance of the first Certificate of Occupancy for the Project that includes floors two-12 and for 10 years thereafter, the Applicant shall display visual art in an area of at least 80 square feet in the residential lobby of the Project.
9. For a period of five years from the date of the first Certificate of Occupancy for the ground floor retail/PDR/Maker space, the Project shall reserve at least five percent of the non-residential ground floor gross floor area for “PDR/Maker Uses,” defined as follows:
  - a. PDR/Maker Uses shall be defined as the following: production, sale, and/or distribution of food and beverages (provided that the onsite consumption of food and beverages shall only be permitted when associated with such production, sale, and/or distribution user); food incubators and food hubs; robotics and 3-D manufacturing; small-scale production, distribution or repair of goods and related accessory sales; curation and sale of small-scale production goods; or new and locally-owned small businesses as certified with the Department of Small & Local Business Development;

- b. PDR/Maker Uses also shall include “Creative economy” uses, which shall be defined as the following: incubators; graphic design; product or industrial design; engineering and design; technology design and production; design and product curation; fashion design; horticultural design; green businesses and sustainable design; specialty sports and recreation uses; media/communications production and distribution; and
  - c. PDR/Maker Uses further shall include “Arts” uses, which shall be defined as the following: arts, design and creation uses as defined in Subtitle B § 200.2(e) of the Zoning Regulations and entertainment, assembly and performing arts as defined in Subtitle B § 200.2(n) of the Zoning Regulations.
10. PDR/Maker uses at Maurice Office. Commencing on the effective date of this Order and continuing until March 1, 2023, the Applicant shall reserve 20,000 square feet of floor area in Maurice Office for PDR/Maker Uses, as defined above in Condition B.9.c.
11. Prior to the issuance of the first Certificate of Occupancy for the ground-floor retail/PDR/Maker space, at least 50% of the non-residential ground-floor gross floor area shall be built to PDR/Maker Specifications, defined below. Compliance shall be demonstrated by self-certification to the Zoning Administrator that the reserved area has been constructed to include:
- a. A Structural Slab Load (Ground Floor) live load of 125 pounds per square inch;
  - b. Clear height of approximately 16 feet from ground-floor slab to bottom of structure above;
  - c. An electrical supply of 50 watts per square foot;
  - d. A loading dock that includes a 48-inch raised loading dock and/or levelers;
  - e. An open floor plan layout;
  - f. A sound attenuation for mixed-use that satisfies NC-25 minimum noise criteria and includes seven-inch-thick minimum concrete podium slab;
  - g. HVAC designed for one ton per 300 square feet; and
  - h. Ventilation (Fresh Air / Make-Up Air) louvers at façade.

**C. Mitigation**

- 1. Penthouse Affordable Housing. The Applicant shall either provide affordable housing or pay into the affordable housing trust fund for the habitable space in the

penthouse. The Applicant shall provide the affordable housing in accordance with the requirements of Subtitle C, Chapter 10. Alternatively, the Applicant shall be permitted to make the payment into the affordable housing trust fund, in accordance with Subtitle C §§ 1505.13-1505.16, as long as the criteria of Subtitle C § 1006.10(c) apply.

2. **Prior to the issuance of the first Certificate of Occupancy for the Project that includes floors two-12,** if not completed or under construction by others, the Applicant shall pay the costs of and complete the following, subject to approval by all applicable regulatory authorities:
  - a. Signalization of the intersection of 4<sup>th</sup> and Penn Streets, N.E. The timing of installation, traffic engineering, exact placement of the signal, and construction parameters shall be subject to final approval from DDOT;
  - b. Construct new sidewalk on Penn Street along the frontage of the Property, up to the western crosswalk at the 5<sup>th</sup> and Penn Streets intersection;
  - c. Install southbound right turn overlap phase at the Florida Avenue, N.E. and 4<sup>th</sup> Street, N.E. intersection;
  - d. Install wayfinding signage in the garage and at the intersection of 4<sup>th</sup> and Penn Streets, N.E. directing northbound and southbound traffic to New York Avenue, N.E. eastbound via Brentwood Parkway;
  - e. Design and install a new striping plan on 5<sup>th</sup> Street, N.E. between Morse and Penn Streets, N.E. to convert 5<sup>th</sup> Street, N.E. to two-way operation between Morse and Penn Streets, N.E.;
  - f. Remove mid-block crosswalk on Penn Street, N.E. between 4<sup>th</sup> and 5<sup>th</sup> Streets, N.E.;
  - g. Install a high-visibility crosswalk across 4<sup>th</sup> Street, N.E. at its intersection with New York Avenue, N.E.;
  - h. Construct missing sidewalk, consistent with DDOT standards, commencing at the southeast corner of New York Avenue, N.E. and 4<sup>th</sup> Street, N.E., and running southeasterly approximately 120 feet to the existing ramp at the southwest corner of 4<sup>th</sup> and Penn Streets, N.E.;
  - i. Install a pedestrian crosswalk running east to west across 4<sup>th</sup> Street at its intersection with Penn Street. The curb ramp at the southeast corner of 4<sup>th</sup> and Penn Streets shall be a blended transition to avoid potential conflicts with public infrastructure, and a minimum four-foot sidewalk may be

provided in lieu of the six-foot sidewalk as shown in Standard Drawing 606.13; and

- j. Install ADA compliant curb ramps for the west leg of the intersection of 5<sup>th</sup> and Penn Streets, provided no relocation of utilities is required.
3. **For the life of the Project**, the Applicant shall implement the Loading Management Plan and Transportation Demand Management Plan described on pages 32 and 42-44, respectively, in Exhibit 22 in the record, with the following additional provisions:
    - a. The Applicant shall offer new residents within the first five years the building is open a one-time, one-year Capital Bikeshare membership; and
    - b. The Applicant shall supply 10 shopping carts for residential tenants to use for daily errands.

**D. Miscellaneous**

1. No building permit shall be issued for this Project until the owner of the Property has recorded a covenant among the land records of the District of Columbia between the owners 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 owner of the Property 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.
2. The Application approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11-Z DCMR § 702.2. Construction must commence no later than three years after the effective date of this Order.
3. 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.
4. 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, 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. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.


On July 30, 2018, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the Application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).


On September 17, 2018, 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 A. Shapiro, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on November 2, 2018.

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

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

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

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