

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-02B

Z.C. Case No. 07-02B

Highland Park West LLC, Columbia Heights Ventures Parcel 26, LLC
and the District of Columbia

Modification to PUD @ Square 2672
November 8, 2010

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on September 30, 2010, to consider an application from Highland Park West LLC, Columbia Heights Ventures Parcel 26, LLC, and the District of Columbia (collectively the "Applicants"), for approval of modifications to a planned unit development (PUD) approved pursuant to Z.C. Order No. 07-02. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On May 13, 2010, the Applicants submitted an application to the Commission for approval of modifications to a PUD approved pursuant to Z.C. Order No. 07-02.
2. The site consists of Lots 884, 885, and 886 in Square 2672 (the "Subject Property"), and has a combined land area of approximately 101,194 square feet. Lot 884 is improved with the existing Highland Park building, and Lots 885 and 886 are assessment and taxation ("A&T") lots created over an existing record lot known as Lot 726.
3. The Subject Property is located in the northwest quadrant of the District and is generally bounded by Irving Street, N.W., to the north, 14th Street, N.W., to the east, a 20-foot public alley to the south, and private property to the immediate west. The Subject Property was split-zoned R-5-B and C-3-A, with the western portion zoned R-5-B and the eastern portion zoned C-3-A. The Commission approved a map amendment as part of the initial application to rezone the R-5-B portion of the Subject Property to C-3-A, such that the entire property is zoned C-3-A.

4. The LaCasa Shelter, a District-owned shelter, is presently located and operating on Lots 885 and 886. Donatelli Development was awarded the development rights for the Subject Property pursuant to a request for proposals issued by the RLA Revitalization Corporation, predecessor in interest to the District. A new community-based residential facility ("CBRF") will ultimately be constructed on Lot 885 by the District at the District's cost and under the auspices of the Department of Real Estate Services ("DRES") and will be operated by the Department of Human Services ("DHS").
5. Pursuant to Z.C. Order No. 07-02, the approved PUD contemplated the construction of a 69-unit apartment building and an 82-bed CBRF as an addition to the existing Highland Park building located on Lot 884. The initially-approved addition would contain approximately 109,000 square feet of gross floor area, and would be constructed to a maximum height of 86 feet, two inches. The overall density of the entire project was approved at 3.96 floor area ratio ("FAR") and was designed to include a total of 64 new parking spaces.
6. The Applicants seek approval for modifications to the apartment house to be constructed as an addition to the existing Highland Park building. The proposed modified apartment house addition is referred to in this application as the "Phase II Addition." The Applicants are seeking the following modifications to the Phase II Addition: to increase the number of residential units from 69 to 144 units; to increase the height from 86 feet, two inches to 90 feet; to eliminate the proposed parking spaces for the new construction; and to redesign the exterior façades of the Phase II Addition in order to help the façade blend with the façades of the existing Highland Park building. In all other respects, the proposed project will be substantially consistent with the conditions set forth in Z.C. Order No. 07-02. The CBRF portion of the approved PUD will remain as approved, and thus this modification application does not apply to or include any changes to the approved CBRF.
7. At its public meeting held on June 14, 2010, the Commission voted to schedule a public hearing on the application.
8. On June 16, 2010, the Applicants submitted a Prehearing Statement. (Exhibit 17.) The Prehearing Statement included revised plan sheets showing the proposed building's design and materials; additional information in response to the Office of Planning's set-down report; and additional materials required pursuant to § 3013 of the Zoning Regulations.
9. On September 10, 2010, the Applicants submitted Final Architectural Plans and Elevations. (Exhibit 28.) The plans included all of the project and development information required by the Zoning Regulations and the Commission. The plans also included updated information in response to comments from the Office of Planning ("OP").

10. After proper notice, the Commission held a public hearing on the application on September 30, 2010.
11. The parties to the case were the Applicants and Advisory Neighborhood Commission ("ANC") 1A (the ANC within which the Subject Property is located).
12. Three principal witnesses testified on behalf of the Applicants at the public hearing, including Chris Donatelli of Donatelli Development, and George Meyers and Laura DeHart of GTM Architects, Inc. Based upon his professional experience, as evidenced by the resume submitted for the record, Mr. Meyers was qualified by the Commission as an expert in architecture and design.
13. OP testified in support of the project at the public hearing.
14. ANC 1A submitted a resolution in support of the application. (Exhibit 14.) ANC 1A's resolution stated that at a duly noticed public meeting on May 12, 2010, at which notice was properly given and a quorum was present, ANC 1A voted to recommend that the Commission approve the Applicants' requested modifications. ANC 1A's resolution stated that at the ANC meeting, the Applicants presented a detailed analysis of the project and proposed modifications, as well as a discussion of the justifications for the proposed modifications and zoning flexibility, and responded to all the questions raised by the Commissioners and community. ANC 1A's resolution noted the Applicants' proposed modifications, and concluded that the overall presentation and the information presented demonstrate to ANC 1A that approval of the requested modifications and the overall project will continue to have a positive impact on the development of the community.
15. ANC 1A submitted an additional letter, dated October 1, 2010, clarifying that the ANC's vote on May 12, 2010 was 5-1-1 to support the application for modifications. (Exhibit 38.)
16. Three individuals testified at the public hearing, including: William Jordan, an ANC 1A Commissioner testifying in his capacity as an individual; Roy Murray, who resides at 13th and Euclid Streets, N.W., in Ward 1; and Jane Zara, on behalf of the Committee to Save Franklin Shelter. Mr. Jordan testified regarding why he voted at the ANC meeting to oppose the requested modifications. Mr. Murray testified that he supports the project since it will bring additional density to the neighborhood. Ms. Zara testified regarding the general need to provide supportive services and housing for homeless people in the District.
17. On October 4, 2010, the Applicants submitted a post-hearing submission. (Exhibit 40.) The post-hearing submission included an excerpt of the Land Disposition and

Development Agreement ("LDDA") between the Applicants, recorded in the land records of the District of Columbia on July 21, 2005 as Instrument No. 2005100977. The submission confirmed Mr. Donatelli's testimony that the project will reserve 20% of the residential floor area of the building subject to this application as affordable housing, of which at least five percent of the residential floor area will be reserved for people with incomes at or below 30% of AMI; at least five percent of the residential floor area be reserved for people with incomes at or below 60% of AMI; and the remaining 10% of the of the residential floor area will be reserved for people with incomes at or below 80% of AMI.

18. On October 4 2010, OP submitted a Supplemental Report, which stated that OP contacted officials from DHS and DRES, and that OP understands that: (a) the La Casa shelter will be fully closed by October 15, 2010; (b) DHS, in conjunction with DRES, plans to construct a facility for permanent supportive housing on a portion of the vacated site; (c) Donatelli Development has fulfilled its obligations to transfer the site for the DHS facility to the District government, complete the architectural drawings for the facility to a level needed for consideration by the Commission, and seek from the Commission zoning relief necessary for constructing the PUD that will be integrated with the facility; (d) in the Fall of 2010, DHS will send out a request for bids to produce complete architectural drawings for the facility, the services to be provided are fully funded, and the drawings are anticipated to be completed in 2011; and (e) DHS has approximately half of the money needed to construct the facility, and the remainder may be available through a federal grant for site-based supportive housing. (Exhibit 39.)
19. At its special public meeting held on October 7, 2010, the Commission took proposed action to approve the application and plans that were submitted to the record.
20. On October 21, 2010, at the request of the Commission, the Applicants submitted a post-hearing submission setting forth Donatelli Development's provision of affordable housing in other projects.
21. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by action dated October 28, 2010, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit 49.)
22. The Commission took final action to approve the application on November 8, 2010.

Development Incentives and Flexibility

23. The Applicants requested the following areas of flexibility from the Zoning Regulations:
- a. *Flexibility from Rear Yard Requirements.* Pursuant to § 774.1 of the Zoning Regulations, buildings in the C-3-A Zone District are required to provide a rear yard of a minimum depth of two and one-half inches per foot of height, but not less than 12 feet. Thus, the Phase II Addition is required to provide a 17-foot rear yard. However, in order to accommodate the Phase II Addition's footprint and loading facilities, the project does not include a rear yard. The Commission finds that the rear of the property abuts a 20-foot public alley, so there will be sufficient open space between the rear of the proposed Phase II Addition and the property to the immediate south of addition, which is located across the 20-foot public alley. Therefore, the Commission finds that approval of this requesting flexibility will not impair the intent of the Zoning Regulations;
 - b. *Flexibility from Court Requirements.* As shown on the project plans, there are a number of courts located at various points throughout the project. Pursuant to § 776.3 of the Zoning Regulations, where a court is provided for a building or portion of a building devoted to residential uses, at any elevation in the court, the width of court shall be a minimum of four inches per foot of height, but not less than 15 feet. The proposed courts meet the minimum width requirements when measured to the building's main massing. However, a number of pinch points are created due to the proposed balconies and bays. The Commission finds that the court widths have been increased as much as possible to meet the spirit of the regulations and provide open space, while at the same time providing a reasonable interior configuration. However, due to the configuration of the site and its uses, increasing the various court widths would severely impact the unit layout, count and stacking of utilities and MEP equipment. The Commission approved similar court relief as part of the approved PUD, and the Commission finds that approval of the requested flexibility should be granted in this application. (Z.C. Order No. 07-02, Finding of Fact No. 32.);
 - c. *Flexibility from Parking Requirements for CBRF.* Pursuant to § 2101.1 of the Zoning Regulations, the project is required to provide a total of eight off-street parking spaces for the CBRF. However, the Applicants are seeking flexibility to provide three instead of eight off-street parking spaces. The Commission approved the same parking relief as part of the approved PUD. (Z.C. Order No. 07-02, Finding of Fact No. 32.) The Commission finds that this request is necessary given the size of the layout of the existing parking spaces which the Applicants propose to allocate to the proposed uses. The overall project has a

surplus of 62 parking spaces, but the Applicants are seeking flexibility to reduce the number of spaces for the CBRF given the anticipated minimal parking demand for that use since the residents will not have cars. Moreover, the Commission further finds that the Subject Property is bound by 14th Street, which is served by a number of bus routes and is also adjacent to the Columbia Heights Metrorail Station. Thus, reducing the number of parking spaces for the CBRF will not have an adverse impact on the project or the area;

- d. *Flexibility from Roof Structure Requirements.* The Applicants request flexibility from the roof structure requirements of the Zoning Regulations because, there will be multiple roof structures (§§ 411.3 and 770.6(a)), and the roof structures cannot be setback from all exterior walls a distance equal to their height above the roof (§§ 411.2 and 770.6(b)). The Commission approved relief from the roof structure setback requirements for the approved PUD. (Z.C. Order No. 07-02, Finding of Fact No. 32.) The Commission finds that each roof structure is a necessary feature and the structures have to be separated due to the building code requirement to provide separate means of egress for buildings, as well as the desire to break up massing on the roof. Moreover, each roof structure meets the setback requirement from all street frontages. The location and number of the roof structures is driven by the layout and design of the residential units within the building. In addition, the Applicants are providing the greatest setbacks possible given the size of the roofs and the internal configuration of the proposed buildings. The Commission thus finds that the requested roof structure design will not adversely impact the light and air of adjacent buildings since each element has been located to minimize its visibility. Therefore, the Commission concludes that the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected; and
- e. *Additional Areas of Flexibility.* The Applicants also request flexibility in the following areas:
- (1) to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, elevators, atria, toilet rooms, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building;
 - (2) to vary the location and unit type of affordable housing units in the apartment building, provided that the total floor area devoted to such units never accounts for less than 20% of the total residential unit floor area in the apartment building;

- (3) to vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials for the apartment building;
- (4) to vary the number and location of off-street parking spaces, not to decrease below 292 spaces; and
- (5) to make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the D.C. Building Code or that are otherwise necessary to obtain a final building permit.

Public Benefits and Amenities

24. The Commission found in Z.C. Case No. 07-02 that a number of public benefits and amenities will be created as a result of the approved PUD. (Z.C. Order No. 07-02, Finding of Fact No. 33.) The Commission finds that approval of the PUD, as modified, will continue to result in a number of public benefits and amenities, including:
 - a. *Urban Design, Architecture, Landscaping and Open Space (§ 2403.9(a).)* The proposed Phase II Addition has been designed by the architectural firm of GTM Architects, Inc. to enhance the streetscape and surrounding neighborhood. As shown on the elevations included with the Revised Plans, the quality of the Phase II Addition's revised architectural design far exceeds that of most matter-of-right projects and is consistent with principles of sound urban design. The project will also include extensive landscaping along Irving Street and within the development's courtyards;
 - b. *Site Planning and Efficient Economical Land Utilization (§ 2403.9(b).)* The Applicants are not significantly changing the footprint of the approved Phase II Addition as part of this application, and the proposed lot occupancy of 64% is less than the maximum permitted for residential uses in the C-3-A Zone District. Thus, as the Commission previously found, the configuration of the Phase II Addition will promote the efficient utilization of land on a relatively narrow site while protecting the light and air of the addition's occupants and their neighbors through the use of multiple courts and building setbacks. Moreover, the Phase II Addition's setback from Irving Street and the east and west boundaries of Lot 886 will provide significant open space and will help to minimize the addition's impact on adjacent properties;

- c. *First Source Employment Agreement (§ 2403.9(e).)* The Applicants have executed a First Source Employment Agreement with the Department of Employment Services ("DOES") in order to achieve the goal of utilizing District residents for at least 51% of the new jobs created by the PUD project. The Applicants will use DOES as their first source for recruitment, referral, and placement of new hires for employees whose jobs are created by the PUD;
- d. *Housing and Affordable Housing (Section 2403.9(f).)* The Commission previously determined that the development of new residential uses on the Subject Property is "consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative." (Z.C. Order No. 07-02, Finding of Fact No. 33(d).) The proposed Phase II Addition, as modified, will provide approximately 97,107 square feet of new housing just steps away from the Columbia Heights Metrorail Station, and will bring additional residential units to the Subject Property. Twenty percent of the residential floor area of the Phase II Addition will be reserved for households earning no more than 80% of AMI. The affordable units will be evenly distributed throughout all but the top two floors of the apartment building and will be comparable in exterior design, materials, and finishes to the market-rate units. The location, leasing and occupancy of the affordable units will be controlled by an agreement between the developer and the District; and
- e. *Environmental Benefits.* The modified Phase II Addition will continue to incorporate a number of environmentally sensitive design features and construction practices that will provide significant environmental benefits to the District. As shown on the landscaping plan included in the plans, extensive landscaping will be installed in the development's courtyards and along Irving Street which will improve water quality by reducing the volume of runoff from the site. The Phase II Addition's HVAC and fire-suppression systems will not use HCFCs or Halon, and the Applicants also intend to use low-VOC paints, sealants, adhesives, and carpeting on the buildings' interiors. All of these features will help diminish the addition's environmental footprint. Although the Applicants will not be seeking LEED certification for the Phase II Addition, the Applicants submitted a Conceptual LEED Scorecard indicating sustainability features to be incorporated into the project. The Applicants shall submit with its building permit application for the apartment building a LEED checklist indicating that the project includes sustainable design features such that the building would be able to achieve a minimum of 23 points of the LEED for new construction standards, although the Applicants are not required to seek LEED certification for the building.

Compliance with Guiding Principles of the Comprehensive Plan

25. The Commission finds that the proposed PUD as modified, continues to: (1) be consistent with the District of Columbia Comprehensive Plan Future Land Use Map and the Generalized Policy Map; (2) help implement many of the guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and health communities; and (3) further the objectives and policies of the Comprehensive Plan's major elements, all as set forth in the OP reports marked as Exhibits 15 and 29 of the record in this case, and as previously found by the Commission in Findings of Fact Nos. 34-41 of Z.C. Order No. 07-02.

Office of Planning Report

26. By report dated June 4, 2010, OP recommended that the Commission set down the proposed modifications to the PUD for a public hearing. (Exhibit 15.) OP indicated that the requested modifications are consistent with the Comprehensive Plan, and with 11 DCMR Chapter 24's requirements for the setdown of a PUD modification. OP also indicated that the proposed plans respect the general intent of the previously approved PUD, and that OP strongly supports the project. OP also indicated that, prior to the public hearing, the Applicants should provide more information regarding the building's design; the distribution of affordable units and unit types, detailed information regarding the roof structures; information regarding the loading berths and traffic; and information regarding landscape management.
27. By report dated September 20, 2010, OP recommended final approval of the application. (Exhibit 29.) OP stated that the proposed substitution of more, smaller units for the approved larger units respond to changes in economic conditions and project financing since the PUD order. The design changes would also present a more contextual façade to the neighborhood than the approved plan. OP also indicated that the Applicants provided to OP the additional information requested in OP's initial report, and that the Applicants addressed all of the Commission's and OP's requests from the public meeting. OP noted that the Commission may wish to ask the Applicants to provide an initial distribution plan for the affordable units, but that the distribution would be subject to change over the years. OP also indicated that the requested modifications are not inconsistent with the Comprehensive Plan, and that as OP previously found in the original PUD application, the modified project continues to provide a number of public benefits and amenities.

DDOT Report

28. The District Department of Transportation ("DDOT") submitted a memorandum dated September 23, 2010, indicating that DDOT recommends conditional support of the

Applicants' request for modifications to the approved PUD. (Exhibit 30.) DDOT indicated that the development is supportive of DDOT's policy to increase the housing stock within walking distance of retail and entertainment. However, DDOT requested that the Applicants follow DDOT's policy for a Transportation Demand Management ("TDM") program in order for the development to avoid any transportation impacts on the Columbia Heights neighborhood. DDOT requested that: (1) the Applicants close the existing curb cut located to the west of the project associated with the existing CBRF; (2) the Applicants prepare a delivery management schedule to DDOT that will allow staff members to review it in advance of final build-out of the property; and (3) the Applicants incorporate comprehensive TDM measures. DDOT also indicated that the Applicants should locate the bicycle parking in a welcoming and well-illuminated area of the building.

29. At the public hearing on September 30, 2010, the Applicants testified that, once construction of the project commences, they will close the existing curb cut located to the west of the project associated with the existing CBRF. The Applicants indicated they will also work with DDOT to develop a delivery management schedule once the Phase II Addition is operating at full capacity. The Applicants also stated that their proposed TDMs have not changed from those of the Commission's prior approval, and indicated on the project plans that the proposed bicycle parking spaces are conveniently located for residents and guests. Thus, the Commission finds that the Applicants have satisfied the conditions in DDOT's recommendation.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project, "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Because the modifications proposed by the Applicants could not be approved by the Zoning Administrator pursuant to § 2409.6, the Applicants submitted the proposed modifications to the Commission for approval. And because the modifications were not so minor as to permit their review under the Commission's Consent Calendar procedure, 11 DCMR § 3030, they were processed as a second-stage application. (11 DCMR § 2409.9.)
3. As was the case for the original approval, the Commission, as part of its approval of a modification may grant or impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.

4. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
5. The modified PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations. The modified PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses for this project are appropriate for the Property. The impact of the project on the surrounding area and the operation of city services is acceptable given the quality of the public benefits in the project.
6. The Applicants' request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable tradeoffs for the requested development flexibility.
7. Approval of this modified PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Commission is required under § 3(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) (2001) to give great weight to the issues and conditions expressed in the written report of an affected ANC. In this case, ANC 1A voted to support the modification application and recommended that the Commission approve the application. (Exhibits 14 and 38.) The Commission has given ANC 1A's recommendation great weight in approving the modification application.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.
10. The application for the modified PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for modifications to a PUD approved pursuant to Z.C. Order No. 07-02 subject to the following guidelines, conditions and standards, which replace those contained in Z.C. Order No. 07-02: For the purposes of these conditions, the term "Applicants" shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Subject Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner. Whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in bold and underlined text.

A. PROJECT DEVELOPMENT

1. The PUD shall be developed in accordance with the architectural plans and elevations prepared by GTM Architects, Inc., dated November 8, 2010 and marked as Exhibit 48 of the record in this case (the "Plans"), as modified by the guidelines, conditions, and standards set forth herein.
2. The PUD shall have a maximum density of 4.11 FAR and a gross floor area of 124,307 square feet devoted to residential uses.
3. The maximum height of the building shall be 90 feet.
4. The project shall include a minimum of 292 off-street parking spaces located in the existing building on Lot 884 in Square 2672, to be shared between the Phase II Addition to be constructed on Lot 886 in Square 2672 and the CBRF to be constructed on Lot 885 in Square 2672.
5. The Applicants are granted flexibility from the rear yard requirements (§ 774.1), court requirements (§ 776.3), roof structure setback and number requirements (§ 411 and § 770.6), and the off-street parking requirements for the CBRF (§ 2101.1), consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.
6. The Applicants shall also 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, elevators, atria, toilet rooms, stairways,

and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building;

- b. to vary the location and unit type of affordable housing units in the apartment building, provided that the total floor area devoted to such units never accounts for less than 20% of the total residential unit floor area in the apartment building;
 - c. to vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials for the apartment building;
 - d. to vary the number and location of off-street parking spaces, not to decrease below 292 spaces; and
 - e. to make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the D.C. Building Code or that are otherwise necessary to obtain a final building permit.
7. **Prior to the commencement of construction of the CBRF** on the land currently known as Lot 885 in Square 2672, the Applicants shall not construct, or otherwise allow the construction of, any improvements or other structures on the land currently known as Lot 885 in Square 2672.

B. PUBLIC BENEFITS

1. **Prior to the issuance of a building permit for the project**, the Applicants shall submit to DCRA the fully-executed First Source Employment Agreement with the Department of Employment Services (“DOES”).
2. **The Applicants shall submit with its building permit application** for the apartment building a LEED checklist indicating that the project includes sustainable design features such that the building would be able to achieve a minimum of 23 points of the LEED for new construction standards, although the Applicants are not required to seek LEED certification for the building
3. Consistent with the LDDA (Exhibit 40), no less than 20% of the residential unit floor area in the apartment house shall be reserved for households earning no more than 80% of the Washington, D.C. Metropolitan Area Median Income (“AMI”). The affordable units must be evenly distributed throughout all but the top two floors of the apartment building and must be comparable in interior design, materials, and finishes to the market-rate units.

4. **During the life of the project**, landscaping in the public space along Irving Street, N.W., shall be in accordance with the Plans, subject to approval by the Public Space Division of DDOT. The Applicants or its successors shall maintain all landscaping in private space owned by the Applicants and in public space adjacent to the site. In addition, until the CBRF is constructed, the Applicants shall maintain the CBRF parcel as shown on the Overall Landscape Plan sheet included in the Plans.
5. **During the life of the project**, the Phase II Addition's HVAC and fire-suppression systems will not use HCFCs or Halon.
6. **During the life of the project**, the Highland Park community room shall be open to the residents of the Phase II Addition of the building pursuant to the terms, procedures, and conditions applicable to the residents of the Highland Park portion of the building, including, but not limited to, terms and restrictions concerning maximum capacity, operating hours, reservation fees, deposits, and usage restrictions.

C. COMPLIANCE WITH DDOT CONDITIONS FROM ORIGINAL APPROVAL

1. **During operation of the building**, the Applicants shall implement and maintain the following Transportation Demand Management Measures:
 - a. The Applicants shall work with DDOT to provide a curbside car-sharing space on Irving Street, N.W., adjacent to the proposed project.
 - b. The Applicants shall provide to the initial building tenants one \$20.00 SmarTrip card per individual residential unit, due at the time of the initial move-in of the initial tenant of that unit.
 - c. The Applicants shall provide 60 bicycle parking spaces in the apartment building's underground garage.
 - d. The Applicants shall provide links to goDCgo.com and CommuterConnections.com on its developer and property management websites.
 - e. The Applicants shall provide informational materials on transportation alternatives to the development's residents through a lobby kiosk, bulletin board, and welcome packets for new tenants.

D. MISCELLANEOUS

1. Pursuant to Z.C. Order No. 07-02, 57 DCR 7940 (2010), the project, as now modified by the Commission, shall be valid until June 27, 2012, within which time an application

shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than June 27, 2013.

2. Pursuant to 11 DCMR § 2409.3, the Zoning Administrator shall not approve a permit application for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to OAG and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the Subject Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with OZ for the case record.
3. The change of zoning from the R-5-B Zone District to the C-3-A Zone District shall be effective upon the recordation of the covenant required in Condition No. C-2, pursuant to 11 DCMR § 3028.9.
4. 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 prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On October 7, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Commission **APPROVED** the application at its special public meeting by a vote of 4-0-1 (Anthony J. Hood, Konrad W. Schlater, Greg M. Selfridge, and Michael G. Turnbull to approve; Peter G. May, not present, not voting).

On November 8, 2010, upon the motion of Chairman Hood, as seconded by Vice Chairman Schlater, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Konrad W. Schlater, Greg M. Selfridge, and Michael G. Turnbull to adopt; Peter G. May, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on December 10, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 07-02B

DEC - 9 2010

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order 07-02B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | | | |
|----|--|----|--|
| 1. | <i>D.C. Register</i> | 5. | Gottlieb Simon ANC 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004 |
| 2. | Kyrus Freeman, Esq. Holland & Knight 2099 Pennsylvania Ave., N.W. Suite 100 Washington, D.C. 20006 | 6. | Councilmember Jim Graham |
| 3. | ANC 1A 733 Euclid Street, N.W. Washington, DC 20001 | 7. | DDOT (Karina Ricks) |
| 4. | Commissioner Luis Morales ANC/SMD 1A03 1460 Columbia Road, N.W. #C Washington, DC 20009 | 8. | Melinda Bolling, Acting General Counsel DCRA 1100 4 th Street, S.W. Washington, DC 20024 |
| | | 9. | Office of the Attorney General (Alan Bergstein) |

ATTESTED BY:

A handwritten signature in cursive script that reads "Sharon S. Schellin". The signature is written in black ink and is positioned above a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning