

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF CLOUMBIA
ZONING COMMISSION ORDER NO. 08-14

Z.C. Case No. 08-14

Consolidated Planned Unit Development and Related Zoning Map Amendment
(Kelsey Gardens Property Company LLC - Square 421, Lots 67 and 68)
March 9, 2009

Pursuant to notice, the Zoning Commission for the District of Columbia, (the “Commission”) held a public hearing on October 30, 2008, to consider an application from Kelsey Gardens Property Company LLC (the “Applicant”), owner of Lots 67 and 68 in Square 421, for consolidated review and one-step approval of a planned unit development (“PUD”) and related amendment to the Zoning Map from the C-2-A Zone District to the C-2-C Zone District to construct a mixed-use development on the property. The Commission considered the applications pursuant to Chapter 24 and § 102, respectively 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 contested case provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications subject to the specified conditions.

FINDINGS OF FACT

Applications, Parties, and Hearings

1. On May 1, 2008, the Applicant, as owner of Lots 67 and 68 in Square 421 (the “Subject Property”), filed applications with the Commission requesting consolidated review and one-step approval of a PUD and a related map amendment from the C-2-A Zone District to the C-2-C Zone District for the Subject Property (“Application” or “PUD Application”). (Exhibits 4-7.)
2. The Subject Property has a combined land area of approximately 42,750 square feet and is currently zoned C-2-A. Square 421 is located in the northwest quadrant of the District, and is bounded by Q Street on the north, 7th Street on the east, P Street on the south, and 8th Street on the west. Square 421 is bisected by an alley running north-south through the property from P Street to Q Street.
3. The Applicant proposes to construct a mixed-use development (“Project”) consisting of market-rate rental housing, affordable rental housing, neighborhood-

- serving retail, and townhouses. The new development will contain approximately 272,820 square feet of gross floor area, a 5.94 floor area ratio (“FAR”), and a maximum building height of 80 feet 10 inches. Approximately 251,430 square feet will be devoted to multifamily residential uses; approximately 14,760 square feet will be devoted to retail uses. In addition, the Project includes townhouses with a total of 13,700 square feet that will be devoted to either residential or office uses. The Project includes 230 parking spaces in a two-level underground parking garage.
4. At its public meeting held on July 14, 2008, the Commission voted to schedule a public hearing on the Application.
 5. On August 1, 2008, the Applicant submitted a Prehearing Statement, along with revised architectural drawings. (Exhibits 16-18.)
 6. On October 14, 2008, the Applicant submitted additional supplemental hearing materials, which included revised architectural drawings, additional drawings of a community-proposed alternative eight-story design, an updated list of community proffers, a LEED checklist, and the resume of Joe Schneider, project architect. (Exhibits 38-43.)
 7. After proper notice, the Commission held a public hearing on the Application on October 30, 2008. The parties to the case were the Applicant and Advisory Neighborhood Commission (“ANC”) 2C, the ANC within which the subject property is located. No requests for party status were submitted.
 8. The Applicant presented three witnesses at the hearing of October 30, 2008, including Joe Schneider, an architect with Lessard Group; Pastor ViCuris Little of the Deliverance Church of God in Christ and a member of the Applicant team; and Rachael Preston, Development Manager with Metropolitan Development.
 9. Rinaldo Washington, Director of Program Services for Emmaus Services for the Aging, testified in support of the project on behalf of Reverend Joseph Williams, Executive Director of Emmaus Services for the Aging. Leroy Thorpe, President of the East Central Civic Association, and Alexander M. Padro, Single Member District Commissioner for ANC 2C01, testified in support of the Project as well.
 10. ANC 2C submitted a report in support of the Application. ANC 2C was fully supportive of the project’s density and mix of uses. The ANC suggested changes to the PUD to allow for loading from P Street, a 20’ alley width, and an eight-story design. (Exhibit 33.)

11. On November 21, 2008, the Applicant submitted a Post-Hearing Submission, which included updated architectural drawing sheets presenting a modified eight-story building design at the preference of the community and garage access and loading access from the alley, in response to the direction of the Commission. This submission also included a traffic impact study and a transportation management plan provided by O. R. George & Associates Inc. (Exhibits 51-53.)
12. At a special public meeting on December 8, 2008, the Commission considered the Application but deferred action on the Application and plans that were submitted to the record. The Commission requested additional clarification on the demand for parking in the vicinity of the Subject Property, the loading of the retail, the details of the interior residential corridors, and changes to the façade of the building design and building materials.
13. On January 12, 2009, in response to the Commission's request, the Applicant submitted a supplemental post-hearing submission, which included updated architectural drawing sheets, and a supplemental memo on parking from traffic engineers at O. R. George & Associates, Inc. (Exhibits 56-59.) The Applicant submitted corrected plans on January 16, 2009. (Exhibit 59A.)
14. At a special public meeting on January 26, 2009, the Commission took proposed action to approve the Application. The Commission expressed continued concern about the design of the northern ground floor of the mixed-use building and of the end unit of the P Street townhouse component, and invited the Applicant to submit revised drawings to deal with these design issues.
15. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated January 29, 2009, 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 68.)
16. On February 18, 2009, the Applicant submitted an additional post-hearing submission addressing the concerns raised by the Commission when it took proposed action. The submission included a revised design of the interior of the ground floor of the mixed-use building and the elimination of the end townhouse residential unit. The elimination of the townhouse unit does not affect the exterior of the building, but instead is accomplished by a re-configuration of the interior space and a reduction in the overall unit count. (Exhibits 69 and 69A.)
17. The Commission took final action to approve the application with conditions on March 9, 2009.

The PUD Site and Area

18. The PUD site includes the entire west side of 7th Street, N.W. between P and Q Streets, as well as a vacant lot located along P Street at the corner of 8th Street, N.W. A ten-foot-wide public alley separates the two parts of the site and forms the western boundary of the 7th Street lot. The Kelsey Gardens Apartments currently occupy the 7th Street lot.
19. Surrounding the site are row houses to the west along 8th Street, a recently approved 95-foot-high mixed-use PUD project at the old O Street market site to the south, and various low scale commercial uses to the east and north.

The PUD Project

20. The Project will have an overall density of 6.0 FAR and a total gross floor area of approximately 272,818 square feet dedicated to a mixed-use development that includes affordable residential rental units, market-rate residential rental units, and approximately 14,760 square feet of retail. The proposed project includes six townhouses totaling approximately 13,700 square feet with flexibility to rent or sell as residential or offices. (Exhibit 69A3)
21. The height of the project steps down from south-to-north and east-to-west, creating a smooth transition from higher-density development to the south and lower-density rowhouse development to the west. The southern portion of the building, fronting on 7th Street, will be built to a height of 80 feet 10 inches at the roofline. The height of the building along 7th Street will remain at 80 feet 10 inches for the length of the building then stepping down at Q Street. At the rear of the building, facing the alley to the west between 7th and 8th Streets, there are five projections of varying lower heights than the 7th Street facade. The townhouses are 41 feet high, complementing the existing townhouses along 8th Street, N.W.
22. The project includes 230 parking spaces. Thirty-six of the total spaces are separated from the balance of parking by a second security gate; 25 of these spaces are allotted for use by retailers and 11 are allotted for use by residential guests. The remaining 194 parking spaces are secured parking for residents of the development. The project also includes two loading docks. The PUD requests zoning relief with respect to the loading berth requirements. One 55-foot loading berth and one 30-foot loading berth instead of three loading berths are provided. All loading and the garage access will be located in the alley at the southern end of the project off of P Street.

PUD-Related Map Amendment

23. The Subject Property is currently zoned C-2-A. The C-2-A Zone District is designed to serve commercial and business functions, housing, and mixed uses for segments of the District of Columbia outside of the central core. (11 DCMR § 720.2.) The C-2-A Zone Districts are generally located in low- and medium-density residential areas with access to main highways or rapid transit stops, and include office employment centers, shopping centers, and medium-bulk mixed-use centers. (11 DCMR § 720.3.)
24. The maximum permitted matter-of-right height in the C-2-A Zone District is 50 feet, with no limit on the number of stories. (11 DCMR § 770.1.) The C-2-A Zone District permits a maximum density of 2.5 FAR, all of which may be residential, but of which not more than 1.5 FAR may be used for other, non-residential permitted purposes. (11 DCMR § 771.2.) Pursuant to § 772.1 of the Zoning Regulations, no building or portion of a building in the C-2-A Zone District devoted to a residential use may occupy more than 60% of the lot upon which the structure is located. (11 DCMR § 771.2.) There is no lot occupancy limitation for commercial use in the C-2-A Zone District.
25. Development under the PUD guidelines for a C-2-A Zone District would allow a maximum building height of 65 feet and a maximum density of 3.0 FAR, of which not more than 2.0 FAR may be devoted to commercial use, including hotels. (11 DCMR §§ 2405.1 and 2405.2.)
26. The Applicant sought a PUD-related map amendment to the C-2-C Zone District. The C-2-C Zone District permits commercial and residential functions similar to the C-2-A Zone District and with higher-density residential and mixed uses. It permits a maximum height of 90 feet and a maximum density of 6.0 FAR for all uses. The C-2-C Zone District allows a maximum lot occupancy of 80%.
27. Pursuant to § 774 the Zoning Regulations, a minimum 15-foot rear yard must be provided for each structure in the C-2-C Zone District which may be measured from the center line of an abutting alley for the first 20 feet of building height. There is no side yard requirement for a building or structure located in a C-2-C Zone District.
28. The off-street parking requirement of the C-2-C Zone District for an apartment house or multiple dwelling is one parking space per four dwelling units. For a retail establishment in excess of 3,000 square feet, the parking requirement is one additional parking space for each additional 750 square feet of gross floor area and cellar floor area. (11 DCHR § 2101.)

Additional PUD-Related Zoning Flexibility

29. Under PUD guidelines for the C-2-C Zone District, the maximum permissible building height on the subject property is 90 feet and the maximum density is 6.0 FAR for all uses.
30. The Applicant requested flexibility from the zoning requirements of the proposed C-2-C District in the following areas:
 - (a) Flexibility for courts that do not meet minimum width or depth requirements.
 - (b) Variance from the rear yard requirement.
 - (c) Special exception from the number and height of roof structures.
 - (d) Variance from the setback for roof structures.
 - (e) Variance from the loading requirements (two berths instead of three).

Public Benefits and Amenities

31. As detailed in the Applicant’s testimony and written submissions, the following public benefits and amenities will be provided as a result of the PUD:
 - (a) *Housing and Affordable Housing.* The delivery of well over 250,000 square feet of gross floor area dedicated to residential use, including 237 market-rate units and 54 restricted-income units consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor’s housing initiative. The affordable units range in size from one to four bedrooms, providing much needed family housing, and all units are restricted to 60% of the Washington Metropolitan Area Median Income (“AMI”), providing a deep level of affordability.
 - (b) *Sustainable Design and Environmental Benefits.* The PUD provides a green roof over 50% of the roof area, decreasing the building’s impact on the public storm water service. The Applicant has committed to achieving a minimum of 26 LEED points based on the standards of the US Green Building Council’s Leadership in Energy and Environmental Design New Construction 2.2 program.
 - (c) *Neighborhood-Serving Retail.* The PUD project delivers 14,760 square feet of ground-floor retail. This retail brings economic opportunity to an underserved community. The scale and design of the retail along 7th Street also provides

an activity node for the broader community, with attractive and inviting retail facades, and pedestrian-scaled and -oriented design.

(d) The Applicant has entered into a First Source Employment Agreement with the Department of Employment Services. The Applicants have also executed a Certified Business Enterprise (“CBE”) Memorandum of Understanding with the District’s Office of Local Business Development.

(e) *Community Benefits through Contributions to Local-serving Organizations.* The Applicant has committed through letters of intent to contribute \$220,000 to non-profit organizations providing services to Shaw. These organizations include the Shaw Middle School, the Watha T. Daniel Library, Emmaus Services for the Aging, Shaw Main Streets, and The Green Team. These commitments are fully described in Exhibit 41, which is incorporated herein by reference. The Applicant has already made some of the contributions listed in Exhibit 41. The conditions of this order reflect only those contributions that the Applicant has not yet made.

32. The Commission finds that the PUD project is acceptable in all proffered categories of public benefits and amenities, and superior in many.

Consistency with the Comprehensive Plan and Convention Center Area Strategic Development Small Area Action Plan

33. The Comprehensive Plan for the National Capital: District Elements (“Comprehensive Plan”), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300), Future Land Use Map designates the southern portion of the Subject Property as being located in a mixed-use, medium-density residential and moderate-density commercial category, while the remainder of the site is designated as low-density commercial and moderate-density residential. The Comprehensive Plan’s Generalized Policy Map includes the Subject Property in a Main Street Mixed Use Corridor, the key objective of which is a pedestrian-oriented environment with traditional store fronts and residential units on the upper floors, fostering economic and housing opportunities, serving neighborhood needs, and supporting transit use.

34. The Commission finds that the Project is consistent with the Future Land Use and Generalized Policy Maps.

35. The Project is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities as follows:

- (a) *Managing Growth and Change.* The Comprehensive Plan encourages growth that protects the positive aspects of life in the city and reduces negatives such as crime. The principles for managing growth and change also emphasize the inclusion of housing for households of varying sizes, including families, and the inclusion of non-residential uses. The proposed redevelopment of the Subject Property replaces a blighted site that has attracted criminal activity in the past with a productive, urban mixed-use project that delivers family-style housing and commercial uses that will create jobs and opportunities for less-affluent households.
 - (b) *Creating Successful Neighborhoods.* Guiding principles for the Comprehensive Plan in creating successful neighborhoods include the preservation of affordable housing to grow inclusively. There is also an emphasis on including local citizens in the planning process and land use decisions. The PUD delivers a project that is upgrading existing affordable units and providing the residents of those units the opportunity to continue to be a part of their community as it changes around them. The proposed design is the result of collaboration with citizens and their local government representatives.
 - (c) *Increasing Access to Education and Employment.* The project delivers on the guiding principles of expanding the economy by increasing shopping and services for many District neighborhoods by providing local serving retail.
 - (d) *Building Green and Healthy Communities.* The proposed project will utilize building construction that minimizes the use of non-renewable resources and promotes energy and water conservation. The project is also sited and situated to reduce air pollution and facilitate pedestrian and bicycle travel. The green roof of the project will minimize storm water runoff and thereby improve surface and groundwater quality.
36. The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:
- (a) *Land Use Element.* The Land Use Element encourages infill development and development near metro stations and along transit corridors and "Great Streets." The Land Use Element expresses a preference for mixed residential and commercial uses rather than single purpose uses, particularly a preference of housing above ground-floor retail uses, and a preference for diverse housing types, including both market-rate and affordable units. The Project is located 700 feet from an entrance to the Shaw/Howard Metrorail Station, includes a mix of residential and commercial uses, with housing located above ground-floor retail, and a mix of market-rate and affordable housing units.

- (b) *Housing Element*. Housing Element policies are oriented to ensure continued production of housing, including housing for all segments of the District's population.
- i. H-1.1.2 Production Incentives. Applicant's PUD specifically requests conforming production incentives, in response to the Comprehensive Plan policy to provide incentives to meet housing production goals.
 - ii. H-1.1.3 Balanced Growth. The Comprehensive Plan encourages the development of new housing on surplus, vacant, and underutilized land in all parts of the city. The existing Kelsey Gardens site is under-utilized in a neighborhood with housing (and retail) needs. It comprises more than an acre of land and can yield a significant number of affordable and market-rate housing units.
 - iii. H-1.1.4 Mixed-Use Development. Applicant's proposed development on the Seventh Street commercial corridor is within a five-minute walk of a Metrorail station, which responds to the call for mixed-use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers and around appropriate Metrorail stations.
 - iv. H-1.1.5 Housing Quality. The Comprehensive Plan requires the design of affordable housing to meet the same architectural standards required of market-rate housing. The affordable dwellings will be scattered throughout the building and they will not be distinguishable from the market-rate units, except that some will have several more bedrooms than the market-rate units.
- (c) *Urban Design Element*. The Applicant's design follows the principles of breaking structures on larger than prevailing neighborhood lots into smaller more varied forms (UD-2.2.8 Large Site Development) by utilizing projecting bays, cornices, varied fenestration, and a variety of building materials and colors to break up the multifamily building façades.
- (d) *Environmental Protection Element*. The Applicant has included a green roof combined with solar reflective roofing, low-flow water fixtures, irrigation efficient landscaping, energy efficient fixtures and appliances, green cleaning products, and a green living educational program for building residents, meeting the principle of encouraging green building methods in new construction and using green methods of operations and maintenance (E-3.2).

37. The Convention Center Area Strategic Development Small Area Action Plan, adopted by the D.C. Council pursuant to Resolution No. 16-759 on June 20, 2006, is intended to provide supplemental guidance to the Zoning Commission and other District agencies in carrying out the policies of the District of Columbia Comprehensive Plan. It addresses affordable housing, retail, and other planning issues within the study area. The PUD site is included in the Convention Center Plan study area.
38. The Convention Center Area Strategic Development Small Area Action Plan articulates the following needs which are addressed by the Project:
 - (a) “Maintain or increase existing number of affordable housing units”
 - (b) “Concentrate multi-unit buildings in areas with good access to mass transit”
 - (c) “Maximize development opportunities on sites suitable for multiple-unit buildings.”
39. The Convention Center Area Plan also establishes a number of retail development goals and recommendations addressed by the Project, including the following:
 - (a) Concentrate ground floor retail in locations that reinforce a traditional “main street” pattern of commercial development and creates a unified identity for the community; and
 - (b) Locate retail in areas already zoned for commercial development.
40. The PUD site is located in Sub-Area III: Retail Corridor designated in the Convention Center Area Plan. According to the plan, the vision for this area is “New infill buildings have residential above ground floor retail. Larger projects include affordable units. Parking is located below grade or off alleys.” All of these elements are in place in the Project.

Office of Planning Report

41. By a report dated October 20, 2008 and testimony at the public hearing, the Office of Planning (“OP”) recommended approval of the Application. (Exhibit 44.) OP indicated that they preferred the original design alternative featuring a maximum height of 90 feet because (1) the design maintained a greater step down to the north end of the site which OP believed more closely matched the scale of buildings north of Q Street and would have better divided the long block into distinct visual segments; and (2) the design has access to parking and loading from the alley rather than P Street. OP noted that the application is not

inconsistent with the Comprehensive Plan including the Convention Center Strategic Development Plan and will further a number of the Plan's Guiding Principles. OP indicated that the proposed amenities are sufficient and commensurate with the amount of relief required for the project. Further, OP indicated that the proffered amenities are acceptable in all categories listed in § 2403.9 and superior in many. OP supported all of the requested zoning flexibility requested. (Exhibit 44.)

42. OP submitted a supplemental report dated November 26, 2009, that responded to the Commission's request that OP contact the D.C. Fire and Emergency Medical Services Department ("DCFEMS") to explore the design implications of its comments detailed in Findings of Fact ("FF") 43. The OP report attached a DCFEMS November 12, 2008 letter stating that DCFEMS had no objections to the design.

Other Government Agency Reports

43. DCFEMS submitted a letter dated October 9, 2008 indicating that the proposed design was not in compliance with IFC Section 503.1. In a letter dated November 12, 2008, DCFEMS indicated that they have no objections to the proposed design.
44. The D.C. Water and Sewer Authority ("DCWASA") submitted a memorandum dated October 10, 2008. The memorandum reviewed the Project's water, sewer, and storm sewer requirements, suggested installation of a backflow prevention device, and stated that DCWASA would issue a water and sewer availability certificate and recommend the issuance of a building permit if the final plans meet DCWASA requirements.
45. The District Department of Transportation ("DDOT") submitted a memorandum dated October 17, 2008, supporting the project proposal subject to providing additional measures to increase multi-modal transit use and a traffic impact study. (Exhibit 45.)
46. DDOT submitted additional comments dated October 29, 2008, rejecting a community recommendation that parking and loading access be from P Street instead of the alley to the west of the site. (Exhibit 46.)
47. The Applicant responded to DDOT's requests in its post-hearing submission dated November 21, 2008. This submission included a traffic impact study and a transportation management plan. The transportation management plan specifically responded to DDOT requests by opting Kelsey Gardens out of the residential parking permits program and committing to provide two car-share spaces in the parking garage for the project. The Applicant did not commit to

installing a SmartBike station at the site, due to number of bike racks located in the garage, but agreed to pursue the issue further with DDOT. (Exhibits 51-53.)

48. DDOT provided a memorandum dated December 8, 2008, recommending a more aggressive transportation management plan, including the provision of an annual car-sharing membership for all new residents, an annual SmartBike membership for all new residents, and SmarTrip cards for all new residents. DDOT also recommended reduction of the total parking spaces to a number closer to the minimum required 90 spaces. The memorandum recommended approval of the development with the above implemented multi-modal transit uses. (Exhibit 55.)
49. The Applicant responded to DDOT's memorandum in its supplemental post-hearing submission dated January 12, 2009. This submission included changes to the transportation management plan including providing an annual membership to a car-share program for new residents and providing a SmarTrip card to new residents. The new transportation management plan also promises to maximize the benefits of the parking garage by implementing shared parking strategies. A supplemental memorandum by traffic engineers O. R. George and Associates further clarified the Applicant's reasons for not consenting to reduce the total number of parking spaces. (Exhibit 58.)
50. The Commission agrees with the Applicant and finds that reducing the number of parking spaces to the degree requested by DDOT would be inconsistent with the Applicant's understanding with the community and would likely have an adverse impact on an already congested neighborhood parking situation.

ANC Report

51. By report dated October 2, 2008 and testimony at the public hearing, ANC-2C indicated that at a duly noticed meeting of a quorum of the Commissioners on October 1, 2008, the ANC voted 4-0 to recommend approval of the PUD by the Zoning Commission with changes in loading access (off of P Street instead of the adjacent alley); alley width (20 feet for the entire length of the alley); and building massing (eight stories along 7th Street with density deleted from 7th Street shifted to the rear projections instead). The ANC advised that the PUD provides both a depth and range of community benefits and serves to eliminate a blighted site in Shaw. (Exhibit 33.)

CONCLUSIONS OF THE LAW

1. The PUD process is an appropriate means for controlling development of the site in a manner consistent with the best interests of the District of Columbia. The PUD process is designed to encourage high-quality development that provides

- public benefits (11 DCMR § 2400.1) and allows flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA.
 3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
 4. Approval of this Application is not inconsistent with the *Comprehensive Plan for the National Capital*.
 5. Approval of this Application is consistent with the purposes of the Zoning Regulations and the Zoning Map of the District of Columbia and will promote orderly development in conformity with the Zone Plan as a whole.
 6. The PUD is within the applicable height and bulk standards of the Zoning Regulations, and the proposed height and density of buildings will not cause any adverse effect on nearby properties. The proposed residential uses are appropriate on this site, which is well served by a major arterial street, bus lines, and a nearby mass transit station. The impact of the project on the surrounding area will not be adverse, but rather will enhance and promote the revitalization of the area.
 7. The development of the project is compatible with District-wide and neighborhood goals, plans, and programs and is sensitive to environmental protection, public safety, and other significant public objectives.
 8. 11 DCMR § 2403 provides the standards for evaluating a PUD application. 11 DCMR § 2403.9 provides categories of public benefits and project amenities for review by the Commission. The objective of the PUD process is to encourage high-quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under matter-of-right zoning. In this Application, the Commission concludes that the requested relief can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The

Commission concludes that the benefits and amenities provided by the Project are appropriate for the development proposed in this Application.

9. The Commission is required under D.C. Official Code §1-309.10(d) to give great weight to the issues and concerns raised in the recommendations of the affected ANC expressed in its written report. The Commission notes that the affected ANC2C provided reports and testified in support of the Application but recommended changes in the project loading access, alley width, and massing. The Commission concurs with the ANC recommendation regarding alley width and building massing – these changes have been incorporated into the Applicant’s revised design. The Commission does not concur with the ANC’s recommendation regarding loading access. Instead, the Commission finds that DDOT’s and OP’s recommendation that access to the project parking and loading facilities be from the adjacent alley is persuasive and preferable from an urban design and pedestrian safety standpoint.
10. 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 (as reflected in FF 41-42 above). The Commission notes that OP recommended approval of the application, but noted two concerns about the application: (1) OP expressed a preference for the original design, which maintained a greater step down to the north end of the site. OP believed this design more closely matched the scale of buildings north of Q Street and better divided the long block (along 7th Street) into distinct visual segments than the alternate design presented by the applicant after it re-designed the building to incorporate comments from the community; and (2) the design has access to parking and loading from the alley rather than P Street. The Commission is satisfied that the design is adequate in its articulation and relationship to neighboring buildings such that it does not appear monolithic. The Commission notes that the Applicant modified its design to address OP’s concern by moving the parking and loading access to the alley.
11. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, as amended.

DECISION

In consideration of the Findings of Fact and the Conclusions of the Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development and an application for a related amendment to the Zoning Map from the C-2-A to the C-2-C Zone District, subject to the following guidelines, conditions, and standards. References to “Applicant” include its successors and assigns, or the owner of the Subject Property if different. Failure to abide by any of the following conditions shall be grounds for the

denial of an application for a building permit or certificate of occupancy or the revocation of any permit or certificate issued.

1. The PUD shall be developed in accordance with the site plan and architectural and landscape plans submitted as Exhibits 52, 59A, and 69A in the record of this case, and as modified by the guidelines, conditions, and standards of this Order.
2. The Project shall be developed with a multi-family building to include ground floor retail space and an adjacent townhouse component devoted to residential and/or office uses depending on market conditions.
3. The maximum building height in the project shall be 80 feet 10 inches for the multi-family building and 41 feet for the townhomes, and the maximum aggregate gross floor area for the PUD shall be 6.0 FAR.
4. In accordance with the plans cited above, the approved multi-family building will include a total of approximately 278 dwelling units with a minimum of 54 of the dwelling units to be affordable to households having 60% or less of Area Median Income in accordance with the requirements of the public agencies providing financial subsidies for this purpose. The approved townhouse component will contain 13 market-rate units.
5. The multi-family building shall contain approximately 14,924 square feet of retail uses consistent with the final ground floor plans contained in Exhibit 69A.
6. There shall be a maximum of 230 off-street parking spaces provided in the Project.
7. The internal corridors in the multi-family building shall be designed consistent with Exhibits 59A and 69A.
8. The Applicant shall achieve a minimum of 26 LEED points based on the standards of the US Green Building Council's Leadership in Energy and Environmental Design New Construction 2.2 program.
9. 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, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings and that the design of the interior corridors are as provided in Condition 7;

- (b) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including window frames, glass types, belt courses, sills, bases, cornices, railings, and architectural embellishments, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
 - (c) To vary the location of the affordable units within the Project as long as they are evenly disbursed throughout the building; and
 - (d) Vary up to five percent the total number of residential units provided and vary the unit mix for the market-rate units in the PUD.
10. Prior to issuance of the first Certificate of Occupancy for the Project, the Applicant shall make the following contributions and complete the following tasks:
- (a) Provide and install tree guards matching the new development's at 15 tree boxes on the 8th and Q Street sides of the block on which the project is located;
 - (b) \$52,000 to The Green Team, a transitional employment program run by the Columbia Heights/Shaw Family Support Collaborative;
 - (c) \$40,000 to the Watha T. Daniel Library;
 - (d) \$50,000 to Emmaus Services for the Aging;
 - (e) \$30,000 to the Shaw Middle School for the purchase of uniforms, equipment, and travel needs for the marching band;
 - (f) \$10,000 to Bread for the City to support food and clothing bank operations; and
 - (g) \$7,500 to the Gibson Plaza Tenant's Association for its computer lab and related programming needs.
11. The Applicant shall make two annual payments of \$5,000 for the purchase of Thanksgiving dinners to needy families within the ANC 2C's jurisdiction. The payments will be made to either ANC 2C or to the East Central Civic Association. Each payment is due no later than November 1st of each year.

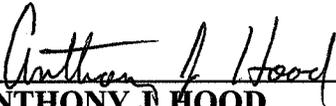
12. Prior to the issuance of the first Certificate of Occupancy for the Project, the Applicant shall contribute \$20,000 to the Shaw Main Streets for its operating budget.
13. The Applicant shall execute a Certified Business Enterprise Utilization Agreement with the District of Columbia's Department of Small and Local Business Development ("DSLBD") to ensure minority vendor participation prior to the issuance of a final PUD order.
14. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant ("PUD 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 Zoning Commission.
15. This final PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, the Applicant shall file for a building permit as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall start within three years of the effective date of this Order.
16. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is 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. 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.

For the reasons stated above, the Commission concludes that the Applicant has met the burden of proof, and it is hereby **ORDERED** that the Application be **GRANTED**.

On January 26, 2009, upon a motion made by Chairman Hood, as seconded by Vice Chairman Jeffries, the Zoning Commission **APPROVED** this Application at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull and Peter G. May to approve; third Mayoral appointee position vacant, not voting).

On March 9, 2009, upon motion of Chairman Hood and seconded by Commissioner May, the Zoning Commission **ADOPTED** this ORDER by a vote of 3-1-1 (Anthony J. Hood to approve; Gregory N. Jeffries and Michael G. Turnbull to approve by absentee ballot; Peter G. May opposed; third Mayoral appointee position vacant, 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* on February 12, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING 

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., November 6, 2007

Plat for Building Permit of SQUARE 421 LOT 68

Scale: 1 inch = 50 feet

Recorded in Book 159 Page 4

Receipt No. 01109

Furnished to: SHELDON WILLIAMS


Surveyor, D.C.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted, and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat, and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

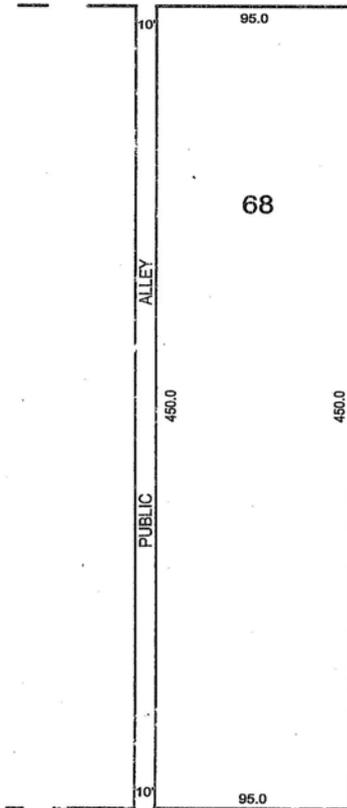
Date: _____

By: L.M.A. 

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

Q STREET, N.W.



D.C. RECEIVED
OFFICE OF THE SURVEYOR
2008 MAY -11 PM 2

7TH STREET, N.W.

P STREET, N.W.

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., November 2, 2007

Plat for Building Permit of: SQUARE 421 LOT 67

Scale: 1 inch = 20 feet Recorded in Book 159 Page 4

Receipt No. 01108

Furnished to: SHELDON WILLIAMS

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted, and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)


Surveyor, D.C.

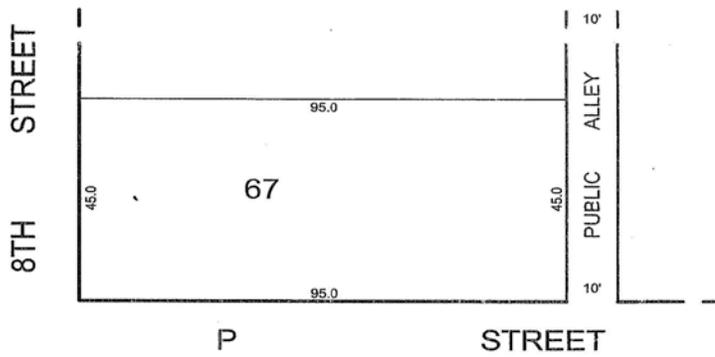
Date: _____

By: D.M. 

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

RECEIVED
D.C. OFFICE OF ZONING
2008 MAY -1 PM 2:13



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 08-14

As Secretary to the Commission, I hereby certify that on FEB 17 2010 copies of this Z.C. Order No. 08-14 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. Cynthia Giordano, Esq.
Arnold & Porter, LLP
5555 Twelfth Street, N.W.
Washington, D.C. 22182 | 6. Councilmember Jack Evans |
| 3. Doris Brooks, Chair
ANC 2C
P.O. Box 26182
Washington, DC 20001 | 7. DDOT (Karina Ricks) |
| 4. Commissioner Alexander Padro
ANC/SMD 2C01
1519 8 th Street, N.W.
Washington, DC 20001 | 8. Melinda Bolling, Acting General Counsel
DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| | 9. Office of the Attorney General (Alan Bergstein) |

ATTESTED BY: Sharon S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning