

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 10-03**  
**Z.C. Case No. 10-03**  
**Parcel Seven Associates, LLC**  
**(Consolidated Planned Unit Development @ Square 912, Lot 55)**  
**November 8, 2010**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on July 19, 2010, to consider an application from Parcel Seven Associates, LLC (the "Applicant"), owner of Lot 55 in Square 912, for the consolidated review and approval of a planned unit development ("PUD") for the subject property. 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 February 25, 2010, the Applicant filed an application with the Commission for the consolidated review and approval of a PUD for Lot 55 in Square 912 (the "Subject Property"). The Subject Property is presently zoned C-2-B and is located within the H Street Northeast Commercial Overlay District. The Applicant is not seeking a zoning map amendment in connection with this application.
2. The Subject Property has a land area of approximately 87,053 square feet, which is approximately two acres, and is located in the northeast quadrant of the District. The Subject Property is located on the south side of H Street, between 8<sup>th</sup> and 10<sup>th</sup> Streets, N.E., and is presently improved with the one-story "H Street Connection" strip retail development, which has a gross floor area of approximately 37,992 square feet.
3. The Applicant proposes to build a mixed-use development composed of retail and residential uses. The overall project will have a density of 5.0 floor area ratio ("FAR"), less than the maximum permitted of 6.0 FAR under the C-2-B PUD requirements, and will include approximately 380,560 square feet of residential uses, comprising 384 units plus or minus 10%, and approximately 51,420 square feet of retail uses. The building will have varying heights and cornice lines and will be constructed to a maximum height

of 90 feet with a maximum of eight stories. The project will have an overall lot occupancy of approximately 70%.

4. The Applicant is providing a total of 405 off-street parking spaces, with approximately 340 spaces for residential use and 65 spaces for commercial use. At the request of Advisory Neighborhood Commission (“ANC”) 6A and the Deputy Mayor for Planning and Economic Development, and in order to maximize available parking for retail use at the site and generally along H Street, the Applicant initially submitted alternative parking plans seeking flexibility to provide either 405 (340 residential + 65 retail) parking spaces, or 505 (340 residential + 165 retail) parking spaces in the event that the District provided a funding mechanism for the construction of the additional 100 retail parking spaces and funding for any mitigation measures deemed necessary to provide the additional 100 spaces. The Applicant's submission, dated June 30, 2010, proposes to provide 405 parking spaces.
5. At its public meeting held on April 12, 2010, the Commission voted to schedule a public hearing on the application.
6. On May 10, 2010, the Applicant submitted a Prehearing Statement. (Exhibit 18.) The Prehearing Statement included revised plan sheets showing the proposed building's setbacks and roof structures; additional information regarding the amount of proposed parking; citations to prior Commission orders finding that the construction of housing, and affordable housing, are important public benefits and amenities for the District; and additional materials required pursuant to § 3013 of the Zoning Regulations.
7. On June 30, 2010, the Applicant submitted a Supplemental Prehearing Statement and Final Architectural Plans and Elevations. (Exhibits 28 and 29.) The plans included new street views of the project, updated parking plans, enlarged partial elevations showing details of materials, an updated sheet showing the ground floor set-backs, an alley view from 8<sup>th</sup> Street, N.E., and an updated roof plan. As noted above, the Applicant also withdrew its initial request for parking flexibility.
8. After proper notice, the Commission held a public hearing on the application on July 19, 2010.
9. The parties to the case were the Applicant and ANC 6A (the ANC within which the Subject Property is located).
10. Five principal witnesses testified on behalf of the Applicant at the public hearing, including Gary D. Rappaport, on behalf of Parcel Seven Associates, LLC; Sarah Alexander, on behalf of Torti Gallas Partners, as an expert in architecture and design; Erwin N. Andres, on behalf of Gorove/Slade Associates, Inc., as an expert in

transportation planning and analysis; and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP, as an expert in land use and zoning. Based upon their professional experience, as evidenced by the resumes submitted for the record, Ms. Alexander, Mr. Andres, and Mr. Sher were qualified by the Commission as experts in their respective fields.

11. The Office of Planning ("OP") and the District Department of Transportation ("DDOT") testified in support of the project at the public hearing.
12. At the hearing, the Applicant submitted updated plan sheets which included a revised garage entry which revised the two curb cuts providing access on 8<sup>th</sup> Street in response to DDOT's report; a copy of the Applicant's PowerPoint presentation; and a copy of the report prepared by the Applicant's expert in land use and zoning. (Exhibits 36-38.)
13. ANC 6A submitted a letter in support of the application. (Exhibit 14.) ANC 6A's letter of support indicated that at a duly noticed public meeting on March 11, 2010, at which notice was properly given and a quorum was present, ANC 6A voted unanimously to support the application and proposed development. ANC 6A indicated that for the last two years, ANC 6A has worked closely with the Applicant to shape the building's massing and design to fit into the historic fabric of H Street N.E., while meeting the need for enough retail and residential density to make the development feasible. ANC 6A also noted that the Applicant has agreed to implement substantial measures to reduce traffic congestion, promote alternative transportation options, and reduce parking pressures on the surrounding residential area, resulting in a "win-win solution" for the community and the Applicant. ANC 6A also indicated that this development will accelerate the development of H Street as a vibrant retail corridor as outlined in the H Street NE Strategic Development Plan. The ANC concluded by requesting that the Commission view this project and the collaborative community process undertaken in this case as a model for future PUD proposals across the city.
14. ANC 6A submitted an additional letter, dated July 12, 2010, indicating that at a regularly scheduled and properly noticed meeting on July 8, 2010, ANC 6A voted 5-2-1 to support the inclusion of 100 additional city-owned parking spaces as part of the PUD for the H Street Connection redevelopment, and ANC 6A urged the Commission to grant the Applicant flexibility to include these additional parking spaces if the District secures the necessary financing. (Exhibit 33.)
15. Two further correspondences from the ANC were received that will be discussed in the portion of this order that concerns post-hearing submissions.
16. ANC 6C also submitted a letter in support of the application. (Exhibit 13.) ANC 6C's letter of support indicated that at a duly noticed public meeting on February 11, 2009, at

which notice was properly given and a quorum was present, ANC 6C voted unanimously to support the proposed development.

17. Councilmember Tommy Wells also submitted a letter dated July 19, 2010, in support of the project. (Exhibit 35.) Councilmember Wells indicated that the project is an important step in developing the H Street corridor and will provide numerous benefits to the District, including a number of public space improvements; accommodating all service and loading needs within the building; inclusion of a number of important sustainable design features; and the provision of housing and affordable housing, with eight percent of the gross residential floor area being devoted to affordable units, amounting to approximately 30-33 units. Councilmember Wells concluded by indicating that he looks forward to the Commission's approval of this project, and he requested that such approval be processed as expeditiously as possible.
18. Anwar Saleem, Executive Director of H Street Main Street, Inc, testified in support of the application and submitted his written testimony. (Exhibit 42.) Mr. Saleem testified that his organization supports the proposed development since it will provide new jobs, much needed employment, and a strong amenities package. Mr. Saleem also indicated that the design of the project will encourage other property owners to upgrade their storefronts and will complement the existing historic storefronts. Mr. Saleem requested that the Commission approve 100 additional parking spaces on the Subject Property if the District provides a funding mechanism for the additional spaces.
19. Three individuals testified in support of the application at the public hearing, including: Phil Toomajian, who resides at 631 10th Street, N.E.; Margaret Holwill, who resides at 145 11th Street, N.E.; and Jen DeMayo, who resides at 11<sup>th</sup> and G Streets, N.E., and works for the Atlas Performing Arts Center located at 1333 H Street, N.E. Each individual requested that the Commission approve the project, and also requested that the Commission include in its approval flexibility for 100 additional parking spaces to be located on the Subject Property to support parking along the corridor if additional financing is provided to support the additional spaces.
20. Randall and Gretchen Brandt (the "Brandts"), who reside at 719 8<sup>th</sup> Street, N.E., which is located to the immediate southwest of the Subject Property, submitted an untimely Request for Party Status to participate in opposition to the application. (Exhibit 31.) At the public hearing, the Commission informed the Brandts that they could appear and participate at the hearing and express their concerns regarding the project as persons in opposition. Thereafter, the Commission voted to deny the Request for Party Status.
21. At its public meeting held on September 27, 2010, the Commission took proposed action to approve the application and plans, but requested additional information that will be discussed later in this Order.

22. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") on September 28, 2010, under the terms of the District of Columbia Home Rule Act. (Exhibit 48.) NCPC, by action dated September, 30 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 53.)
23. As will be described in greater detail later in this Order, the Commission took final action to approve the application on November 8, 2010 after reviewing the submissions it requested and resolving the remaining issues before it.

### **The PUD Project**

24. The Subject Property is situated in Ward 6 and consists of Lot 55 in Square 912. The Subject Property has a land area of approximately 87,053 square feet. The Subject Property is presently zoned C-2-B and is located within the H Street Northeast Commercial Overlay District.
25. The Applicant proposes to build a mixed-use development composed of retail and residential uses. The overall project will have a density of 5.0 FAR, less than the maximum permitted density of 6.0 FAR under the C-2-B PUD requirements, and will include approximately 380,560 square feet of residential uses, comprising 384 units plus or minus 10%, and approximately 51,420 square feet of retail uses. The building will have varying heights and cornice lines and will be constructed to a maximum height of 90 feet with a maximum of eight stories. The project will have an overall lot occupancy of approximately 70%. A total of 405 off-street parking spaces will be provided in a below-grade parking garage, with approximately 340 spaces for the residential use and 65 spaces for the commercial use.

### **Development Under Existing Zoning**

26. The Subject Property is currently zoned HS/C-2-B. The Applicant is not seeking a zoning map amendment in connection with this application. The C-2-B Zone District is designed to serve commercial and residential functions, with residential and mixed uses. (11 DCMR §720.8.) The C-2-B Zone Districts are compact and located on arterial streets, in uptown centers, and at rapid transit stops. (11 DCMR § 720.7.) Buildings may be entirely residential or a mixture of residential and commercial uses in the C-2-B Zone District. (11 DCMR § 720.8.) The C-2-B Zone District includes the following development requirements:

- A maximum matter-of-right height of 65 feet with no limit on the number of stories (§ 770.1), and a maximum height of 90 feet under the PUD requirements (§ 2405.1);

- A maximum matter-of-right density of 3.5 FAR, and 4.2 FAR utilizing the Inclusionary Zoning bonus, all of which may be devoted to residential use, but not more than 1.5 of which may be devoted to non-residential uses (§ 771.2), and a maximum density of 6.0 FAR, all of which may be devoted to residential use, but not more than 2.0 FAR of which may be devoted to non-residential uses under the PUD requirements (§ 2405.2);
  - A maximum lot occupancy of 80% (§ 772.1);
  - A minimum rear yard depth of 15 feet (§ 774.1);
  - If provided, a side yard at least two inches wide per foot of building height, but not less than six feet (§ 775.5);
  - If provided, a minimum court width of four inches per foot of height, but not less than 15 feet (§ 776.3) and in the case of a closed court, a minimum area of at least twice the square of the width of court, but not less than 350 square feet (§ 776.4);
  - For a retail establishment in excess of 3,000 square feet, one off-street parking space for each additional 750 square feet of gross floor area and cellar floor area (§ 2101.1);
  - For an apartment house or multiple dwelling with 50 or more units, one off-street parking space for each three dwelling units (§ 2101.1);
  - For a retail establishment with 30,000 to 100,000 square feet of gross floor area, one loading berth at 30 feet deep, one loading berth at 55 feet deep, one loading platform at 100 square feet, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep (§ 2201.1); and
  - For an apartment house or multiple dwelling with 50 or more dwelling units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep. (§ 2201.1.)
27. The Subject Property is located in the Retail-Sub-District (HS-R) of the H Street Northeast Commercial Overlay District. (§ 1320.1(b).) The H Street Northeast Commercial Overlay District includes the following development requirements:
- Buildings must be designed and built so that not less than 75% of the streetwall(s) to a height of not less than 25 feet shall be constructed to the property line abutting the street right-of-way. Buildings on corner lots must be constructed to both property lines abutting public streets (§ 1324.2);

- New construction that preserves an existing façade constructed before 1958 is permitted to use, for residential uses, an additional 0.5 FAR above the total density permitted in the underlying zone district for residential uses (§1324.3);
- In C-2 Zone Districts within the HS Overlay District, a 70% residential lot occupancy is permitted (§ 1324.4);
- For the purposes of this Section, the percentage of lot occupancy may be calculated on a horizontal plane located at the lowest level where residential uses begin (§ 1324.5);
- For the purposes of § 1324.5, "residential uses" include single-family dwellings, flats, multiple dwellings, rooming and boarding houses, and community-based residential facilities (§ 1324.6);
- Parking structures with frontage on H Street, N.E. must provide not less than 65% of the ground level frontage as commercial space (§ 1324.7);
- Each new building on a lot that fronts on H Street, N.E. must devote not less than 50% of the surface area of the streetwall(s) at the ground level of each building to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to commercial uses or to the building (§ 1324.8);
- Security grilles must have no less than 70% transparency (§ 1324.9);
- Each commercial use with frontage on H Street, N.E. must have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings must have at least one primary entrance on H Street directly accessible from the sidewalk (§ 1324.10);
- Buildings must be designed so as not to preclude an entrance every 40 feet on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground floor uses and the main lobby (§ 1324.11);
- The ground-floor level of each building or building addition shall have a uniform minimum clear floor-to-ceiling height of 14 feet ( § 1324.12);
- Buildings subject to § 1324.12 shall be permitted an additional five feet of building height over that permitted in the underlying zone (§ 1324.13);

- Projection signs shall have a minimum clearance of eight feet above a sidewalk and 14 feet above a driveway, project no more than three feet, six inches from the face of the building, and end a minimum of one foot behind the curblin or extension of the curblin (§ 1324.14);
- Façade panel signs cannot be placed so as to interrupt windows or doors and shall project no more than 12 inches from the face of the building (§ 1324.15); and
- Roof signs are prohibited. (§ 1324.16.)

### **Development Incentives and Flexibility**

28. The Applicant requested the following areas of flexibility from the Zoning Regulations:

- Flexibility from Streetwall Requirements.* Section 1324.2 of the Zoning Regulations provides that buildings in the HS Overlay District must be designed and built such that not less than 75% of the streetwall(s) to a height of not less than 25 feet must be constructed to the property line abutting the street right-of way, and that buildings on corner lots must be constructed to both property lines abutting public streets. The site has approximately 570 linear feet of frontage on H Street, and thus approximately 427 linear feet of the proposed streetwall is required to be constructed to the property line. However, only approximately 140 feet, or 25%, of the H Street frontage will be constructed to the property line. The Commission finds that nearly 304 feet, or 53%, of frontage along H Street will be constructed to within one-to-two feet of the property line, and the building will extend for the entire length of the square to 8<sup>th</sup> and 10<sup>th</sup> Streets. The Commission further finds that the Applicant has designed the building to include setbacks along H and 8<sup>th</sup> Streets in order to provide vertical articulation and the appropriate massing along H Street, given the size of the site, and to create a more pedestrian-friendly environment at the corner of 8<sup>th</sup> and H Streets, which is a major bus stop area with a fairly narrow sidewalk width on H Street, N.E. Therefore, the Commission finds that flexibility from the streetwall requirement of § 1324.2 of the Zoning Regulations is appropriate in this case.
- Flexibility from Roof Structure Requirements.* The Applicant requests 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 structure containing the elevator tower cannot be set back from all exterior walls a distance equal its height above the roof (§§ 411.2 and 770.6(b)). 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 and flexibility is requested only from the wall of the court in the center of the building. The location and number of mechanical units on the roof is driven by the layout and design of the residential units within the building. In addition, the Applicant is providing the greatest setbacks possible given the size of the roofs and the internal configuration of the proposed buildings. In addition, all of the penthouses have similar horizontal banding and detailing which allows them to both respect the design of the elevation in which they are located above as well as each other. The three larger penthouses in the center of the block are all the same blond brick to further unify these structures. The two end penthouses (far east and west) are the same color as the elevation below them so that they look appropriate for the rare instance they can be seen from the ground. Brick detailing and metal louvers add further architectural interest to the penthouse design. The Commission further 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 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.

- c. *Phasing of Building.* The Applicant is seeking flexibility to construct the proposed building in either one or two phases, in order to respond to market conditions. If the building were to be phased, the first phase would include the western portion of the building and the second phase would include the eastern portion of the building.
- d. *Additional Areas of Flexibility.* The Applicant also requests flexibility in the following areas:
  - (1) To be able to provide a range in the number of residential units of plus or minus 10% from the 384 depicted on the plans;
  - (2) 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 building;
  - (3) To vary the garage layout and the number, location, and arrangement of the parking spaces, provided that the total number of parking spaces is not reduced below the minimum level required. This includes the flexibility to add an additional 100 commercial parking spaces within the building, should the District meet the Applicant's requirement that the District identify an acceptable funding mechanism; and

- (4) 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 curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

### **Public Benefits and Amenities**

29. The Commission finds that the following benefits and amenities will be created as a result of the PUD:

- a. *Urban Design, Architecture, Landscaping, and Open Space.* The building's H Street façade has been carefully designed and articulated to be consistent with the character and fabric of the H Street corridor. The façade of the building abutting H Street contains two distinct pieces – a lower and well-articulated portion immediately on the street and a taller mass of varying heights recessed back from the street approximately 20 feet. The H Street façade is divided into seven distinct pieces, each with its own massing, façade character, and material colors. The rhythms, window patterns, and storefront character of these facades are all different, reinforcing the notion of these as separate entities. The portion of the building at the corner of 8<sup>th</sup> and H Street has a distinctive curve and is articulated with a more modern vocabulary. Moreover, with respect to site planning and efficient and economical land utilization, the Applicant's proposal to replace the existing surface parking on the site with a new building constructed to the property line constitutes a significant benefit. The project will also help to implement the design guidelines of the *H Street NE Strategic Development Plan* and bring more activity to H Street, and the Applicant's design provides opportunities for additional outdoor seating areas along H Street, N.E.
- b. *Transportation Features.* During operation of the building, the Applicant will implement the following On-Site Vehicle Parking Measures and Transportation Demand Management Measures:
  - (1) Off-street parking spaces accessory to the residential uses shall be leased or sold separately from the rental or purchase fees;
  - (2) Each residential lease and purchase agreement shall contain a provision prohibiting the tenant/owner from applying for an off-site permit under the Residential Parking Permit Program;

- (3) Providing one on-site parking space dedicated for a car-sharing service for so long as such services are reasonably and practically available to the public;
  - (4) Providing at least five designated guest parking spaces in the retail portion of the garage during any three-hour period on weekdays. The Applicant shall have the right to charge a fee for use of these spaces;
  - (5) Locating any garage ticketing kiosks for the parking garage at the base of the entry ramp, and providing a reversible middle retail parking entrance lane that can be used to implement a second ticket kiosk entrance as needed;
  - (6) Providing links to [goDCgo.com](http://goDCgo.com) and [CommuterConnections.com](http://CommuterConnections.com) on its developer and property management websites;
  - (7) Providing a \$20 SmarTrip card to all initial building residents upon move-in, and a one-time \$30 SmarTrip card for each initial employee of the retail businesses. This total commitment will be capped at \$15,000;
  - (8) Providing a one-time, one-year car-share membership (which shall include the cost for any application fees) for the initial occupant(s) of each residential unit, capped at a total commitment of \$19,000;
  - (9) Providing a carpool and mass transit coordinator and participation in the Guaranteed Ride Home Program;
  - (10) Providing 25 bike parking spaces for retail visitors and 50 bike parking spaces for use by residents in the parking garage;
  - (11) The Applicant will fund the development of a bike-sharing station at a cost not to exceed \$45,000, with the location of such bike-sharing station to be determined by DDOT; and
  - (12) The project will include showers and changing areas in the building for employees who wish to bike to work, as reflected on the Plans.
- c. *First Source Employment Agreement.* The Applicant has entered into a First Source Employment Agreement with the Department of Employment Services. Execution and implementation of this agreement will help to expand employment

opportunities for residents of the District in connection with construction of the project.

- d. *Historic Preservation.* At the request of representatives of the ANC, the Applicant has agreed to support any future application filed by the ANC for the designation of appropriate sites along the H Street corridor within a historic district.
- e. *Housing and Affordable Housing.* The single greatest benefit to the area, and the District as a whole, is the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The proposed PUD will contain approximately 380,560 square feet of gross floor area dedicated to residential uses.
- f. *Environmental Benefits.* The Applicant will therefore submit with its building permit application a LEED checklist indicating that the project includes sustainable design features such that the building would be able to meet the standards for certification as a LEED-Silver building, although the Applicant is not required to seek LEED-Silver certification for the building.
- g. *Additional Benefits and Amenities.* In working with the community and the District, the Applicant believes that the following items are additional important project amenities:
  - The provision of ground floor, neighborhood-serving retail space;
  - The provision of a substantial set back at the corner of 8<sup>th</sup> and H Streets, and the inclusion of materials upgrades on public and private space at a cost of approximately \$250,000;
  - The provision of space for a potential arts display to be coordinated with the D.C. Commission on the Arts and Humanities;
  - An agreement to auger the soldier beams instead of pile driving the beams at a cost of \$125,000 to \$185,000 subject to site conditions; and
  - Agreement to participate in a clean-and-safe program for H Street if one is created by the District.

**Compliance with Guiding Principles of the Comprehensive Plan Amendment Act of 2006  
(D.C. Law 16-300, effective March 8, 2007)**

30. The District of Columbia Comprehensive Plan Future Land Use Map designates the Subject Property in the mixed-use, medium-density residential and medium-density commercial land use category. The medium-density residential designation is used to define neighborhoods or areas where mid-rise apartment buildings are the predominant use. Pockets of low- and moderate-density housing may exist within these areas. The medium-density residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. (The R-5-B and R-5-C Zone Districts are generally consistent with the Medium Density designation, although other Zones may apply.) The medium-density commercial designation is used to define shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation generally draw from a citywide market area. Buildings are generally larger and/or taller than those in moderate-density commercial areas but generally do not exceed eight stories in height. The corresponding zone districts are generally C-2-B, C-2-C, C-3-A, and C-3-B, although other districts may apply.
31. The Commission finds that the Applicant's proposal to construct a mixed-used development that includes residential and retail uses on the Subject Property is consistent with the Future Land Use Map's designation of the Subject Property. The Subject Property is located within the H Street Overlay, and is presently zoned C-2-B. The Applicant is not requesting any amendments to the existing zoning classification.
32. The Commission finds that the proposed PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as follows:
  - a. *Managing Growth and Change.* The guiding principles of this element are focused on ensuring that the benefits and opportunities of living in the District are equally available to everyone in the city. The project is fully consistent with a number of the goals set forth in this element. Specifically, the project will help to attract a diverse population with the inclusion of a mix of housing types for households of different incomes. (§§ 217.2 and 217.3.) The Applicant's proposal to develop a significant amount of residential and retail use is also consistent with the Comprehensive Plan's acknowledgement that the growth of both residential and non-residential uses is critical, particularly since non-residential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income. (§ 217.4.) In addition, the proposed development also helps connect the Subject Property to the rest of the neighborhood and the overall

urban fabric by developing a mixed-use development on H Street, N.E. (§§ 217.5 and 217.6.)

- b. *Creating Successful Neighborhoods.* The guiding principles for creating successful neighborhoods include both improving the residential character of neighborhoods and encouraging commercial uses that contribute to the neighborhood's character and make communities more livable. (§§ 218.1 and 218.2.) In addition, the production of new affordable housing is essential to the success of neighborhoods. (§ 218.3) Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (§ 218.8.) The proposed development furthers each of these guiding principles with the construction of market-rate and affordable housing, as well as commercial uses that will create additional housing, retail, and employment opportunities. In addition, as part of the PUD process, the Applicant has worked with the ANC and local community groups to ensure that the development provides a positive impact to the immediate neighborhood.
- c. *Increasing Access to Education and Employment.* The Increasing Access to Education and Employment element includes a number of policy goals focused on increasing economic activity in the District, including increasing access to jobs by District residents (§ 219.1); encouraging a broad spectrum of private and public growth (§ 219.2); supporting land development policies that create job opportunities for District residents with varied job skills (§ 219.6); and increasing the amount of shopping and services for many District neighborhoods. (§ 219.9.) The project is fully consistent with these goals since the proposed retail area will help to attract new jobs to the District, as well as to this specific neighborhood.
- d. *Connecting the City.* The proposed development will help to implement a number of the guiding principles of this element. The project includes streetscape improvements to provide improved mobility and circulation through the project, as well as the overall neighborhood. (§ 220.2.) In addition, the access points for the required parking and loading facilities have been designed to appropriately balance the needs of pedestrians, bicyclists, transit users, autos, and delivery trucks as well as the needs of residents and others to move around and through the city. Moreover, the proposed redevelopment and streetscape improvements along H Street will also help to reinforce and improve one of the "great streets" of the city. (§ 220.3.)
- e. *Building Green and Healthy Communities.* The proposed development is fully consistent with the guiding principles of the building green and healthy communities element since the project's proposed landscaping plan will help to

increase the District's tree cover, and the proposed development will minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (§§ 221.2 and 221.3.) In addition, the project, which includes LEED elements, will also help to facilitate pedestrian and bicycle travel. The existing site consists of significant areas of surface parking immediately adjacent to H Street, the removal of which will be of significant benefit from an urban design and environmental standpoint.

33. The Commission also finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as set forth in the report and testimony of the Applicant's land use and zoning expert and the OP report.

### **OP Report**

34. By report dated April 2, 2010, OP stated that it supports the application and that the proposed PUD is not inconsistent with the Comprehensive Plan. Therefore, OP recommended that the Commission schedule a public hearing on the application. (Exhibit 15.)
35. By report dated July 9, 2010, OP recommended final approval of the application. (Exhibit 32.) OP stated that redevelopment of the site would provide additional residential and retail uses, which would highlight the on-going revival of the H Street corridor. OP also reported that the Applicant has integrated recommendations in the design and architecture of the proposal for an improved building, which conforms to the H Street Overlay provisions, anticipates the advent of the H Street streetcar line, and would improve pedestrian activity along the H Street frontage. The façade and architectural details of the mixed-use building is a result of extensive staff and community input. OP found that the proposal is not inconsistent with the 2006 Comprehensive Plan Future Land Use and Generalized Policy maps, and furthers many important policies for the Capitol Hill Area. OP also found that the Applicant's requests for minor relief from two zoning requirements and flexibility to construct the development in two phases based on market considerations should be granted as proposed.

### **DDOT Report**

36. DDOT submitted a memorandum dated July 15, 2010, indicating that DDOT is supportive of the Applicant's choice of land uses, elements of urban design incorporated into the public space, and the high quality level of design utilized in the project. (Exhibit 34.) However, DDOT noted some potential concerns regarding possible increased traffic delays, potential increased bus delays, and the size of the curb cut initially proposed on 8<sup>th</sup> Street, N.E.

37. At the public hearing on July 19, 2010, DDOT testified that it supports this project. DDOT indicated that its initial report highlighted some of DDOT's concerns, but that DDOT subsequently met with the Applicant to resolve the concerns raised in DDOT's report. DDOT also testified that the application has many merits including creating a highly walkable environment, having very active uses on the ground floor which will increase interest in walking and pedestrian safety, and the inclusion of bicycle facilities. DDOT concluded its testimony by reiterating that DDOT fully supports the project as presented at the public hearing and recognized the development team for accommodating DDOT's requests to address the curb cut concerns and the circulation at 8<sup>th</sup> and H Streets. (Public Hearing Transcript, pp. 125-128.)

### **Persons in Opposition**

38. The Brandts testified that their property has been damaged on several occasions by trucks servicing the current H Street Connection property. In addition, the Brandts indicated that the proposed eight-story building is inconsistent with the H Street master plan, is inconsistent with the scale of existing homes on 8<sup>th</sup> and 10<sup>th</sup> Streets, and is too close to their home. The Brandts also opposed the project based upon the anticipated amount of traffic that would impact 8<sup>th</sup> and 10<sup>th</sup> Streets, particularly the intersection of 8<sup>th</sup> and H Streets. The Brandts requested that the garage entrance be located on H Street, N.E. The Brandts also opposed the inclusion of 100 additional parking spaces to be provided if funded by the District.
39. At the conclusion of its public hearing, the Commission asked the Applicant for additional information concerning the project, and requested that the Applicant consider making further adjustments to limit the potential adverse impacts of the project on the Brandt's property, specifically asking the project architect to consider themselves to be the owner of that home.
40. Although not a party, the Brandts were permitted, without objection by the Applicant, to respond to any proposed solutions to their concerns.

### **Post Hearing Submissions**

41. On September 3, 2010, the Applicant submitted a post-hearing submission. (Exhibit 45.) The post-hearing submission included perspectives showing the revised façade of the building in relation to the row dwellings on 8<sup>th</sup> Street; additional information and a proposed condition regarding the phasing of the project; additional information regarding the Applicant's proposed amenities package; and an updated design for the roof structures; and a revised trellis at the corner of 10<sup>th</sup> and H Streets.

42. The Applicant included with its post-hearing submission a number of solutions to address the concerns raised by the Brandts. The first proposed solution, identified as "Option 1," includes a revised garage layout to include a separate parking garage entrance and a separate exit for the retail patrons in Phase I of the development. This would result in a one-way circulation pattern and the garage entry ramp has been significantly narrowed. The garage entrance is located in the same place as presented during the public hearing. However, the exit ramp has been located at approximately the mid-point of the building, and would connect to the service drive east of the Brandts' house, across from a parking lot to the south of the subject property. In addition, Option 1 includes installing a five-foot green buffer adjacent to the Brandts' home, installing a six-inch curb at the edge of the green buffer, and installing four bollards along the curb of the proposed green buffer. The proposed bollards will be concrete-filled, with steel pipes, and will have a six-inch diameter and measure three feet, six inches in height. The bollards will be spaced evenly apart along the property line adjacent to the buffer. Moreover, the overall distance between the building's southern façade to the property line adjacent to the Brandts' home has been increased from 22 feet to 25 feet. Option 1 also improves truck turn movements by increasing the existing curb cut width to 24 feet and increasing the curb-to-curb distance in the private alley from the existing 15'-2" to 18'-6". These changes result in significant improvements to truck turn movements into the private alley as shown on the insert prepared by Gorove/Slade Associates, Inc. and included on Sheet A07.
43. The Applicant also submitted an alternative plan, identified as "Option 2," which provides for a retail/residential entrance accessed from a 10-foot entrance directly off 8<sup>th</sup> Street, N.E., and a separate entrance for service trucks accessed from an 18'-6" entrance. Both of these entrances would be accessed from 8<sup>th</sup> Street, N.E. The entrances will be separated by a six-foot safety island which will be flush to the sidewalk. A curb cut having an overall width of 34'-6" would be necessary to accommodate the separate entrances, while also providing adequate space to allow for truck turn movements into the private alley. Option 2 also improves truck turn movements into the private alley, as compared to the existing condition. Option 2 also maintains the proposed separate entrance and exit for the retail parking ramp. In addition, this option includes creating the same five-foot green buffer adjacent to the Brandts' home, installing a six-inch curb at the edge of the green buffer, and installing four bollards along the curb of the proposed green buffer. Option 2 also increases the distance between the building's southern façade to the property line adjacent to the Brandts' home from 22 feet to 25 feet, and increases the existing curb-to-curb distance in the private alley from the existing 15'-2" to 18'-6". The Applicant requested that the Commission approve either or both Options.
44. On September 8, 2010, the Brandts filed a response expressing their support for what they characterized as "Option #3," which would have all vehicular ingress and occur off the south side of H Street. (Exhibit 46.) The Brandts further indicated that Option 2 is

“significantly better than” Option 1 and that they could support Option 2 if “Option #3 were not a significantly better alternative and current practice for the Commercial site.”

45. By letter dated September 9, 2010, ANC Commissioner Drew Ronneberg indicated that at a regularly scheduled and properly noticed meeting held that same day, ANC 6A voted to support either Option 1 or Option 2. (Exhibit 47.) The ANC further reiterated its support for the proposed design of the penthouse structures and the proposed amenities package, which the ANC viewed as substantial.

### **Proposed Action**

46. During its deliberations on proposed action, the Commission indicated their support for allowing the Applicant to proceed with either Option 1 or Option 2.
47. The Commission then turned its attention to the following three areas of concern:
- Whether anything further could be done to reduce potential impacts on adjacent residential properties;
  - Whether the amenities package justified the zoning flexibility sought, particularly in view of the fact that the affordable housing being proffered was no more than that required by Chapter 26 of the Zoning Regulations; and
  - Whether, both ingress and egress to the retail uses could be constructed further down the alley, since the Applicant has demonstrated that an entrance ramp within the alley was feasible.
48. The Commission requested that the Applicant address the three issues and later, by letter dated October 4, 2007 (Exhibit 51), asked the Applicant to submit an alternative roof structure design that better unifies the roof structures and to also explain why it is necessary to have two elevator banks that extend to the roof. The ANC was sent a copy of the letter.
49. The Applicant provided its responses in a letter dated October 19, 2010 and the attachments thereto. (Exhibit 55.)
50. As to the first issue of protecting adjacent properties, the Applicant offered to install in place of the bollards a cast-in-place, concrete planter with brick facing on the exposed walls of the planter. The walls will measure approximately three feet, six inches in height, and will have an overall width of approximately five feet as measured from the property line to a six-inch curb to be installed. The north side of the wall adjacent to the private alley will measure approximately one foot wide, and the south side of the wall adjacent to the neighboring property line will measure approximately eight inches wide.

51. As to having both the ingress and egress to the garage from the private alley in the middle of the site, the Applicant indicates that it considered this scenario, but did not think it was the best solution principally because it would not decrease the number of trips in the private alley, but might in fact increase them due to cars traveling past the loading area.
52. In terms of the amenities proposed, the Applicant noted that the public benefits offered were the result of years of negotiation with the affected ANC. The Applicant indicated that the affected ANC and Councilmember Wells both viewed the project as being critically important to the development of the area and submitted a letter from the Office of the Deputy Mayor for Planning and Economic Development detailing the positive financial impact that will result from the project
53. In addition, the Applicant asserted that new housing of any kind is one of the public benefits recognized in the PUD regulation and asserted that a decision to develop housing in place of commercial uses has been recognized as a particular form of public benefit. Although the affordable housing being offered is no greater than that required by the Zoning Regulations, the Applicant cited a recent Commission order that recognized the provision of required housing as a public benefit. Lastly, the Applicant suggested that the level of public benefits offered by the project are comparable to those found sufficient in previously approved PUDs.
54. The Applicant's submission included a redesign of the roof top structures. Brick piers with masonry caps form an arcade which joins the individually enclosed roof structures into one unified structure. As to the elevator banks, the Applicant contended that two banks were essential to the project to allow accessible access to the roof terrace for each phase and potential separate financing of the project.
55. By letter dated October 25, 2010, ANC 6A Commissioner Ronneberg indicated that he reviewed the Applicant's submission, indicated that the Community eagerly anticipated development on the site, and urged the Commission to approve the revised application. (Exhibit 56.)

### **Disposition of Remaining Issues**

56. At its regularly scheduled public meeting held November 8, 2010, the Commission accepted into the record a consolidated set of plans, and took final action to approve the Application after making the following determinations. (Exhibit 58.)
57. The Applicant may either install the bollards or the concrete planter with brick facing in the private alley. However, because of the possibility of drainage problems with the planter, the Commission would want the Applicant to obtain the support of the Brandts to proceed with that option.

58. The proffer of affordable housing is not a public benefit because it does no more than meet the minimum required under Chapter 26 of Title 11, Inclusionary Zoning (“IZ”). The one instance cited by the Applicant in which the Commission found a benefit in this circumstance involved a map amendment from CM-1 to C-2-B. Since CM properties are not subject to IZ, but C-2-B properties are, the map amendment resulted in a net increase in affordable housing in the District. That is not the case here.
59. Notwithstanding the unexceptional amenities package being offered, the Commission nevertheless concludes that the development incentives being granted are warranted in view of the benefits flowing from the project itself. The Applicant’s October 19<sup>th</sup> submission, together with the supporting letters from the ANC, Councilmember Wells, and the Office of the Deputy Mayor for Planning and Economic Development, amply demonstrate the significance of this project to its neighborhood. The Applicant will be building a project on an underutilized site that is currently without housing or fronting retail. If built, the project will go a long way towards the revitalization of H Street and bring the east side and west sides of H Street together.
60. The Commission agrees with the Applicant that mid-alley vehicular access to the retail uses is not achievable for the reasons stated in the submission.
61. The Applicant’s explanation of the need for two elevator banks is reasonable.
62. The redesign of the roof tops structures achieved the unified characteristic sought by the Commission.

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts.

3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments 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. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The 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 Subject Property. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The project will not result in any adverse traffic impacts. Based upon the February, 2010 Traffic Impact Study ("TIS"), prepared by Gorove Slade and included in the initial PUD submission, the testimony of the Applicant's expert in transportation analysis and planning, and DDOT's testimony at the public hearing, the Commission finds that once the project is built-out, the surrounding intersections studied by the Applicant and DDOT would continue to operate at levels similar to existing conditions, and that the stop-controlled intersections would not experience any change in level of service or delay. Thus, the project will not result in any fundamental changes to travel demand at the intersection of 8<sup>th</sup> Street and H Street, N.E. The Commission further notes that the proposed project would have less of an impact on the roadway network than a matter-of-right project.
8. The site is currently zoned C-2-B and has a land area of approximately 87,053 square feet. Thus, the site could be developed as a matter of right to include 130,579 square feet of gross floor area devoted to office and/or retail use, plus 235,043 square feet of residential gross floor area. However, given that the project only includes 51,420 square feet of retail square footage, the amount of commercial or office traffic that would otherwise be generated is substantially reduced. Indeed, as described in more detail on pages 36-37 of the TIS, a matter-of-right development on the site would have an overall greater impact on the area roadway network as compared to the proposed project, particularly at the H Street/8<sup>th</sup> Street intersection in terms of trip generation and average delay.
9. The Applicant's redesign of the private alley to create a one-way traffic circulation results in significant improvements to truck turn movements into the private alley and the five foot green buffer with either bollards or a planter will protect the Brandts' property to the maximum extent possible.

10. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.
11. Approval of this 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 Subject 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.
12. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2006 Repl.) to give great weight to the affected ANC's recommendation. In this case, ANC 6A and 6C voted unanimously to support the project and recommended that the Commission approve the application. (Exhibits 13 and 33.) The Commission has given ANC 6A's and 6C's recommendations great weight in approving this application.
13. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.* (2007 Repl.)

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for the consolidated review and approval of a planned unit development ("PUD") for Lot 55 in Square 912 subject to the following guidelines, conditions and standards: For the purposes of these conditions, the term "Applicant" 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 plans prepared by Torti Gallas and Partners, Inc., dated November 8, 2010, marked as Exhibit 58 in the record (the "Approved Plans") and as further modified by the guidelines, conditions, and standards herein.

2. The PUD shall have a maximum density of 5.0 FAR and a gross floor area of 435,265 square feet.
3. The maximum height of the building shall be 90 feet.
4. The project shall include 405 striped off-street parking spaces in the garage with the Applicant having the flexibility to reduce the ratio of residential parking spaces to 0.7 per residential unit, subject to the flexibility granted pursuant to Condition No. 13c.
5. The Applicant is granted flexibility from the streetwall (§ 1324.2), and roof structure number and setback requirements (§§ 411 and 770), consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.
6. The Applicant is granted the flexibility to proceed with:
  - a. Either Option 1 or Option 2 for the ground floor of the building as shown on the Approved Plans; and
  - b. Either with the installation of bollards or a cast-in-place, concrete planter within five-foot green buffer in the private alley as also shown on the Approved Plans.
7. If the project is developed in phases, the Applicant will landscape and maintain any space not otherwise improved with buildings, access points, hardscape, other structures, or the private alley.
8. The plans included with the building permit application for the project shall include the retail space as shown on the Approved Plans.
9. The plans included with the building permit application for the project shall include a set back at the corner of 8<sup>th</sup> and H Streets and the building materials as specified on the Approved Plans, which materials as specified on the plans amount to an additional cost of between \$200,000 and \$250,000 over the materials specified in the H Street construction materials plan issued by DDOT.
10. The plans included with the building permit for the application shall show that any proposed soldier beams are being augered, and not pile driven.

11. The plans included with the building permit application shall show the installation of security cameras connected to the rear of the building and capable of viewing the private alley area.
12. The plans included with any application for a demolition permit shall include a pest control plan.
13. The Applicant shall also have flexibility with the design of the PUD in the following areas:
  - a. To be able to provide a range in the number of residential units of plus or minus 10% from the 384 depicted on the plans;
  - b. 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 building;
  - c. To vary the garage layout, the number, location, and arrangement of the parking spaces, and the distribution of spaces between the phases, provided that the total number of parking spaces is not reduced below the minimum level required by Condition 4. The Applicant shall have the flexibility to add an additional 100 commercial parking spaces within the building, it being understood that the Applicant has stated for the record that it will not construct the additional spaces unless the District of Columbia and the Applicant agree that the District of Columbia has provided complete funding or an acceptable funding mechanism for both the total cost of constructing the additional 100 parking spaces, and for the cost for any mitigation measures required by DDOT to provide the additional 100 parking spaces, and that the District has presented the mutually agreeable funding or funding mechanism to the Applicant prior to the Applicant starting its civil and architectural drawings for the PUD or starting its civil and architectural drawings for the first phase of the PUD if the PUD is to be phased; and
  - d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to

comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

**B. PUBLIC BENEFITS**

1. **The Applicant shall submit with its building permit application** a LEED checklist indicating that the project includes sustainable design features such that the building would be able to meet the standards for certification as a LEED-Silver building, although the Applicant is not required to seek LEED-Silver certification for the building.
2. **Prior to the issuance of a building permit for the project**, the Applicant shall submit to DCRA a fully executed First Source Employment Agreement with the Department of Employment Services.
3. **Prior to the issuance of a Certificate of Occupancy for the project**, the Applicant shall submit to the Historic Preservation Office, with a copy to DCRA, a letter indicating that the Applicant supports any application filed or to be filed by ANC 6A for the designation of appropriate sites along the H Street corridor within a historic district.
4. **Prior to the issuance of a Certificate of Occupancy for the project**, the Applicant shall submit to DCRA proof that the Applicant has registered to participate in a clean-and-safe program for H Street, if a clean-and-safe program has been created by the District for H Street by such time.
5. **For so long as the project exists**, the project shall dedicate a minimum of eight percent of the residential gross floor area for affordable residential units. The affordable units shall be affordable to households earning up to 80% of the area median income. The affordable units shall be distributed vertically and horizontally throughout the residential portion of the building and shall not be overly concentrated on any floor of a project.
6. **During operation of the building**, the Applicant shall implement the following On-Site Vehicle Parking Measures and the Transportation Demand Management Measures:
  - a. Off-street parking spaces accessory to the residential uses shall be leased or sold separately from the rental or purchase fees;

- b. Each residential lease and purchase agreement shall contain a provision prohibiting the tenant/owner from applying for an off-site permit under the Residential Parking Permit Program;
- c. Providing one on-site parking space dedicated for a car-sharing service for so long as such services are reasonably and practically available to the public;
- d. Providing at least five designated guest parking spaces in the retail portion of the garage during any three-hour period on weekdays. The Applicant shall have the right to charge a fee for use of these spaces.
- e. Locating any garage ticketing kiosks for the parking garage at the base of the entry ramp, and providing a reversible middle retail parking entrance lane that can be used to implement a second ticket kiosk entrance as needed;
- f. Providing links to [goDCgo.com](http://goDCgo.com) and [CommuterConnections.com](http://CommuterConnections.com) on its developer and property management websites;
- g. Providing a \$20 SmarTrip card to all initial building residents upon move-in, and a one-time \$30 SmarTrip card for each initial employee of the retail businesses. This total commitment will be capped at \$15,000;
- h. Providing a one-time, one-year car-share membership (which shall include the cost for any application fees) for the initial occupant(s) of each residential unit, capped at a total commitment of \$19,000;
- i. Providing a carpool and mass transit coordinator and participation in the Guaranteed Ride Home Program;
- j. Providing 25 bike parking spaces for retail visitors and 50 bike parking spaces for use by residents in the parking garage;
- k. The Applicant will fund the development of a bike-sharing station at a cost not to exceed \$45,000, with the location of such bike-sharing station to be determined by DDOT; and
- l. The project will include showers and changing areas in the building for employees who wish to bike to work, as reflected on the Plans.

### C. MISCELLANEOUS

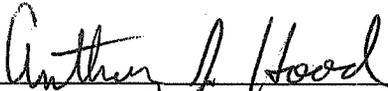
1. Prior to the issuance of the first building permit for the project the Applicant shall record a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicant and all successors in title to the construct on and use the Subject Property in accordance with this Order or any amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the Office of Zoning for the case record.
2. The Applicant is authorized to construct the approved building in two phases, with the parameters of the phases as shown Sheet A-25 of the Approved Plans. An application must be filed for a building permit for the first phase of the development within two years from the effective date of this Order as specified in 11 DCMR § 2409.1. Construction of the first phase shall begin within three years of the effective date of this Order. An application must be filed for a building permit for the second phase of the development within two years after the completion of the first phase of the building as evidenced by the issuance of the certificate of occupancy for the residential portion of the building. Construction of the second phase shall begin within one year after the building permit is issued.
3. 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 September 27, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, and Michael G. Turnbull to approve; Peter G. May to approve by absentee ballot; Greg M. Selfridge, not having participated, not voting).

On November 8, 2010, upon the motion of Commissioner Turnbull, as seconded by Commissioner May, the Zoning Commission **ADOPTED** the Order at its public meeting, by a

vote of 4-0-1 (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt; Greg M. Selfridge, 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 January 14, 2011.



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.: 10-03

JAN 14 2011

As Secretary to the Commission, I hereby certify that on \_\_\_\_\_ copies of this Z.C. Order No. 10-03 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Norman Glasgow, Jr.  
Holland & Knight  
2099 Pennsylvania Ave., NW.  
Suite 100  
Washington, D.C. 20006
3. ANC 6A  
P.O. Box 75115  
Washington, DC 20013
4. Commissioner Drew Ronneberg  
ANC/SMD 6A02  
646 11<sup>th</sup> St., N.E.  
Washington, DC 20002
5. ANC 6C  
P.O. Box 77876  
Washington, D.C. 20013-7787
6. Commissioner Tony Richardson  
ANC 6C05  
921 2<sup>nd</sup> Street, N.E.  
Washington, D.C. 20002
7. Gottlieb Simon  
ANC  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004
8. Councilmember Tommy Wells
9. DDOT (Karina Ricks)
10. Melinda Bolling, Acting General Counsel  
DCRA  
1100 4<sup>th</sup> Street, S.W.  
Washington, DC 20024
11. Office of the Attorney General (Alan Bergstein)

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "S. S. Schellin", is written over a horizontal line.

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