

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 11-12**  
**Z.C. Case No. 11-12**  
**EastBanc-W.D.C. Partners, LLC**  
**(Consolidated PUD and Related Map Amendment at Square 37)**  
**March 26, 2012**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held public hearings on December 19, 2011, and on January 5, 2012, in order to consider an application from EastBanc-W.D.C. Partners, LLC ("Applicant"), on behalf of the District of Columbia and 699 N, LLC, the owners of Lots 836, 837, and 855 in Square 37 for the approval of a consolidated planned unit development ("PUD") and related map amendment. The Commission considered the application pursuant to Chapters 1, 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 June 8, 2011, the Applicant filed an application with the Commission for the consolidated review and approval of a PUD on Lots 836, 837, and 855 in Square 37 ("Property") and a related map amendment to rezone the Property from the R-5-B to the CR Zone District ("Application"). The Application proposes the redevelopment of the Property with a mixed-use project with a new West End Branch Library ("Library"), ground-floor retail, and residential above. It also includes the construction of a new Engine Company #1 Fire Station ("Fire Station") at the northeast corner of the intersection of M and 23<sup>rd</sup> Streets, N.W. (Exhibit 3.)
2. The Property has an area of approximately 46,764 square feet. It is located on the north side of L Street, N.W., between 23<sup>rd</sup> and 24<sup>th</sup> Streets, and is currently improved with the West End Branch Library (Lot 836), the Metropolitan Police Department Special Operations Division (Lot 837), and a surface parking lot (Lot 855). The Property is designated Mixed-Use High-Density Residential/Medium-Density Commercial on the District of Columbia Comprehensive Plan Future Land Use Map ("Land Use Map") and is presently zoned R-5-B.
3. At its meeting of July 25, 2011, the Commission voted unanimously to set down the Application for public hearing. In its discussion on the Application, the Commission

requested additional drawings and elevations showing (i) the proposed building in the context of the surrounding area; (ii) an enlarged drawing of the loading area circulation; and (iii) clarification on the roof structures, including the proposed penthouse. Additionally, the Commission inquired about the size of the Library; the construction management plan for the project; and the development costs for the Library and the Fire Station and how those costs impact the ability to provide on-site affordable housing.

4. In its setdown report dated July 15, 2011, the Office of Planning ("OP") requested the Applicant provide additional information on the Application, additional/revised architectural drawings, the transportation impact study, and the status of the Applicant's community outreach efforts. (Exhibit 15.)
5. On September 2, 2011, the Applicant submitted a Prehearing Statement. (Exhibit 17.) The Prehearing Statement addressed the issues and comments raised by the Commission and OP. It also included as attachments a letter of support from DC Public Library dated September 1, 2011 (Exhibit B), a letter of support from the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") dated June 21, 2011 (Exhibit C), and an outline of the project's development costs (Exhibit D).
6. On November 29, 2011, the Applicant submitted a Supplemental Filing, which included an updated set of architectural plans and elevations. (Exhibit 30.) The drawings were revised to include an additional level of underground parking. The supplemental statement discussed various elements of the project to address issues and comments raised by the Commission and OP, and included the following: (i) a concept approval letter dated October 27, 2011, from the U.S. Commission of Fine Arts; (ii) a letter from Zipcar dated November 5, 2011; (iii) a memorandum from Symmetra Design dated November 22, 2011, addressing a recessed parking option (in lieu of a layby) along 23<sup>rd</sup> Street; (iv) a letter from Noell Consulting Group, dated November 28, 2011, analyzing the proposed residential parking ratio for the PUD; (v) a chart showing the parking ratios for comparable projects; (vi) a draft construction management plan; and (vii) a memorandum from Symmetra Design dated November 4, 2011, in response to DDOT's comments on the project.
7. A description of the proposed development and the notice of the public hearing in this matter were published in the *D.C. Register* on September 23, 2011. The notice of public hearing was mailed to all property owners within 200 feet of the Property, as well as to Advisory Neighborhood Commission ("ANC") 2A. On December 19, 2011, the Commission commenced the public hearing on the Application. The hearing continued and concluded on January 5, 2012.
8. The parties to the case were the Applicant, ANC 2A, the Gibson Condominium Association, Inc., The Residences at Ritz-Carlton, Kenneth L. Wnuck, the West End Flats Condominium Association, and the D.C. Library Renaissance Project/West End Library Advisory Group ("DCLRP-WELAG").

9. The West End Citizens Association ("WECA") and Ms. Sayuri Rajapakse requested party status, but their requests were not granted by the Commission. WECA was not granted party status because the Commission did not find that its interests were more significantly, distinctly, and uniquely affected than others who live in the area. Ms. Rajapakse was denied party status because the Commission determined that the impacts to her unit are common to a number of the units at The Gibson and the Commission preferred that the impacts to The Gibson be addressed holistically through the Gibson Condominium Association, which was granted party status.
10. At the hearing on December 19, 2011, the Applicant submitted four items into the record: (i) a draft construction management plan dated December 16, 2011 (Exhibit 53); (ii) the benefits and amenities package (Exhibit 51); (iii) a memo from Symmetra Design addressing the proposed parking ratio of 1.5 parking spaces per unit (Exhibit 52); and (iv) a set of alternative drawings for the garage entrance on 24<sup>th</sup> Street (Exhibit 50).
11. Prior to the start of the hearing on January 5, 2012, DMPED filed a letter in support of the Application. (Exhibit 65.) The letter explains that the value on of the public land on Square 37 is tied directly to the floor area ratio ("FAR") approved for the PUD, and it is the District's desire to maximize the value of that land in order to generate enough revenue to cover the costs of the Library and the Fire Station, which are estimated at \$20 million. According to the letter, this is the basis for the request to waive the inclusionary zoning requirements for the project.
12. Six witnesses testified at the public hearing on behalf of the Applicant: Brian Kenner, Chief of Staff to the Deputy Mayor for Planning and Economic Development; Matthew Troy, Project Manager for DMPED; Anthony Lanier, President of EastBanc; Enrique Norten of TEN Arquitectos; Nicole White of Symmetra Design; and Steven E. Sher, Director of Zoning and Land Use Services at Holland & Knight LLP. Based upon professional experience and qualifications, Mr. Norten was accepted by the Commission as an expert in architecture; Ms. White was accepted as an expert in traffic engineering and transportation planning; and Mr. Sher was accepted as an expert in land use, zoning, and planning.
13. A copy of the Applicant's Power Point presentation is marked as Exhibit 45; a copy of Mr. Troy's testimony is marked as Exhibit 49; and a copy of Mr. Sher's testimony is marked as Exhibit 57.
14. OP testified at the hearing in support of the project, and stated that the proffered public benefits, with the major ones being the Library and the Fire Station, are commensurate with the flexibility requested. OP also testified that it was not supportive of the proposed residential parking ratio of 1.5 spaces per unit, and the PUD building projection that impacts Unit 803 at The Gibson. OP recommended that the Applicant modify the building design by pulling the 6<sup>th</sup> floor projection on 23<sup>rd</sup> Street back to the property line.

15. The District Department of Transportation (“DDOT”) testified at the hearing in support of the project. DDOT also stated that it asked the Applicant to consider recessed parking as an alternative option to the layby proposed along 23<sup>rd</sup> Street. According to DDOT’s testimony, recessed parking is easier to manage than a layby.
16. DC Public Library, represented by Ginnie Cooper, Chief Librarian for the District of Columbia, testified in support of the project.
17. DC Fire and Emergency Services, represented by Battalion Chief David Foust, testified in support of the project.
18. ANC Commissioner Rebecca Coder, the Chairperson of ANC 2A and the single member district representative for ANC 2A02, the single member district where the PUD is located, testified that ANC 2A unanimously supports the Application subject to certain issues being addressed and which the Applicant has addressed effectively. In her testimony, Ms. Coder stated that, overall, ANC 2A thought the project had a unique design that could be an incredibly positive contribution to the neighborhood. She also explained how the Applicant addressed concerns regarding the increased traffic in the alley by pulling the building back an additional five feet along the north property line, installing safety features, and limiting delivery hours. She also stated that the Applicant agreed to build out all of the units to first-class condominium design. According to Ms. Coder, ANC 2A believes that the Library and the Fire Station are priorities and represent significant public amenities to both the neighborhood and the broader community. Finally, she noted that ANC 2A worked with the Applicant to develop a construction management plan to address the short-term impacts of the project and asked that the construction management plan be part of this Order. (Exhibit 66.)
19. The following persons testified in support of the Application at the public hearing:
  - a. Cheryl Cort, Policy Director for the Coalition for Smarter Growth. Ms. Cort stated that the Library and the Fire Station are exceptional public amenities. Ms. Cort suggested affordable dwelling units be included, if financially feasible, and she recommended additional Zipcars for the PUD. (Exhibit 64.)
  - b. Anita Diliberto, President of West End Friends. Ms. Diliberto commended the Applicant for addressing the concerns regarding traffic, pest control and noise and dust control, as reflected in the construction management plan.
  - c. Barbara Kahlow, on behalf of the West End Citizens Association. Ms. Kahlow stated that WECA strongly supports the Applicant’s plans for the Library and the Fire Station. (Exhibit 70.)
  - d. Susan B. Haight, President of the West End Library Friends. Ms. Haight testified that the West End Library Friends Stakeholder’s Committee prepared a report that

included comprehensive recommendations for an ideal branch library addressing the footprint, the physical plan, and its maintenance and exterior design, which was submitted to the D.C. Library Board of Trustees, Chief Librarian, DMPED, OP, and the D.C. Council. She also testified that the West End Library Friends believes that the Applicant met the recommendations of the report. (Exhibit 71.)

- e. Frederick Schwartz, Foggy Bottom Resident and user of West End Library. Mr. Schwartz challenged OP's evaluation of the PUD as it relates to the project's impact on the southerly views of Unit 803 at The Gibson and the District's transportation policy. (Exhibit 72.)
- f. Asher Corson, President of the Foggy Bottom Association ("FBA"). Mr. Corson described the Applicant's extensive community outreach efforts and the consensus from various constituencies to support the project. Mr. Corson submitted copies of his testimony and a resolution passed by the FBA Board of Directors on January 3, 2012. (Exhibit 73.) The resolution recognized the West End Library Friends to be the official group representing the needs and interests of Foggy Bottom and West End residents in relation to the West End Library, and states that the FBA does not recognize or support the DC Library Renaissance Project.

20. The following parties testified in opposition to the Application:

- a. Scott Meyer, on behalf of the Gibson Condominium Association. Mr. Meyer testified on behalf of the Gibson Condominium Association in support of the owner of Unit 803, Ms. Rajapakse. Mr. Meyer stated that the Gibson Condominium Association fully supports Ms. Rajapakse's request to have the building projection closest to The Gibson pulled back to the property line.
- b. Gretchen Hitchcock, on behalf of The Residences at Ritz-Carlton. Ms. Hitchcock read the written statement of Howard Biel, on behalf of the Residential Executive Committee of the Residences at Ritz-Carlton Washington, D.C. The statement commended the Applicant for its community outreach efforts and the building program. (Exhibit 74.) The statement was critical of the project design and requested that the proposed building be redesigned such that the residential units bulge toward the center of the development site instead of along the exterior streets.
- c. Kenneth Wnuck, resident at 1117 24<sup>th</sup> Street, N.W. Mr. Wnuck testified that he was troubled by the scale and design of the proposed project and that the height, development density, scale, and architectural character of the development is inconsistent with the existing scale and character of the neighboring properties. He discussed how the proposed project could impact the quality and character of the neighborhood and his home particularly. He challenged the PUD's consistency with the Comprehensive Plan and referenced a 2004 application to

rezone the Property from R-5-B to CR, which was denied by the Commission. (Exhibit 75.) However, on February 10, 2012, Mr. Wnuck filed a letter with the Commission requesting that the Commission open the record for the limited purpose of changing his party status from Opponent to Supporter, and further requesting that the Commission not consider his testimony during deliberations in the case. (Exhibit 94.) The Commission granted Mr. Wnuck's request and recognizes him as a party in support of the Application.

- d. Chris Otten on behalf of the DC Library Renaissance Project/West End Library Advisory Group. During his testimony, Mr. Otten challenged several aspects of the project:
- (i) He argued that the Library and the Fire Station are required under the Land Disposition Agreement ("LDA") between the Applicant and the District and, therefore, through the LDA, the proposed development is a matter-of-right project. According to Mr. Otten, the Zoning Regulations require PUD benefits to be features greater than what could be developed as a matter of right. Therefore, the Applicant should not be able to claim the Library and the Fire Station as benefits.
  - (ii) He criticized the project as being ambiguous with "moving goal posts" because the Application did not include the details of Square 50, and because the amount of the residential floor area in the Application differs from what is in the LDA and has varied throughout the PUD review/approval process.
  - (iii) He claimed that the Applicant is getting a subsidy from the District in the form of a tax abatement of close to \$2.1 million, and that the public land that is part of the Application has been undervalued. He also challenged the projected construction cost of the Library.
  - (iv) He argued that the PUD does not comply with §§ 2404.12 and 2403.10 of the Zoning Regulations nor with the Library Enhancement, Assessment and Development Act of 2006 ("LEAD Act").

A summary of these arguments and attachments is marked as Exhibit 68 of the record.

- e. Beau Rightsell, President of the West End Flats Condominium Association. Mr. Rightsell testified that some of the owners in the West End Flats are concerned about the project's impact on their light and views, especially those residents who face the south side of the building; the transition from the PUD project to the townhouses and then to the West End Flats' four-story brick building; potential damage to their building from the construction; the two-way traffic circulation in

the east-west alley on the north side of the Property; and increased noise and traffic from the alley.

21. The following persons testified in opposition to the Application:

- a. Sayuri Rajapakse, 1140 23<sup>rd</sup> Street, N.W., Unit 803 at The Gibson. Ms. Rajapakse testified that the sixth floor projection of the PUD building on 23<sup>rd</sup> Street threatens to unfairly obstruct the light and view currently available from her balcony, greatly diminishing her ability to enjoy the use of her balcony and significantly lessening the value of her unit relative to other units. She requested that the projection be pulled back to the property line. Ms. Rajapakse submitted a diagram in support of her testimony. (Exhibit 76.)
- b. Elizabeth Elliott, resident on 20<sup>th</sup> Street, N.W. Ms. Elliot expressed concerns about the project design, traffic and density given the project's location.
- c. Linda Leaks, District of Columbia Grassroots Empowerment Project, a non-profit membership organization also called Empower D.C. Ms. Leaks asked the Commission to deny the Applicant's request for a waiver of the Inclusionary Zoning ("IZ") requirements. (Exhibit 77.)
- d. Lisa McCracken, Occupy DC. Ms. McCracken expressed concern about the availability of affordable housing in the District.
- e. Sam Du Core, Occupy DC. Mr. Du Core expressed concern about the lack of affordable housing in the District and objected to the Applicant's request for a waiver of the IZ requirements.
- f. Jennifer Lopez, Occupy DC. Ms. Lopez objected to the Applicant's request for a waiver of the IZ requirements.
- g. Jennifer Elingston, D.C. Resident. Ms. Elingston objected to the Applicant's request for a waiver of the IZ requirements.
- h. Melissa DeBartelemeo, D.C. Resident. Ms. DeBartelemeo objected to the Applicant's request for a waiver of the IZ requirements.
- i. Robert Warren, People for Fairness Coalition. Mr. Warren challenged the construction of high-end dwelling units on the Property.

22. At the public hearing on January 5, 2012, during Closing Statement, the Applicant submitted into the record (a) a chart comparing the estimated cost to construct the proposed new West End Branch Library versus other Libraries throughout the city (Exhibit 78); (b) a copy of the transcript from the Commission meeting on May 18, 2006,

where the Commission discussed the IZ requirements in the PUD context (Exhibit 79); and (c) a chart showing how the proposed residential parking ratio for the PUD compares to similar projects in the District (Exhibit 80).

23. At the conclusion of the hearing, the Commission requested that the Applicant submit the following:
  - a. A set of plans that include (i) the penthouse drawing(s) that were presented to the Commission at the January 5 hearing; (ii) refined renderings of the project's treatment of the townhouses to the north; (iii) a shadow study that shows the impact of a matter of right project versus the proposed building; and (iv) a diagram that shows how many degrees of the perspective view for Ms. Rajapakse's unit are affected by the PUD.
  - b. A copy of the PowerPoint presentation made by the Applicant to the Commission on January 5, 2012;
  - c. A copy of the executed Memorandum of Agreement ("MOA") between ANC 2A and the Applicant; and
  - d. A written analysis of the Applicant's absorption of the costs of the Library and the Fire Station, and an explanation of the project benefits and amenities given this framework.
  
24. On January 19, 2012, the Applicant filed with the Commission the following:
  - a. A set of drawings and plans that includes (i) the penthouse drawing(s) that were presented to the Zoning Commission at the January 5 hearing; (ii) refined renderings of the project's treatment of the townhouses to the north; (iii) a shadow study that shows the impact of a matter of right project versus the proposed building; and (iv) a diagram that shows how many degrees of the perspective view for Ms. Rajapakse's unit are affected by the projection on the sixth floor of the PUD building along 23<sup>rd</sup> Street; (Exhibit 86.)
  - b. A copy of the PowerPoint presentation made by the Applicant to the Commission on January 5, 2012; (Exhibit 87.)
  - c. A copy of the executed MOA between ANC 2A and the Applicant; (Exhibit 85.) and
  - d. A written analysis of the Applicant's absorption of the costs of the Library and the Fire Station and an explanation of the project's benefits and amenities given this framework. (Exhibit 84.)

25. On January 26, 2012, the Gibson Condominium Association filed a response to the Applicant's post-hearing submission. (Exhibit 88.) The response included a letter from Ms. Rajapakse challenging the studies submitted by the Applicant and expressing concern about the light that would be available to her unit given the PUD design. The letter requests that the projection be pulled back to the property line. The Commission has reviewed the studies submitted by the Applicant (Exhibit 86) and Ms. Rajapakse (Exhibit 76). Based on the studies, the Commission finds that the projection is acceptable, and the actual diminution of the views from Ms. Rajapakse's unit is not significant enough for the Commission to not approve the plan. In fact, the way the PUD building is sculpted, Ms. Rajapakse's unit has a view of the street it would not have with a traditional building design on the PUD site. Further, the Commission finds that, given the Property's designation on the Land Use Map, which is Mixed-Use High-Density Residential/Medium-Density Commercial, the shadows that will be cast from the PUD are acceptable.
26. On January 26, 2012, Kenneth Wnuck filed a response to the Applicant's post-hearing submission. (Exhibit 8.) In his response, Mr. Wnuck contends that the sun studies filed by the Applicant establish that his property will be adversely affected by the proposed development, and that the Applicant did not adequately address the relationship between the adjacent townhouses or 24<sup>th</sup> Street and the PUD building.
27. On February 10, 2012, Mr. Wnuck filed a letter with the Commission requesting that the Commission open the record for the limited purpose of changing his party status from Opponent to Supporter, and further requesting that the Commission not consider his testimony during deliberations in the case. (Exhibit 94.) The Commission granted Mr. Wnuck's request and recognizes Mr. Wnuck as a party in support of the Application.
28. On January 26, 2012, the Applicant filed its Proposed Findings of Fact and Conclusions of Law. (Exhibit 91.)
29. On January 26, 2012, DCLRP-WELAG filed a response to the Applicant's post-hearing submission. (Exhibit 92.) In its response, DCLRP-WELAG provides analyses on the following observations:
  - a. The public benefits proffered under the PUD are actually required public benefits owed to the District through a legal agreement and/or required by Zoning Regulations.
  - b. The precedent established should the waiver of the IZ requirements be granted.
  - c. The Application requires the Commission to ignore incomplete plans and financial analysis while expecting the Commission to help set the final terms of an unfinished land development and disposition agreement between the Applicant and the District.

- d. There are components of the PUD application and overarching West End parcels project that contravene key Comprehensive Plan policies and long-term planning objectives. First, DCLRP-WELAG argues that the waiver of the IZ units without a guarantee that 52 affordable units will be constructed on Square 50 above the Fire Station is in direct contention with the Near Northwest Element of the Comprehensive Plan regarding affordable housing. Second, DCLRP-WELAG argues that the removal of the Police Special Operations facility is contrary to Community Services and Facilities Goal of the Comprehensive Plan, specifically § 1103.8 of the Comprehensive Plan which states that "planning for new public facilities like libraries and police stations is an important long-range planning activity." Third, DCLRP-WELAG challenges the Applicant's assertion that the PUD will generate a significant amount of tax revenue for the District.

The Commission's findings on the stated observations by DCLRP-WELAG are set forth in the Contested Issues section of this Order.

30. On February 21, 2012, the Applicant filed with the Office of Zoning and served on OP, the Office of the Attorney General ("OAG"), ANC 2A, and the other parties to the case that portion of the Applicant's proposed order that describes the public benefits and being proffered for the PUD and the corresponding conditions. (Exhibit 97.)
31. On March 5, 2012, the Applicant filed with the Office of Zoning and served on OP, OAG, ANC 2A, and the other parties to the case revised drawings for the garage entrance, the revised proffer of benefits and amenities and conditions, and a revised draft of the proposed findings of fact and conclusions of law. (Exhibits 98 and 99.)
32. The Commission voted to approve proposed action on the Application on February 13, 2012. At the meeting, the Commission requested that the Applicant further refine the drawings for the parking garage entrance proposed on 24<sup>th</sup> Street. The Commission also requested the Applicant submit the revised proposed Findings of Fact.
33. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") on February 14, 2012. Pursuant to the memorandum dated March 6, 2012, NCPC found that the proposed PUD will not affect the federal interests. (Exhibit 100.)
34. The Commission took final action to approve the Application on March 26, 2012. The Commission also re-opened the record to allow the Applicant to submit a consolidated set of plans.

### **The PUD Project**

35. The PUD is a mixed-use project with a total gross floor area of approximately 327,304 square feet. The development includes (i) a new public library with approximately

17,000 to 20,223 square feet of gross floor area, which fronts on L Street; (ii) approximately 7,617 square feet of neighborhood-serving retail along 23<sup>rd</sup> Street; and (iii) a multi-family residential building above the Library and retail consisting of approximately 289,004 square feet with 153 to 189 one-, two- and three-bedroom units. The rooftop penthouse will have spaces for communal recreation uses as depicted on the Roof Plan (Penthouse Level 1) in the architectural drawings for the project. The PUD will be supported by an underground parking garage with six parking spaces for the Library, 12 parking spaces for the retail use, and residential parking at a ratio of 1.5 spaces per unit. The PUD will have a maximum height of 110 feet, and a maximum density of 7.0 FAR.

36. The PUD will significantly benefit the West End neighborhood by redeveloping the Property with a new West End Branch Library, new housing, and new neighborhood-serving retail, including a privately operated café at the corner of 23<sup>rd</sup> and L Streets, through which people can access the Library and vice versa, all of which will add to the critical mass of people supporting street life. The Library will be designed to appeal to a wide cross-section of the community. In addition to the Library, in connection with the PUD, the Applicant will construct and deliver to the District a new fire station within one block of the Property, at the northeast corner of the intersection of M and 23<sup>rd</sup> Streets (Square 50) to replace Engine Company #1.

#### **Development Under Existing R-5-B Zoning**

37. The Property is currently zoned R-5-B. The Zoning Regulations describe R-5 Zone Districts as general residence districts designed to permit flexibility of design by permitting in a single district. Except as provided in § 350 through § 361 of the Zoning Regulations, all types of urban residential development are permitted if they conform to the height, density, and area requirements established for these districts. The R-5 Zone Districts also permit the construction of those institutional and semi-public buildings that are compatible with adjoining residential uses and excluded from the more restrictive Residence Districts. The maximum building height permitted in the R-5-B Zone District is 50 feet. (11 DCMR § 400.1.) The maximum density permitted in the R-5-B Zone District is 2.0 FAR for public libraries; and 1.8 FAR for all other structures. (11 DCMR § 402.4.) The maximum percentage of lot occupancy permitted in the R-5-B Zone District is 60%. (11 DCMR § 403.2.)

#### **Development Under Proposed CR Zoning**

38. In connection with the PUD approval, the Applicant seeks a PUD-related rezoning of the Property from R-5-B to CR (Commercial Residential). The purpose of the CR Zone District is to encourage a diversity of compatible land uses that may include a mixture of residential, office, retail, recreational, light industrial, and other miscellaneous uses. The CR provisions are also intended to help create major new residential and mixed-use areas

in planned locations at appropriate densities, heights, and mixture of uses, among other objectives.

39. In the CR Zone District, the permitted maximum building height is 90 feet. (11 DCMR § 630.1.) Housing for mechanical or stairway or elevator penthouse shall be set back from all exterior walls at a distance at least equal to its height above the roof and shall not exceed 18 feet, six inches in height above the roof. (11 DCMR § 630.4.) The FAR of all buildings and structures on a lot shall not exceed 6.0; not more than 3.0 of which may be used for other than residential purposes. (11 DCMR § 631.1.) An area equivalent to 10% of the total lot area shall be provided as ground-level public space for all new development in the CR Zone District. (11 DCMR § 633.1.) The lot occupancy is limited to 75% for a residential building. (11 DCMR § 634.1.)
40. In the case of a through lot or a corner lot abutting three or more streets, no rear yard shall be required for any building or structure. (11 DCMR § 636.5.) No side yard is required in a CR Zone District; however, where one is provided, its minimum width shall be three inches per foot of building height, but not less than eight feet. (11 DCMR § 637.2.) For a residential building, where an open court is provided in the CR Zone District, the court shall have a minimum width of three inches per foot of height of court, but not less than 10 feet; and for a hotel or other permitted uses, two and one-half inches of height of court, but not less than six feet for other permitted structures. (11 DCMR § 638.1(a)-(b).) Where a closed court is provided in the CR Zone District, for a residential building, a width of four inches per foot of height of court, but not less than 15 feet is required; and the closed court must have an area twice the square of the required width of court dimension. (11 DCMR § 638.2(a).) For other permitted structures, the court must have a width of two and one-half inches per foot of height of court, but not less than 12 feet; and an area twice the square of the required width of court dimension. (11 DCMR § 638.2(b).)

#### **PUD Development in CR Zone District**

41. The permitted maximum building height for a PUD in the CR Zone District is 110 feet. (11 DCMR § 2405.1.)
42. The permitted maximum density for a PUD in the CR Zone District is 8.0 FAR, of which up to 4.0 may be for commercial use. (11 DCMR § 2405.2.)

#### **Development Flexibility**

43. Flexibility From the Inclusionary Zoning Requirements. The PUD requires a waiver of the IZ requirements set forth in Chapter 26 of the Zoning Regulations. § 2603.2 of the Zoning Regulations requires that the Applicant devote the greater of eight percent of the gross floor area being devoted to residential use or 50% of the bonus density being utilized for IZ units. In this case, the PUD has a gross residential floor area of 289,004

square feet. Eight percent of that area, or 23,120 square feet is greater than 50% of the bonus density that would be utilized by the project for IZ units, which is 21,175 square feet. Therefore, Chapter 26 requires the PUD to set aside 23,120 square feet of the residential building, or approximately 14 units, for IZ. Without a waiver from this requirement, the project will not generate enough revenue to support the construction of the Library and the Fire Station that are proffered as public benefits.

44. Flexibility From Roof Structure Requirements. The Applicant originally requested flexibility to permit a roof structure that is setback from the exterior building walls at a distance that is less than equal to its height above the roof, as required in § 770.6(b) of the Zoning Regulations. At the hearing, the Applicant presented revised drawings showing the penthouse meeting the required setback along 23<sup>rd</sup>, 24<sup>th</sup>, and L Streets. The penthouse does not meet the 1:1 setback on the interior faces of the building. Copies of the revised drawings were submitted as part of the Applicant's post-hearing submission on January 19, 2012. (Exhibit 86.)
45. Flexibility From the Loading Requirements. The Applicant requests flexibility from § 2201 of the Zoning Regulations to have a loading berth that is 30 feet deep in lieu of one that is 55 feet deep. Given the type of dwelling units for the project, it is highly unlikely that deliveries will be made to the residential building in a 55-foot tractor trailer. Also, the loading area is situated at the rear of the building and configured in a manner that allows for safe front-in, front-out access, but not a turning radius wide enough to accommodate a 55-foot-long truck.
46. Flexibility From Lot Occupancy Requirements. The PUD has a building area of 35,763 square feet, which is equal to a lot occupancy of 82%, where § 534.1 of the Zoning Regulations permits a maximum lot occupancy of 75% (35,073 square feet of building area). Therefore, the Applicant seeks relief from the lot occupancy requirements. The percentage of lot occupancy is calculated on a horizontal plane located at the lowest level of where the residential uses begin. (11 DCMR § 199.1.) In this case, the residential uses begins at the first-floor mezzanine level of the building. Calculated at this level, the lot occupancy for the building is slightly higher than the permitted maximum because of the project's unique design. The balconies shift across each floor of each building façade, which results in a larger horizontal plane (for purposes of calculating lot occupancy) than if the balconies were stacked vertically, one over the other, in a more traditional arrangement.
47. Flexibility From Required Public Space at Ground Level. The Applicant proposes 4,495 square feet of public space at the ground level where 4,676 square feet is required under § 633 of the Zoning Regulations. The project has ample open space on 23<sup>rd</sup> Street, but has exchanged some open space immediately adjacent to the main entrance of the Library for interior courtyard space for the Library. This design was intended to minimize loitering near the Library entrance.

48. Flexibility From Parking Requirements for Library Use. The Applicant requested flexibility to have six parking spaces for the library use where 18 parking spaces are required under the Zoning Regulations. In a letter dated September 1, 2011, included as Exhibit B of the Applicant's prehearing statement, DC Public Library indicated that the proposed PUD parking is adequate for the library use. (Exhibit 17.)
49. No other types of zoning relief were requested or granted.
50. In addition, the Applicant seeks flexibility for the PUD as follows:
  - a. Flexibility to provide a range in the number of residential units, from 153 to 189.
  - b. Flexibility 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. Flexibility to vary the number, location and arrangement of parking spaces for the residential use, provided that the project provides a minimum of six parking spaces for the library use and the minimum amount of parking required under the Zoning Regulations for the retail and residential uses, and further provided that the bicycle racks, storage and shower facilities are located in the general vicinity of where they are shown on the approved PUD plans.
  - d. Flexibility 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 and the U.S. Commission of Fine Arts as necessary to obtain a final building permit.
  - e. Flexibility to construct a layby, recessed parking, or another alternative to minimize impacts to the traffic conditions or response times for emergency vehicles traveling on 23<sup>rd</sup> Street. The Applicant will continue to work with DDOT on an appropriate option.

**Public Benefits and Amenities**

51. The PUD will have the following benefits and amenities in the areas of urban design, architecture, landscaping and the creation or preservation of open spaces (§ 2403.9(a)):

- a. The PUD will result in the redevelopment of a currently underutilized site with a mixed-use project that includes a new public library, ground-floor retail and residential uses above.
  - b. The PUD incorporates exemplary, world-class architecture.
  - c. The residential units create a rhythmic stepping adding interest and movement to a neighborhood of static, cube-shaped buildings. At grade, the PUD building is pulled back from the property line in order to create covered public and private spaces. The dichotomy of the Library, as an inherent public space, and the needs of users to separate themselves from the activities around them, is addressed through filters of the façade. The first layer is the fragmented green gardens and streetscape that are then reflected in a layer of custom patterning on the glass façade of the Library. This helps to build a strong relationship between the interior and exterior. The 23<sup>rd</sup> Street façade of the building is also pulled back at grade in order to create spacious projections and landscaping is designed to encourage window shopping and accommodate some covered seating for potential restaurant or café uses.
  - d. The project includes large, curvilinear landscaped zones wrapping the corner of 24<sup>th</sup> and L Streets and near the residential lobbies, leaving more space on 23<sup>rd</sup> and L Streets for outdoor café space and seating area. In general, the project will reduce the overall hardscape and is designed to facilitate pedestrian circulation to the retail area.
52. The PUD will have the following benefits and amenities in the areas of site planning and efficient and economical land utilization (§ 2403.9(b)):
- a. The proposed mix of uses will bring a greater density of use to the neighborhood while using the same amount of developed land.
  - b. Vehicular access to the site will be from a single curb-cut on 24<sup>th</sup> Street, replacing the multiple curb cuts that currently serve the site; vehicular parking for the project will be below grade; and loading will be accessed via the public alley system adjacent to the Property.
  - c. The north face of the building, adjacent to the east-west alley, has been pulled back five feet from the property line, which effectively widens the alley from 15 feet to 20 feet.
53. The PUD will have the following benefits and amenities in the areas of effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts (§ 2403.9(c)):

- a. The north face of the building, adjacent to the east-west alley, has been pulled back five feet from the property line, which effectively widens the alley from 15 feet to 20 feet.
- b. The Applicant will repave the entire length and width of the east-west alley along the north side of the Property, between 23<sup>rd</sup> and 24<sup>th</sup> Streets, N.W., at no cost to the District.
- c. The Applicant will install safety devices in the east-west alley on the north side of the Property, including, but not limited to, mirrors and stop signs, as warranted by the Applicant's traffic consultant and DDOT.
- d. The Applicant will make a monetary contribution of \$2,500 to DDOT for signage and other costs to relocate the bus stop on the corner of 23<sup>rd</sup> and L Streets, N.W., to New Hampshire Avenue between M Street and Washington Circle. DDOT and WMATA are supporting the relocation of the bus stop in connection with the change of New Hampshire Avenue from one-way to two-way between M Street and Washington Circle. It will also make the corner of 23<sup>rd</sup> and L Streets more accommodating for the outdoor café, bike racks and access to the east lobby of the PUD building.
- e. In order to minimize impacts to the traffic conditions and response times for emergency vehicles traveling along 23<sup>rd</sup> Street, N.W., the Applicant will construct a layby or a recessed parking area along the Property's frontage on 23<sup>rd</sup> Street, subject to the review and approval by DDOT.
- f. All residential parking spaces will be limited to residents of the PUD and their guests only and may not be offered for non-residential lease opportunities. Further, parking spaces will be unbundled and sold or leased separately from the residential units.
- g. The project will provide at least two parking spaces for a car-sharing service.
- h. As part of its Transportation Demand Management ("TDM") plan, the Applicant will provide the following to the first occupant of each residential unit upon closing of a sale or signing of a lease:
  - (i) A one-time, complimentary \$100 WMATA SmarTrip fare card (\$100 in fare media shall be provided on the SmarTrip card);
  - (ii) A one-time, annual membership and registration fee subsidy for participation in a car-sharing program; and
  - (iii) A one-time annual membership to a bike share service.

- i. The Applicant will provide bicycle racks on the first level of the parking garage and in an at-grade storage facility that will collectively accommodate up to 108 bicycles. A bicycle storage room will be located adjacent to the parking garage entry near the west residential building lobby, and additional bicycle storage will be provided on the southeast corner of Cellar 1. Shower facilities for the residential building staff, the retail staff, and library staff will be provided on the garage level C1 of the building.
54. The PUD will have the following benefits in the area of employment and training opportunities (§ 2403.9(e)):
  - a. The Applicant has executed a CBE Agreement with the Department of Small and Local Business Development. (Exhibit 4J.)
  - b. The Applicant has executed a First Source Employment Agreement with the Department of Employment Services ("DOES"). (Exhibit 4K.)
55. The PUD has the following benefit in the areas of housing (§ 2403.9(f)):
  - a. The PUD will result in 153 to 189 new residential dwelling units on a site that currently has none.
56. The PUD will have the following environmental benefits and amenities (§ 2403.9(h)):
  - a. The PUD will achieve a minimum of 60 LEED points equivalent, which equates to LEED Gold.
  - b. The residential parking garage will have at least two electric car charging stations.
  - c. The project will have green terraces and green roofs throughout the building as reflected in the approved PUD plans.
  - d. The redevelopment of the site eliminates an existing surface parking lot. All parking provided with the project will be located under cover, thus eliminating the urban heat island effect and noise that is typically generated from surface parking lots.
57. The PUD will have the following benefits and amenities that are of special value to the West End neighborhood (§ 2403.9(i)):
  - a. The project includes the construction of a new West End Branch Library. The Library will have significantly improved facilities, including a children's area, space for the Library Friends, and community rooms.

- b. The project includes approximately 7,617 square feet of new neighborhood-serving retail including a café at the corner of L and 23<sup>rd</sup> Streets, N.W., which can be accessed through the Library and vice versa.
- c. The Applicant will construct a new fire station to replace the existing, outmoded station at the northeast corner of the intersection of 23<sup>rd</sup> and M Streets, N.W., in Square 50, which will enhance public safety throughout the neighborhood.
- d. The Applicant shall have a loading management plan for the project that includes the following restrictions:
  - (i) Commercial vendors, delivery vehicles and/or trash truck drivers shall be instructed to approach the loading area from 23<sup>rd</sup> Street, to allow for the easiest rear-end maneuver into the loading area. Trucks leaving the site shall exit using 24<sup>th</sup> Street, to provide the easiest egress maneuver required to exit the loading area.
  - (ii) The loading dock for delivery vehicles and trash pick up shall not be open before 7:00 a.m. nor later than 9:00 p.m. weekdays, or before 8:00 a.m. nor later than 9:00 p.m. on weekends and holidays. The property manager will be responsible for monitoring the loading dock to restrict access before these times and inform delivery and trash contractors of this requirement.
  - (iii) Move-ins for the residential building shall be Monday through Friday between the hours of 8:00 a.m. and 7:00 p.m.

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

58. The PUD is consistent with the following policies of the *Land Use Element* of the Comprehensive Plan:
- a. *Policy LU-1.3.8: Public Facilities.* Encourage the siting (or retention and modernization) of public facilities such as schools, libraries, and government offices near transit stations and along transit corridors. Such facilities should be a focus for community activities and should embrace neighborhood identity.
  - b. *Policy LU-2.1.10: Multi-Family Neighborhoods.* Maintain the multi-family residential character of the District's Medium and High Density residential areas. Limit the encroachment of large scale, incompatible commercial uses into these areas, and make these areas more attractive, pedestrian-friendly, and transit accessible. (10 DCMR § 309.15.)

- c. Policy LU-2.2.4: Neighborhood Beautification. Encourage projects that improve the visual quality of the District's neighborhoods, including landscaping and tree planting, façade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements. (10 DCMR § 310.5.)
59. The PUD is consistent with the following policies of the Housing Element of the Comprehensive Plan:
- a. Policy H-1.1.1: Private Sector Support. Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives.
  - b. Policy H-1.1.3: Balanced Growth. Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low and moderate density single family homes as well as the need for higher-density housing. (10 DCMR § 503.4.)
  - c. Policy H-1.1.4: Mixed Use Development. Promote mixed use development, including housing on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors and around appropriate Metrorail Stations. (10 DCMR § 503.5.)
60. The PUD is consistent with the following policies of the Urban Design Element of the Comprehensive Plan:
- a. Policy UD-2.2.1: Neighborhood Character and Identity. Strengthening the defining visual qualities of Washington's neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context. (10 DCMR § 910.6.)
  - b. Policy UD-2.2.3: Neighborhood Centers. Undertake strategic and coordinated efforts to create neighborhood centers, civic buildings, and shopping places that reinforce community identity. (10 DCMR § 910.9.)
  - c. Policy UD-2.2.5: Creating Attractive Façades. Create visual interest through well-designed building façades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street. (10 DMCR § 910.12.)
  - d. Policy UD-2.2.6: Maintaining Façade Lines. Generally maintain the established façade lines of neighborhood streets by aligning the front walls of new

construction with the prevailing facades of adjacent buildings. Avoid violating this pattern by placing new construction in front of the historic façade line, or by placing buildings at odd angles to the street, unless the streetscape is already characterized by such variations. Where existing facades are characterized by recurring placement of windows and doors, new construction should complement the established rhythm. (10 DCMR § 910.14.)

- e. Policy UD-3.1.7: Improving the Street Environment. Create attractive and interesting commercial streetscapes by promoting ground level retail desirable street activities, making walking more comfortable and convenient, ensuring that sidewalks are wide enough to accommodate pedestrian traffic, minimizing curb cuts and driveways, and avoiding windowless facades and gaps in the street wall.
  - f. Policy UD-3.3.2: Design Excellence in Public Buildings. Require design excellence for all public buildings and public space, with government leading by example to create a more attractive environment in the city and its neighborhoods. Important civic places, such as schools and libraries, should be individually designed to foster community identity and neighborhood character. (10 DCMR § 915.4.)
61. The PUD promotes the policies of the Community Services and Facilities Goals, including the following:
- a. Policy CSF-1.1.1: Adequate Facilities. Construct, rehabilitate, and maintain the facilities necessary for the efficient delivery of public services to current and future District residents. (10 DCMR § 1103.6.)
  - b. Policy CSF-1.1.3: Retention of Publicly-Owned Land. Retain District-owned property for community facility uses. Wherever feasible, the District should use short- or long-term leases for lands not currently needed so as to preserve the District's long-term supply of land for public use. (10 DCMR § 1103.9.)
  - c. Policy CSF-1.1.4: Addressing Facilities that are Functionally Obsolete. Develop reuse or disposition plans for public buildings or site that are functionally obsolete, that cannot be rehabilitated cost-effectively, or that are no longer needed. (10 DCMR § 1103.11.)
  - d. Policy CSF-1.1.7: Public Facilities and Economic Development. Locate new public facilities to support economic development and neighborhood revitalization efforts. (10 DCMR § 1103.13.)
  - e. Policy CSF-3.1.1: State-of-the-Art Public Library System. Ensure that the District has a state-of-the-art Central Library and branch libraries that meet the information and life-long learning needs of District residents.

- f. Action CSF-3.1B: Branch Libraries. Completely overhaul, upgrade, or re-build each branch library to provide a safe and inviting space that provides services and programs that address the needs of local residents. Each branch library should be designed to provide a minimum of 20,000 square feet of floor space with a clearly visible entrance and an open, inviting and attractive façade. (10 DCMR § 1110.11.)
  - g. Policy CSF-3.2.2: Public-Private Partnership for Libraries. Explore public-private partnerships to fund the construction of new libraries, including the development of new and remodeled libraries within mixed use projects on existing library sites. In such cases, redevelopment should conform to the other provisions of this Comprehensive Plan, including the protection of useable neighborhood open space. (10 DCMR § 1111.3.)
62. The PUD promotes the policies and objectives of the Near Northwest Area Element - Foggy Bottom West End Policy Focus Area. The objectives for land use decisions in this area are to conserve and enhance the existing residential neighborhood and retain the residential balance of the area. The PUD addresses these concerns by providing 153 to 189 new residential units to the neighborhood.

#### **Consistency with Future Land Use Map and Generalized Policy Map**

63. The Property is designated Mixed-Use High-Density Residential/Medium-Density Commercial on the Land Use Map. Mixed-use categories are areas where the mixing of two or more land uses is encouraged. This designation is generally applied to established, pedestrian-oriented commercial areas which also include substantial amounts of housing, typically on the upper stories of buildings with ground floor retail or office uses. (10 DCMR § 225.18.) Residential uses are permitted in all of the commercial zones, however, so many Mixed-use areas may have commercial zoning. (10 DCMR § 225.12.)
64. The High-Density Residential designation is used to define neighborhoods and corridors where high-rise (8 stories or more) apartment buildings are the predominant use. Pockets of less dense housing may exist within these areas. The corresponding zoned districts are generally R-5-D and R-5-E, although other zones may apply. (10 DCMR § 225.6.)
65. 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. (10 DCMR § 225.10.)

66. The Property is included in a Neighborhood Conservation Area on the Generalized Policy Map. Neighborhood Conservation Areas have very little vacant or underutilized land. They are primarily residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will be modes in scale and will consist primarily of scattered site infill housing, public facilities, and institutional uses. Major changes in density over current (2005) conditions are not expected but some new development and reuse opportunities are anticipated. (10 DCMR § 223.4.)
67. The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. Limited development and redevelopment opportunities do exist within these areas but they are small in scale. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map. (10 DCMR § 223.5.)

#### **Office of Planning Reports**

68. By report dated July 15, 2011, OP recommended that the Commission set down the Application for a public hearing. (Exhibit 15.)
69. By report dated December 9, 2011, OP recommended the approval of the Application subject to the following conditions:
  - a. Reduction in the proposed residential parking ratio of 1.5 spaces per unit.
  - b. Pulling back of the northernmost projection on 23<sup>rd</sup> Street ("Projection") so it is flush with the property line to avoid the unnecessary impact on the residential unit in the adjacent building across the alley (Unit 803 at The Gibson).
  - c. Clarification of the benefits and amenities commitments of the PUD.(Exhibit 38.)
70. In addition to this recommendation, the OP report states that the Applicant should provide a justification in the reduction of the at-grade open space. OP also noted that the streetscape does not follow the District standards as currently designed and the location of the vaults in public space is contrary to District's policy.
71. With regard to the residential parking ratio of 1.5 spaces per unit, the Commission finds that the project complies with the parking requirements set forth in Chapter 21 of the Zoning Regulations. The Applicant's traffic expert testified that the impact of the proposed parking ratio of 1.5 spaces per unit versus the parking ratio of 1.0 space per unit

originally proposed by the Applicant is negligible. This is due primarily to the public transportation available to the PUD site. The Commission also finds that the impacts of the proposed parking ratio will be mitigated by two conditions proffered by the Applicant. First, residential parking for the PUD will be limited to residents of the PUD and their guests only; parking may not be offered for non-residential lease opportunities. Second, the Applicant will decouple the sale or lease of the parking spaces from the sale or rental of the units so that residents will see and feel the costs of each parking space consumed rather than have this cost buried in their rent or purchase price.

72. With regard to the Projection, the Commission has reviewed the studies presented by Ms. Rajapakse and the study submitted by the Applicant on January 19, 2012. (Exhibits 76 and 86.) Based on these documents, the Commission finds that the Projection is acceptable, and the actual diminution of the views from Ms. Rajapakse's unit is not significant enough for the Commission to not approve the plan. In fact, the way the PUD building is sculpted, Ms. Rajapakse's unit has a view of the street it would not have with a traditional building design on the PUD site. Further, the Commission finds that, given the Property's designation on the Land Use Map, which is Mixed-Use High Density Residential/Medium-Density Commercial, the shadows that will be cast from the PUD are acceptable.
73. The Applicant presented at the public hearing a list of proffered benefits and amenities in connection with the PUD. (Exhibit 51.) The Commission finds that the proffered benefits and amenities are commensurate with the requested flexibility to height, density, and other areas.
74. According to the Applicant, the PUD has 4,495 square feet of public space at the ground level where 4,676 square feet is required under § 633 of the Zoning Regulations. The project has ample open space on 23<sup>rd</sup> Street, but has exchanged some open space immediately adjacent to the main entrance of the Library for interior courtyard space for the Library. This design was intended to minimize loitering near the Library entrance.
75. With regard to the conformity of the streetscape design and location of the utility vaults with District standards and policy, the Commission finds that these concerns are properly addressed to DDOT.

### **DDOT Report**

76. By report dated December 7, 2011, DDOT recommended conditional approval of the Application. (Exhibit 37.) In its report, DDOT stated that it would work with the Applicant to determine alternatives to a layby on 23<sup>rd</sup> Street. DDOT also recommended that the Applicant revise the project's streetscape design to adhere more closely to the surrounding community streetscape. Finally, DDOT suggested that the Applicant follow the provided TDM options and employ some form of performance monitoring to ensure a continuous and appropriate response to traffic management.

77. The Commission recognizes DDOT is not supportive of a layby on 23<sup>rd</sup> Street, a position that is contrary to the ANC's request that a layby be constructed. For the reasons that will be stated in the following, the Commission believes that a recessed parking area will address the traffic issues that prompted the ANC's support for a layby lane. Since either option is satisfactory to the Commission, the Applicant is granted the flexibility in the project design to include either a layby or recessed parking along 23<sup>rd</sup> Street, subject to review and approval by DDOT.

### **ANC 2A Report**

78. On November 22, 2011, ANC 2A filed a report with the Commission. (Exhibit 28.) The report indicates that the ANC reviewed the development plans at three duly noticed meetings in 2011, including its regularly scheduled meeting of November 16, 2011, where a quorum was present.
79. The report states that ANC 2A supports the redevelopment of the Property and is generally appreciative of the approach of the development team in involving the community as the planning for the PUD has progressed.
80. The report states that ANC 2A unanimously supports the project, subject to the following issues being addressed:
- a. Sensitivity to surrounding buildings. There is concern that the building, as currently proposed, overextends in relation to the surrounding building and "profiles too extensive so as to be compatible with its host environment." [sic] The ANC requests that the Applicant be much more sensitive to the edges of the building and its place in the West End compared to neighboring buildings.
  - b. Transportation planning. The ANC expressed concern over the impact that the proposed delivery and parking design would have on the residential buildings adjacent to the Property, which utilize the east-west alley along the north side of the Property. The concern is due to the narrowness of the alley from 23<sup>rd</sup> to 24<sup>th</sup> Street, the heavy delivery traffic from the Westin Hotel, and the pending increase in traffic with the opening of George Washington University Medical Faculty Associates. As such, the ANC proposed the following:
    - (i) Deliveries/trash pick-up. Delivery times for the PUD should be from 7:00 a.m. to 9:00 p.m. Also, closer attention needs to be paid to addressing how to protect the West End Flats and The Gibson from the turning requirements of the delivery trucks.
    - (ii) Parking Egress. More thought around safety enhancements for the egress planned for the alley (*e.g.*, only allowing commercial vehicular access into the alley from 23<sup>rd</sup> and 24<sup>th</sup> Streets while forcing outbound traffic from the

PUD to head north from the garage and then turn east to 23<sup>rd</sup> or west to 24<sup>th</sup> Street, or making the east-west alley one way east, plus the addition of mirrors, signage, etc.)

- (iii) Layby. ANC 2A supports a full-width layby on 23<sup>rd</sup> Street and requests that it be at least 45 feet in length. The ANC believes this is an important feature to the community because of the heavy traffic on 23<sup>rd</sup> Street, especially during morning and evening rush hours, as well as the frequency of emergency vehicle traffic on the way to George Washington University Hospital.
- c. Condominiums. ANC 2A would like every unit of the project to have the same high-level condominium finishes. This is consistent with the neighborhood's understanding of the LDA between the Applicant and the District, which stipulates that the residential units will be condominiums.
- d. Community Amenities. The Applicant should commit to (i) repave the entirety of the alley, north-south and east-west; (ii) add safety-related features in the alley; (iii) ensure the monies deposited into the maintenance fund as proposed are equal to the representations made by the developer; (iv) ensure that the District fulfills its commitment related to the public funding for the affordable housing at the fire station site; and (v) commit to provide filing space and the use of an office as required for ANC 2A in the new West End Library (as the existing West End library currently provides to the ANC). Additionally, if the Fire Station and the affordable housing above the Fire Station are to be counted as amenities, they should be conditions of this Order and directly linked to the issuance of the certificate of occupancy for the PUD.
- e. Construction Management Plan. ANC 2A will work with the Applicant and the community to ensure a construction management plan adequately addresses the concerns of the surrounding properties.

### **ANC 2A Testimony**

- 81. Rebecca Coder, Chair of ANC 2A, testified at the public hearing on January 5, 2012. (Exhibit 66.) Ms. Coder stated that the Applicant effectively addressed the issues presented in the ANC report as follows:
  - a. Sensitivity to surrounding buildings. Although some persons expressed concern about how the building relates to the surrounding buildings, ANC 2A could not identify what could be done to address the concerns outside of redesigning the entire building, which the ANC does not support. ANC 2A believes the PUD's unique design will be an incredibly positive contribution to the neighborhood.

- b. Transportation Planning/Management. ANC 2A believes that the Applicant has taken many steps to address the concerns related to the increased traffic in the alley and along 23<sup>rd</sup> Street, namely:
    - (i) Effectively widening the east-west alley along the northern property line of the PUD from 15 feet to 20 feet, and installing safety features in the alley.
    - (ii) The Applicant has agreed to limit deliveries to the hours of 7:00 a.m. to 9:00 p.m. weekdays and 8:00 a.m. to 9:00 p.m. weekdays and holidays.
    - (iii) The Applicant and the ANC will evaluate the alley traffic after the PUD has been in operation for one year to determine if the alley should be changed from two-way to one-way traveling eastbound.
    - (iv) To help ensure ongoing traffic flow, the ANC requests a full-size layby along 23<sup>rd</sup> Street.
  - c. Condominiums. ANC 2A requests that the residential units be built to first-class condominium design, which the Applicant has agreed to do.
  - d. Community Amenities. ANC 2A believes that the Library and the Fire Station are priorities and represent significant public amenities to both the neighborhood and the broader community. Also, the Applicant has agreed to work with the ANC and the West End Library Friends to ensure that filing space is made available for the ANC at the Library as well as some other minor amenities related to the development.
  - e. Construction Management. ANC 2A worked with the Applicant to develop a construction management plan that addresses the short-term impacts of the project. The ANC requests that the construction management plan be part of the Order. The ANC also entered into a MOA with the Applicant and requests that the provisions of the MOA be reflected in this Order. The MOA and construction management plan are marked as Exhibit 85 of the record.
82. With regard to how the PUD relates to the surrounding buildings, the Commission concludes that the project's unique design will be a positive contribution to the neighborhood and that the Applicant has addressed the issue to the maximum extent possible.
83. With regard to transportation planning/management, the Commission concurs with ANC 2A's position that the Applicant has taken steps to adequately address the concerns related to the increased traffic in the alley by effectively widening the alley along the PUD's northern property line from 15 feet to 20 feet; installing safety features in the

alley; and limiting the time for deliveries. These measures will be conditions of the PUD approval. The Commission considered the ANC's request for a layby along 23<sup>rd</sup> Street and concludes that in light of the DDOT's report either a layby or recessed parking along 23<sup>rd</sup> Street will be equally efficient in mitigating the traffic impacts of concern to the ANC. As noted, the Commission has given the Applicant the flexibility to provide either. ANC 2A's request for high-level condominium finishes in every unit appears to be related to its concern that the residential building should be a condominium rather than rental. The Applicant has not proffered that commitment and the Commission sees no basis for imposing a condominium regime either directly or indirectly. The Commission notes Paragraph 4 of the MOA (Exhibit 85) states that the Developer will complete the interior of all units in the building with similar high quality finishes of those found in high quality condominiums, but the Commission declines to enforce that through a condition.

84. The Commission agrees that the construction of the replacement Library and Fire Station should be linked to the certificate of occupancy for the residential building and incorporated that requirement into a condition.
85. The Applicant has agreed to make the following alley improvements, which are conditions of the PUD approval:
  - a. Repave or cause the repaving of the entire length and width of the east-west alley along the north side of the Property, between 23<sup>rd</sup> and 24<sup>th</sup> Streets.
  - b. Install safety devices in the east-west alley north of the Property, including, but not limited to, mirrors and stop signs as warranted by the Applicant's traffic consultant and DDOT.
86. With regard to the other community amenities referenced in the ANC report, the Commission finds:
  - a. The West End Library and Fire Station Maintenance Fund ("Maintenance Fund") was established by the West End Parcels Development Omnibus Act of 2010, which designates the Chief Librarian of the District of Columbia Public Library and the Mayor as the Fund Managers. Under the legislation, the Maintenance Fund will be audited annually by the Inspector General, who shall transmit the audit report to the Mayor and Council no later than 90 days after close of the fiscal year. The operation of the Maintenance Fund is not within the Commission's scope of review of the Application, nor was it proffered by the Applicant as a project benefit/amenity. Therefore, the oversight of the Maintenance Fund cannot be included as a condition of the PUD approval.
  - b. The Applicant is unable to force the District to fund the affordable housing above the Fire Station. Therefore, a request that the Applicant do so is not properly

before the Commission and cannot be included as a condition of the PUD approval.

- c. According to Ms. Coder's testimony, the Applicant has agreed to work with ANC 2A and the West End Library Friends to ensure that filing space is made available for the ANC at the Library. However, the Applicant has chosen not to proffer such space as a public benefit and the Commission cannot compel it to do so.

87. With regard to the construction management plan, Applicant has agreed to include the applicable provisions of the construction management plan and the MOA as part of the Order and the Commission has done so.

### **Contested Issues**

88. Library and Fire Station as Public Benefits. DCLRP-WELAG argues that the Library and the Fire Station are required under the LDA between the Applicant and the District and, therefore, are matter of right developments. As such, the Applicant cannot proffer these facilities as public benefits/amenities under the PUD. That is incorrect. Section 2403.6 of the Zoning Regulations defines public benefits as superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter of right provisions. The new Library and Fire Station clearly meet this definition. It does not matter that they are being provided as part of a contract in which the developer is receiving benefits in return. The Zoning Regulations do not require the Commission to look into the motives of an applicant, just whether what is being proffered warrants the development flexibility afforded. Such a balance has been struck here. The Commission finds, based on the letters submitted by DMPED (Exhibits 17 and 65) and the development costs submitted by the Applicant (Exhibits 17 and 84), that the construction of the Library and the Fire Station can only be achieved by the density value created through the PUD. Therefore, the Library and the Fire Station can be proffered as public benefits as defined under the Zoning Regulations.
89. Waiver of the Inclusionary Zoning Requirement. Section 2603.2 of the Zoning Regulations require that the Applicant devote the greater of eight percent of the gross floor area being devoted to residential use or 50% of the bonus density being utilized for IZ units. In this case, 23,120 square feet of the residential building, or approximately 14 IZ units would be required. DCLRP-WELAG and other persons testified in opposition to the Applicant's request for a waiver of the IZ requirements on the grounds that there is a need for more affordable housing in the District and that the Commission's approval of the waiver would establish a significant precedent for future IZ waiver requests.
90. In its order adopting Chapter 26, the Commission indicated that the PUD process could be used to permit a partial or full exemption from IZ, but only if "the number and quality of commendable public benefits proffered would clearly have to exceed those that would

ordinarily suffice to gain PUD approval.” (Z.C. Order 04-33 at page 7.) The Commission finds that this standard has been met. Indeed, the enhanced level of service that will result from the construction of the new Library and Fire Station so clearly will enhance the neighborhood that they set a benchmark in excellence for any future requests for IZ waivers through the PUD process.

91. In addition, based on the testimony by ANC 2A, the letters and testimony by DMPED and OP, and the information on the Library and Fire Station costs submitted by the Applicant in its Prehearing Statement and Post-Hearing submission, the Commission finds if the IZ units were required for the project, the project would not generate enough revenue to support the construction of the Library and the Fire Station. Therefore, to have denied the IZ waiver would have resulted in the loss of these important public benefits which, under these unique circumstances, outweigh the benefit of devoting the requisite amount of gross floor area for affordable units that would otherwise have been required under IZ.
92. Project Design, Scale, and Density. In their testimony to the Commission, the Gibson Condominium Association, The Residences at Ritz-Carlton, the West End Flats Condominium Association, Ms. Rajapakse, and Elizabeth Elliott expressed objections to the project design, scale, and density.<sup>1</sup> The Commission finds that the PUD incorporates exemplary, world-class architecture that will add to the attractiveness of the neighborhood. Based on the architectural drawings and studies submitted as part of the Applicant's Post-Hearing Submission, elements of the project design will impact the light, air, and views of the adjacent properties in a manner that is acceptable given the quality of the public benefits in the project. Further, the Commission finds that the impact from the scale and density of development are reasonable given the Property's designation on the Land Use Map, which is Mixed-Use High-Density Residential/Medium-Density Commercial, and the character of the surrounding area, which includes a mix of high rise hotels, office buildings and apartment houses, as discussed in the testimony of the Applicant's land use, zoning, and planning expert.

Further, the Applicant has mitigated the impacts of the project design and scale on the surrounding buildings by enhancing the treatment of the northwest portion of the building adjacent to the townhouses on 23<sup>rd</sup> Street, N.W.; reducing the size of the penthouse and increasing the penthouse setback along the 23<sup>rd</sup> Street, 24<sup>th</sup> Street, and L Street façades; and pulling the building back an additional five feet along the north property line in order to increase the distance between the PUD and The Gibson.

93. Alley Traffic. During its testimony, the West End Flats Condominium Association expressed concern about the increase traffic in the east-west alley that would be

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<sup>1</sup> Mr. Wnuck expressed the same objections but has since withdrawn his objections and asked the Commission to recognize him as a party in support of the project and not consider his testimony during its deliberations of the case.

generated by the PUD. In its report to the Commission, ANC 2A also expressed concern about the projected increase in the alley traffic. However, at the public hearing, the ANC testified that the Applicant has taken steps to address this issue including effectively widening the alley along the northern property line of the PUD from 15 feet to 20 feet; installing safety features in the alley; and limiting the hours of delivery. As such, the Commission finds that the additional alley traffic generated by the project will be mitigated by the following measures, which are conditions of the PUD approval:

- a. The north face of the building adjacent to the east-west alley has been pulled back five feet from the property line, which effectively widens the alley from 15 to 20 feet.
- b. The Applicant will repave or cause the repaving of the entire length and width of the east-west alley along the north side of the Property, between 23<sup>rd</sup> and 24<sup>th</sup> Streets.
- c. The Applicant will install safety devices in the east-west alley north of the property, including but not limited to, mirrors and stop signs, as warranted by the Applicant's traffic consultant and DDOT, in order to ensure safe and efficient vehicle turning movements.
- d. The Applicant will work with the ANC over the first year of building occupancy to monitor building operations and will jointly recommend any needed changes in the alley traffic system to DDOT if needed.

Further, based on testimony from the Applicant's traffic expert and from DDOT, the Commission finds that the proposed alley traffic circulation is consistent with DDOT's current policies and is acceptable given the proposed redevelopment of the Property and the level of public benefits achieved through the PUD.

94. Residential Parking Ratio. OP and DDOT objected to the increase in the residential parking ratio for the PUD, from one space per unit to 1.5 spaces per unit, given the public transportation options in proximity to the Property. The Commission finds that the residential parking ratio proposed for the project complies with the parking requirements set forth in Chapter 21 of the Zoning Regulations. According to the Applicant's traffic expert, the impact of the proposed parking ratio is negligible when compared with the originally proposed parking ratio of one space per unit, primarily due to the public transportation options available to the PUD site. Notwithstanding, in order to mitigate impacts from the increased residential parking ratio, the Applicant proffered as a condition of the PUD approval to limit the residential parking in the project to residents of the PUD and their guests only. The parking may not be offered for non-residential lease opportunities. The Applicant has also agreed to decouple the sale or lease of the parking spaces from the sale or rental of the units so that residents will see and feel the

true cost of each parking space consumed rather than have this cost buried in their rent or purchase price.

95. Consistency with the Comprehensive Plan. In his testimony, Mr. Wnuck challenged the PUD's consistency with the Comprehensive Plan. However, Mr. Wnuck later withdrew his objections to the project and asked the Commission to recognize him as a party in support of the project and not consider his testimony during its deliberations of the case.

DCLRP-WELAG argued that the Application contravenes key policies of the Comprehensive Plan, including those in the Near Northwest Element of the Comprehensive Plan and the Community Services and Facilities Goal of the Comprehensive Plan. The Commission finds that when considered as a whole, the PUD is not inconsistent with the Comprehensive Plan. According to the OP report, the Comprehensive Plan Area Elements places the Property within the Near Northwest Area and describes the area as being developed with mixed-use developments with major uses being office, hotel, and residential with very few vacant spaces remaining. The policies generally recommend that residential use be retained and enhanced by new housing. Also, according to the OP Report and the analysis prepared by the Applicant's land use, zoning, and planning expert, the PUD advances the following policies of the Community Services and Facilities Element of the Comprehensive Plan:

- a. Policy CSF-1.1.1: Adequate Facilities. Construct, rehabilitate, and maintain the facilities necessary for the efficient delivery of public services to current and future District residents. (10 DCMR §309.17.)
- b. Policy CSF-1.1.4: Addressing Facilities That Are Functionally Obsolete. Develop reuse or disposition plans for public buildings or sites that are functionally obsolete, that cannot be rehabilitated cost-effectively, or that are no longer needed. 10 DCMR §1103.10.)
- c. Policy CSF-1.1.7: Public Facilities and Economic Development. Locate new public facilities to support economic development and neighborhood revitalization efforts. (10 DCMR §1103.13.)
- d. Action CSF-3.1-B: Branch Libraries. Completely overhaul, upgrade, or re-build each branch library to provide a safe and inviting space that provides services and programs that address the needs of local residents. Each branch library should be designed to provide a minimum of 20,000 square feet of floor space with a clearly visible entrance and an open, inviting, and attractive façade. (10 DCMR §1110.11.)
- e. Policy CSF-3-2.1: Location of Branch Libraries. Locate branch libraries in a systematic way to maximize access for the greatest number of District residents, including future residents who will reside in planned new neighborhoods. This

approach may result in the development of new libraries in growing population centers within the city and the replacement of the substandard "kiosk" type libraries with larger, more appropriately designed facilities." (10 DCMR §1111.2.)

- f. Policy CSF-3.2.2: Public-Private Partnerships for Libraries. Explore public-private partnerships to fund the construction of new libraries, including the development of new and remodeled libraries within mixed use projects on existing library sites. In such cases, any redevelopment should conform to the other provisions of this Comprehensive Plan, including the protection of useable neighborhood open space. (10 DCMR §1111.3.)
  - g. Policy CSF-4.2.1: Adequate Fire Stations. Provide an adequate number of properly equipped fire stations to ensure the health and safety of residents of the District of Columbia. The adequacy of existing facilities should be evaluated in part on the ability to maintain a response time of four minutes at least 90 percent of the time for emergency fire calls and eight minutes at least 90 percent of the time for emergency medical calls. Where response times exceed acceptable limits, equipment and facilities should be relocated or provided to close these gaps. (10 DCMR §1114.8.)
96. Changes in Development Details. DCLRP-WELAG describes the Application as ambiguous and having "moving goal posts" because it does not include details on the development of Square 50 and the residential floor area for the project differs from what is in the LDA and has varied slightly since the time the Application was filed. In his testimony, Mr. Otten pointed out that the LDA refers to 224,000 square feet of residential floor area; the Application filed on June 8, 2011, refers to 307,000 square feet of residential floor area, 174 units and 192 parking spaces; and the Applicant's prehearing statement refers to a different floor area and almost 70 additional parking spaces. With regard to Square 50, the redevelopment of that site is not part of the Application; nor is it required to be. With regard to second issue, the change in the residential floor area resulted from slight modifications to the building design, which is not unusual during the PUD review and process. Whether the plans approved for the PUD are inconsistent with the terms of the LDA is irrelevant to the Commission's consideration. The project must be developed in accordance with the plans approved by the Commission and the conditions of approval. Whether these plans are inconsistent with any other agreements is for the parties to those agreements to determine and, if necessary resolve.
97. Financial Analysis of Project. Throughout his testimony, Mr. Otten challenged the amount of revenue that the PUD will generate for the Maintenance Fund and the appraised value of the Property. He also argued that the PUD is being subsidized by the District. Again this is of no relevance to the Commission. The Commission has found that the replacement Library and Fire Station are exemplary public benefits; so much so

that they warrant a waiver of the IZ Requirements. The Executive Branch of the District government, with the consent of the Council, negotiated and entered into a land distribution agreement under which the developer agreed to construct these two important facilities at no direct cost with the District. The Commission will not second guess the calculations that led the District party to conclude this was a good deal. The only relevant consideration for the Commission is that this project has will result in superior public benefits that offset the development incentives granted. (*See* 11 DCMR § 2403.8.)

98. Compliance with § 2404.12 of the Zoning Regulations. In his testimony, Mr. Otten contends that the PUD does not comply with § 2404.12 of the Zoning Regulations. That section requires OP to refer each application for a PUD subject to the provisions of § 2404 to the Department of Housing and Community Development for an analysis of compliance with the housing requirements of the Section and a recommendation. However, § 2404 applies to PUD applications that propose an increase in gross floor area devoted to office space over and above the amount of office space that is permitted as a matter of right under the zoning included as part of the PUD. The proposed PUD is a mixed-use project with a library and ground-floor retail and a residential building above. Therefore, the PUD is not subject to the provisions of § 2404 and § 2404.12 is not applicable to the project.
99. Compliance with § 2403.10 and 2403.9 of the Zoning Regulations. Mr. Otten testified that the Application does not comply with § 2403.10 of the zoning regulations because the Applicant seeks a waiver of the inclusionary zoning requirements and, therefore, does not provide the benefit of affordable housing referenced in § 2403.9(f) of the Zoning Regulations.

Subsection 2403.10 states that a project may qualify for approval by being particularly strong in only one or a few of the categories in § 2403.9, but must be acceptable in all proffered categories and superior in many. Subsection 2403.9 lists a number of categories under which a PUD benefit and amenity may be exhibited. In this case, the Commission finds that the proposed PUD is particularly strong in the following categories:

- (a) Urban design, architecture, landscaping, or creation or presentation of open spaces; (11 DCMR § 2403.9 (a).)
- (b) Site planning and efficient and economical land utilization; (11 DCMR § 2403.9 (b).)
- (c) Effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts; (11 DMCR § 2403.9(c).)
- (d) Environmental; (11 DCMR § 2403.9(h).) and

- (e) Uses of special value to the neighborhood or the District of Columbia as a whole. (11 DCMR § 2403.9 (i).)

Further, the Commission finds that the proposed PUD is acceptable in all other applicable categories listed in § 2403.9, namely:

- (a) Employment and training opportunities; (11 DCMR 2403.9(e).) and
- (b) Housing and affordable housing. (11 DCMR 2403.9(f).)

The fact that § 2403.9 (g) mentions affordable housing does not mean that every PUD must provide affordable housing or that a waiver from IZ cannot be granted. Indeed, in its order adopting chapter 26, the Commission specifically decided that such waivers can be granted through a PUD subject to a more stringent evaluation standard for the benefits proffered. As noted, the Commission applied that standard and concluded it was met in this case. Therefore, the Application meets the PUD standards set forth in § 2403.10 and 2403.9 of the Zoning Regulations.

#### **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. A comprehensive public review by the Commission of the specific development proposal is required in order to evaluate the public benefits offered in proportion to the flexibility or incentives requested, and in order to establish a basis for long-term public control over the specific use and development of the Property. (11 DCMR § 2400.3.)
3. The Commission may approve a PUD application, with or without modifications. In carrying out the purposes of the Zoning Regulations, the Commission may establish general standards and, in individual cases, set standards and conditions for height and bulk lesser or greater than the standards established for the affected districts under the Zoning Regulations or elsewhere in the Zoning Regulations. (11 DCMR § 2400.5.)
4. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations, which is 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.

5. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations. 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 Property. The impact of the project on the surrounding area and the operation of city services is acceptable given the quality of the public benefits in the project.
6. The Commission finds that the Applicant's proposal to rezone the Property from R-5-B to CR and to construct a mixed-use development on the Property is consistent with the Property's designation on the Future Land Use Map and the Generalized Policy Map.
7. The Applicant's requests for flexibility from the Zoning Regulations are consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are in proportion to the requested development flexibility.
8. 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 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.
9. The Commission is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC. In this case, ANC 2A filed a report with the Commission dated November 22, 2011 (Exhibit 28), which states that ANC 2A unanimously supports the PUD, subject to the Applicant addressing issues related to the projects sensitivity to the surrounding buildings, transportation planning, condominium/unit finishes, community amenities, and the Construction management plan. The Commission fully addressed each issue and concern raised in the written report in Findings of Fact 82 through 87 of this Order and indicated why it did or did not find the ANC's advice to be persuasive. In doing so, the Commission satisfied the great weight requirement of the act.
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. By report dated December 9, 2011, OP recommended the approval of the Application subject to the three conditions. (Exhibit 38.) The report also expressed other areas of concern. Each of these concerns was addressed by the Commission in Findings of Facts 71 through 75 of this Order. In doing so the Commission satisfied the great weight requirement of the act.
11. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

## DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development for the property located at Lots 836, 837, and 855 in Square 37, and a related map amendment to rezone the Property, from the R-5-B to the CR Zone District 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. "During the operation of the building" means a period of time that begins when the building is first occupied, and ending when it is last occupied.

### **A. Project Development**

1. The PUD shall be developed in accordance with the plans titled "West End | Square 37," prepared by TEN Arquitectos, dated March 28, 2012, marked as Exhibit 103 of the record (the "Plans").
2. In accordance with the Plans, the PUD shall be a mixed-use project with a new public library consisting of approximately 20,164 square feet; approximately 7,617 square feet of neighborhood-serving retail; and a multi-family residential building above with a gross floor area of approximately 289,004 square feet and 153 to 189 dwelling units. The maximum density for the project shall be 7.0 FAR, and the maximum building height shall be 110 feet.
3. Vehicular access to the site shall be from a single curb-cut on 24<sup>th</sup> Street, as depicted on the Plans. Access to the loading area shall be via the public alley system adjacent to the Property.
4. The project shall have a below-grade parking garage as depicted in the Plans. The garage shall have a minimum of six parking spaces for the library use, a minimum of 18 parking spaces for the retail use, and a parking ratio of 1.5 spaces per unit for the residential use.
5. The project shall include green terraces and green roofs throughout the building in accordance with the Plans.
6. The project is exempt from the Inclusionary Zoning requirements set forth in Chapter 26 of the Zoning Regulations.

7. The Applicant is granted flexibility from §§ 411 and 770.6 of the Zoning Regulations to have roof structures that do not meet the setback requirements and are not enclosed within walls of equal height to the extent depicted in the Plans.
8. The Applicant is granted flexibility from § 2201 of the Zoning Regulations to provide a residential loading berth with a depth of 30 feet in lieu of one with a depth of 55 feet.
9. The Applicant is granted flexibility from § 534.1 of the Zoning Regulations to have a maximum lot of occupancy of 82% where a maximum of 75% is permitted, as reflected in the Plans.
10. The Applicant is granted flexibility from § 633 of the Zoning Regulations to have 4,495 square feet of public space at ground level where 4,676 square feet is required.
11. The Applicant is granted flexibility to provide six parking spaces for the library use, where Chapter 21 of the Zoning Regulations requires a minimum of 18 parking spaces for said use.
12. The Applicant is granted flexibility to provide a range in the number of residential units, from 153 to 189.
13. The Applicant is granted flexibility 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.
14. The Applicant is granted flexibility to make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements so long as the project provides a minimum of six parking spaces for the Library use and the minimum amount of parking required under the Zoning Regulations for the retail and residential uses and further provided that the bicycle racks, storage and shower facilities must be located in the general vicinity of where they are shown on the Plans.
15. The Applicant is granted flexibility 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 curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the requirements of the District of Columbia Building Code and the U.S. Commission of Fine Arts, as necessary, to obtain a final building permit.

16. The Applicant has flexibility to construct either a layby or a recessed parking area along the Property's frontage on 23<sup>rd</sup> Street, subject to the review and approval by DDOT. The purpose of the improvement is to minimize impacts to the traffic conditions and response times for emergency vehicles traveling along 23<sup>rd</sup> Street, N.W.

**B. Public Benefits and Project Amenities**

1. Prior to the issuance of a certificate of occupancy for the residential building, the Applicant shall have completed the construction of the Library, which shall include a children's area, space for the Library Friends, and community rooms.
2. Prior to the issuance of a certificate of occupancy for the residential building, the Applicant shall have completed the construction of a new fire station at the northeast corner of the intersection of 23<sup>rd</sup> and M Streets, N.W.
3. Prior to the issuance of certificate of occupancy for the building, the Applicant shall repave or cause the repaving of the entire length and width of the east-west alley along the north side of the Property, between 23<sup>rd</sup> and 24<sup>th</sup> Streets, N.W., at no cost to the District.
4. Prior to the issuance of a certificate of occupancy for the building, the Applicant shall install safety devices in the east-west alley north of the Property, including, but not limited to, mirrors and stop signs, as warranted by the Applicant's traffic consultant and DDOT.
5. Prior to the issuance of a certificate of occupancy for the building, the Applicant shall make a monetary contribution of \$2,500 to DDOT for signage and other costs related to the relocation of the bus stop on the corner of 23<sup>rd</sup> and L Streets, N.W., to New Hampshire Avenue between M Street and Washington Circle.
6. Prior to the issuance of a certificate of occupancy for the building, the Applicant shall construct a layby or a recessed parking area along the Property's frontage on 23<sup>rd</sup> Street, subject to the review and approval by DDOT.
7. During the operation of the project, all residential parking spaces shall be limited to residents of the PUD and their guests only and may not be offered for non-residential lease opportunities. Further, parking spaces shall be unbundled and sold or leased separately from the residential units.
8. During the operation of the project, the project shall provide two parking spaces for a car sharing service.

9. During the operation of the project, as part of its Transportation Demand Management (“TDM”) plan, the Applicant shall provide the following to the first occupant of each residential unit upon closing of a sale or signing of a lease:
  - a. A one-time, complimentary \$100 WMATA SmarTrip fare card (\$100 in fare media shall be provided on the SmarTrip card); and
  - b. A one-time, annual membership and registration fee subsidy for participation in car-sharing program for each residential unit upon move-in; and
  - c. A one-time, annual membership to a bike share service.
10. During the operation of the project, the project shall have bicycle racks on the first level of the parking garage and in an at-grade storage facility that collectively accommodate up to 108 bicycles. A bicycle storage room shall be located adjacent to the parking garage entry near the east residential building lobby, and additional bicycle storage shall be provided on the southeast corner of Cellar 1. Shower facilities for the residential building staff, the retail staff, and the library staff will be provided on the garage level C1 of the building.
11. The PUD shall achieve a minimum of 60 LEED points equivalent, which equates to LEED Gold.
12. During the operation of the project, the parking garage shall have a minimum of two electric car charging stations.
13. During the operation of the project, the Applicant shall have a loading management plan for the project that includes the following restrictions:
  - a. Commercial vendors, delivery vehicles and/or trash truck drivers shall be instructed to approach the loading area from 23<sup>rd</sup> Street, to allow for the easiest rear-end maneuver into the loading area. Trucks leaving the site shall exit using 24<sup>th</sup> Street, to provide the easiest egress maneuver required to exit the loading area;
  - b. The loading dock for delivery vehicles and trash pick up shall not be open before 7:00 a.m. nor later than 9:00 p.m. weekdays, or before 8:00 a.m. nor later than 9:00 p.m. on weekends and holidays. The property manager will be responsible for monitoring the loading dock to restrict access before these times and inform delivery and trash contractors of this requirement; and

- c. Move-ins for the residential building shall be Monday through Friday between the hours of 8:00 a.m. and 7:00 p.m.

**C. Miscellaneous**

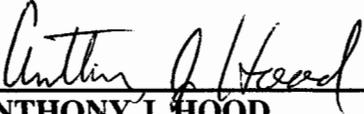
1. During the construction of the project, the Applicant shall adhere to the construction management plan, dated December 16, 2011, and marked as Exhibit 53 of the record.
2. No building permit shall be issued for this PUD until the Applicant has recorded a PUD covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General. Such covenant shall bind the Applicant and all successors in title to construct on and use the Property in accordance with this Order or amendment thereof by the Commission.
3. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order. Failure to take these actions will result in the expiration of the PUD approval as of the applicable date.
4. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

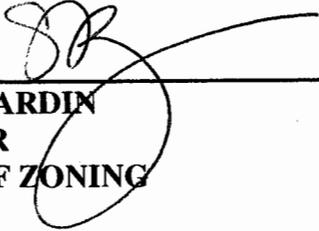
On February 13, 2012, upon the motion of Commissioner Turnbull, as seconded by Commissioner May, the Zoning Commission **APPROVED** the Application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to approve; Konrad W. Schlater, not having participated, not voting).

On March 26, 2012, upon the motion of Commissioner May, as seconded by Commissioner Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; Konrad W. Schlater, not having participated, not voting).

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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 April 27, 2012.

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 11-12

APR 27 2012

As Secretary to the Commission, I hereby certify that on \_\_\_\_\_ copies of this Z.C. Order No. 11-12 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. D.C. Register
2. Leila Jackson Batties, Esq.  
Holland & Knight  
2099 Pennsylvania Ave., N.W. #100  
Washington, D.C. 20006
3. ANC 2A  
West End Library  
1101 24<sup>th</sup> Street, N.W.  
Washington, D.C. 20037
4. Commissioner Rebecca Coder  
ANC/SMD 2A02  
2501 M Street, N.W. #721  
Washington, D.C. 20037
5. Gottlieb Simon  
ANC  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004
6. Councilmember Jack Evans
7. DDOT (Martin Parker)
8. Melinda Bolling,  
Acting General Counsel  
DCRA  
1100 4th Street, S.W.  
Washington, D.C. 20024
9. Office of the Attorney General (Alan Bergstein)
10. West End Flats Condominium Association  
c/o Beau Rightsell  
1121 24<sup>th</sup> Street, N.W.  
Washington, D.C. 20037
11. Kenneth L. Knuck  
c/o Laurie Horvitz, Esq.  
4520 East-West Highway, Suite 700  
Bethesda MD 20814
12. DC Library Renaissance Project  
c/o Robin Diener  
1530 P Street, N.W.  
Washington, D.C. 20005
13. The Residences at the Ritz Carlton  
c/o Howard Biel  
1111 23<sup>rd</sup> Street, N.W. #PH1A  
Washington, D.C. 20037
14. The Gibson Condominium Association  
c/o Scott Meyer  
1140 23<sup>rd</sup> Street, N.W.  
Washington, D.C. 20037

ATTESTED BY:

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

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